MAKING MINORITY GOVERNMENT WORK:

Hung parliaments and the challenges for Westminster and Whitehall

Robert Hazell and Akash Paun (eds.)
with Mark Chalmers, Ben Yong and Catherine Haddon

INSTITUTE
FOR
GOVERNMENT

The Constitution Unit

Contents

About the Authors

Prof Robert Hazell has been Director of the Constitution Unit since its establishment in 1995 and is also Professor of Government and the Constitution in the UCL Department of Political Science. He was previously Director of the Nuffield Foundation and a senior civil servant in the Home Office.

Akash Paun is a Senior Researcher at the Institute for Government. He was previously a Research Associate at the Constitution Unit, where he specialised in the study of parliament and devolution to Scotland and Wales.

Mark Chalmers is a Researcher at the Constitution Unit, and a specialist in Canadian politics. He holds degrees from the London School of Economics and the University of Windsor, Ontario, where he also worked as a lecturer.

Dr Ben Yong is a Researcher at the Constitution Society in London, having previously worked at the Constitution Unit. He completed his PhD at the London School of Economics on New Zealand constitutional history and is from Wellington, New Zealand.

Dr Catherine Haddon is a Research Fellow at the Institute for Government, and a former lecturer in the Department of Politics and History at Brunel University.

Foreword

Ten years ago, at the outset of devolution in the UK, the Constitution Unit embarked on a two year study to learn the lessons from overseas on how to govern in non-majoritarian systems. The research was led by Ben Seyd, who made study visits to Denmark, Germany, Ireland and New Zealand, and wrote a 150 page report on *Coalition Government: Lessons from Overseas*. His aim was to analyse how coalition governments operate, with a view to learning lessons for the new coalitions in Scotland, Wales and Northern Ireland. In 2004 he updated his work in *Coalition government in Scotland and Wales*, reviewing the experience of the first term of devolution, how well the coalition arrangements had worked, and what further improvements might be needed.

A decade on, the Constitution Unit decided to revisit this work, working in partnership with the new Institute for Government. We found that in Westminster systems minority government had been as strong a feature as coalitions, and decided to make minority government the main focus of our research. We have looked mainly at the recent experience in Canada, New Zealand, Scotland and Wales. We were fortunate to recruit a Canadian, Mark Chalmers, to lead the work on Canada, and a New Zealander, Ben Yong, to lead the research on New Zealand. Akash Paun led the work on Scotland, and Catherine Haddon did the historical research into past minority governments at Westminster.

We conducted over 60 interviews with ministers, politicians, senior civil servants, parliamentary staff, academic experts and journalists in our three study countries. We are extremely grateful to them for giving up their time to be interviewed, and subsequently for commenting on drafts of the report: we received written comments from over 35 experts from across the countries we covered. We are of course responsible for any errors and omissions, and for the conclusions we have drawn.

Our work is a companion piece to the recent report by the Institute for Government on *Transitions: Preparing for Changes of Government,* by Peter Riddell and Catherine Haddon. That report is about a change of government from one party to another. Our report is about a change from one form of government to another: from majority to minority government. In both cases our principal concern is to ensure, not just a smooth transition, but that the new government is as effective as possible.

That is why we have called our report *Making Minority Government Work*. Our focus is not simply on the executive branch. It is on all the political actors who are involved in minority government. This includes Parliament, the institution which makes and breaks governments, passes their laws and holds them to account; the political parties, who compose minority governments, and support and oppose them in Parliament; the Crown, centrally involved in government formation and dissolution; and the media, whose reporting is critical to how minority government is perceived by the public.

The media may play down our report as something which is not going to happen. That is a risk we can live with. The electoral experts say that hung parliaments will become increasingly frequent, so minority government will happen one day, possibly quite soon. But the greater risk is that when it happens, the media will denounce minority government as something fearful, unstable and deeply undesirable. They are themselves part of the majoritarian culture. Our purpose is to show that there is an alternative, already working in parts of Britain and in other Westminster parliaments, from which we can learn useful lessons. Minority government can be made to work; but it requires more subtle skills than the simpler and cruder forms of majoritarian politics. That is what our report is about.

Robert Hazell and Akash Paun, December 2009

Summary of Key Points

Westminster perceives minority government as weak, unstable, incoherent and short term in its approach to policy.

Recent experience in Canada supports that, with unstable minority governments and political and constitutional crises. But in New Zealand and Scotland minority governments and minority parliaments have been much more effective.

This report is about how to make minority government work. It summarises the recent experience in Canada, New Zealand and Scotland, and the historical experience at Westminster. It then draws out lessons for all the main actors.

Lessons for the Prime Minister and government
Minority government has some advantages over coalition: single party control, greater policy coherence, quicker decision making. But a minority government cannot govern in a majoritarian way. It must accept the likelihood of frequent parliamentary defeats, and prepare the media and the public for them, so they are not seen as confidence issues. To avoid being blown off course, it must set out a clear strategy and set of long term goals.

Lessons for the civil service
Be prepared for a caretaker government, and the need to support negotiations between political parties during a prolonged period of government formation. Be prepared for many different possible combinations of minority and/or coalition government, including looser forms of partnership that may require relaxation of collective Cabinet responsibility. This need not undermine Cabinet confidentiality, but does require a clear set of rules. Serving a minority administration also requires a different set of skills, including closer monitoring of parliamentary developments and facilitation of inter-party negotiations.

Lessons for Parliament
Parliament can become stronger under minority government, but cannot make policy or force the government to do anything against its will. Parliament may take longer to pass bills, and amend them more heavily, but the overall volume of legislation is unlikely to diminish greatly. Parliamentary reform to reduce the government's dominance of parliamentary business will not happen without a clear agenda and champion who can make it happen.

Lessons for opposition parties
Prepare before the election for negotiations immediately afterwards. Consider the alternatives before entering into coalition: supply and confidence agreements may help a party preserve its distinct identity. It is difficult to co-ordinate 'the opposition' against the government, or to bring the government down, but opposition parties can influence government policy through bilateral deals.

Lessons for the Crown
The mystique about the process of government formation and dissolution risks drawing the Crown unnecessarily into controversy. There need to be clearer rules which explain that it is not the monarch's role to form a government, or to facilitate negotiations. The decision to form a government must be arrived at by politicians, and the Prime Minister then advises the monarch on who can command the confidence of Parliament.

Executive Summary

Prospects for a hung Parliament

No British general election has returned a hung parliament in over three decades. As the political system gears up for the May 2010 poll there is a widespread assumption that the era of single-party majority government will continue. Most opinion polls project a comfortable majority victory for the opposition Conservative Party. But it is also predicted that anything up to a 10% Conservative lead will return a parliament of minorities next year, due to the growth in support for smaller parties and the current bias in the electoral system to Labour. The required swing is more than at all post-war elections save for Tony Blair's 1997 landslide. Six months before that election, the Labour Party had a lead of around 25% (as opposed to the 10-15% advantage enjoyed by the Conservatives today), which eventually narrowed to a 12.5% margin at the poll.

This means that a hung parliament is a real possibility, whose implications ought to be thought through in advance. The danger is that the necessary preparations and contingency planning in Westminster and Whitehall will not take place, or at least not thoroughly enough. An inconclusive election result might lead to a period of uncertainty and delay, with negative consequences for public confidence and government effectiveness. This report, which presents the findings from a study of recent experience in Canada, New Zealand and Scotland, is an attempt to help make these problems less likely.

Forming the new government

The first challenge to be faced in a parliament of minorities will be the formation of a new government. It is almost inevitable that this will take longer than usual, but this should be no cause for alarm. Almost all other Western countries cope without difficulty with a short period of negotiation and uncertainty between election and the swearing in of a ministerial team.

The leader of the largest party would normally be expected to lead the government, but there are no constitutional reasons why this must be the case. The guiding principle is who can command the confidence of the House of Commons. That is normally subject to an early test in the debate on the Queen's Speech. To enhance public understanding of the government formation process, one sensible reform would be to hold an 'investiture' vote in parliament (as in Scotland) at which MPs select the Prime Minister. The person nominated would then be appointed by the Queen to lead the new government. Doing the process this way round would help avoid any risk of the Monarch being drawn into political controversy.

Coalition or minority government

There is a range of options for how to structure relations between the lead party of government and smaller parties. At one end of the spectrum is formal coalition, with more than one party represented in Cabinet and the government bound by a shared policy agenda, set out in a formal partnership agreement. A formal coalition can secure for the government a working majority in parliament, but it can limit flexibility, especially if the partnership agreement is very detailed. Agreement on procedures to consult and resolve disputes within the coalition is as important as agreement on policies. For smaller parties, entering a coalition may also lead to dilution of the party's distinctive identity in the eyes of the public. Formal coalitions have rarely been the outcome of hung parliaments at Westminster, and would in any case not greatly change the relationship between government and parliament. They were also the subject of a previous report on this subject by the Constitution Unit, and are therefore not the central focus of this report.

The other end of the spectrum involves the formation of a minority government by one of the large parties, which requires it to strike issue-by-issue deals to pass its business. This option is more unpredictable, as it raises the chances of defeats in parliament or of alternative legislative alliances emerging. But it makes life simpler within government, as there is no need for time-consuming coalition management. Clarity of strategic vision is also easier to achieve. And minority government may have to concede less than would be demanded by a junior coalition partner, if it can find different parties in parliament to back different aspects of its policy agenda.

In between these two options there is a spectrum of more or less formalised mechanisms, such as 'confidence and supply agreements', by which governments can ensure they have the support of external parties on crucial votes in exchange for policy or other concessions, an arrangement which can help preserve the identity of smaller parties.

Resources available to minority governments

The Westminster system preserves for the executive a range of important resources that that help to ensure effective government. These include control of the parliamentary agenda, the budget process, delegated legislation, and prerogative powers including the right to seek an early election. Most of these would remain untouched in a hung parliament, although pressures may emerge to cede control of the parliamentary timetable to a cross-party business committee, or to allow the Commons to vote on its own dissolution (as the Prime Minister proposed in 2007).

A minority government would also control the civil service machine, enabling it to develop policy and plan the allocation of resources with a far higher level of expertise than the opposition parties. Simply by virtue of being the government, it also enjoys political resources in the ability to set the wider political agenda and tone of public debate.

Government must be more consensual

The lack of a majority in parliament means that the PM will have to be prepared to make greater concessions on policy, spending and control of the agenda. A key lesson from other countries (in particular Canada) is that when minority prime ministers seek to govern as if they had a majority the result is instability, partisanship, persistent electioneering and likely failure. By contrast, minority administrations which adopt a more consensual approach, negotiating and making concessions with opponents inside and outside parliament, are more likely to remain in office and to make headway with their policy agenda.

Where the government does not offer enough in the way of concessions, it risks losing bills altogether. The civil service also need to become more 'politically attuned' to the concerns of opposition and backbench MPs and outside interests. The general lesson is that a hung parliament will lead to multi-party govern*ance*, even if single party govern*ment* continues.

Opposition parties must act responsibly

Opposition parties also face a challenge of adaptation. Unlike under 'normal' Westminster conditions, in a parliament of minorities the opposition can block or significantly amend government proposals and even introduce alternative policies of their own. This unaccustomed power requires opposition leaders to act responsibly, not to oppose for opposition's sake.

The absence of a government majority does not imply the existence of an opposition majority. Opposition parties may find it surprisingly difficult to unite against the government, or bring the government down. They will have policy and other differences, and they may themselves be fearful of triggering an early election. So they are more likely to strike bilateral deals.

Parliament can become stronger

Without a majority government in office, parliament becomes more important and more powerful. The legislative process becomes more uncertain, but also more inclusive, as opposition and backbench amendments have more chance of being carried. But Parliament cannot make policy, or force the government to take executive action against its will. Nor is parliamentary reform any more likely in a minority parliament: it needs champions and a clear agenda to make it happen.

Role of the media

The media's instinct will be to portray ministerial concessions or defeats in parliament as failures and signs of ineffective government. But such events could alternatively be portrayed as a more consensual and inclusive form of decision making that holds advantages over the executive domination that currently characterises the Westminster system.

Making minority government work

Ultimately whether minority government can be made to work at Westminster will depend on the politicians: in particular the Prime Minister and the governing party. But other actors have important roles too: the civil service, the opposition parties, the parliamentary authorities, and the media. All have important parts to play, and all can learn from experience elsewhere in helping to ensure that a minority parliament and a minority government work as effectively as possible.

Part 1: The Westminster Context

1. Introduction

Akash Paun, Institute for Government

> The unwritten rules of the game in British politics are deeply intertwined with the assumption that one party will win a clear majority and rule the roost. If that assumption is no longer valid, a very large proportion of the normal conventions of government would come under challenge.

David Butler, Governing without a Majority (1986), p.8.

1.1 Context: In the shadow of the Westminster model

Westminster, so-called 'mother of parliaments', has had to suffer the parent's fate of witnessing her offspring grow up, reject many of her old-fashioned ways, and strike out in directions she herself finds too bold and frightening.[1] One notable example is the extent to which single party majority government has remained the norm at Westminster, unlike in almost all continental European legislatures and, increasingly, the more closely-related Commonwealth parliaments too. As a result of the 'first past the post' electoral system and the dominance of a two (or two and a half[2]) national party system,[3] every election in the postwar era bar one has returned a majority for either Labour or the Conservatives (8 times each), with the size of the majority ranging from 3 to 179 (see figure 1.1).

Figure 1.1: Share of seats won by governing party since 1945

Source: UK Election Statistics: 1918-2004, at: http://tinyurl.com/election-stats
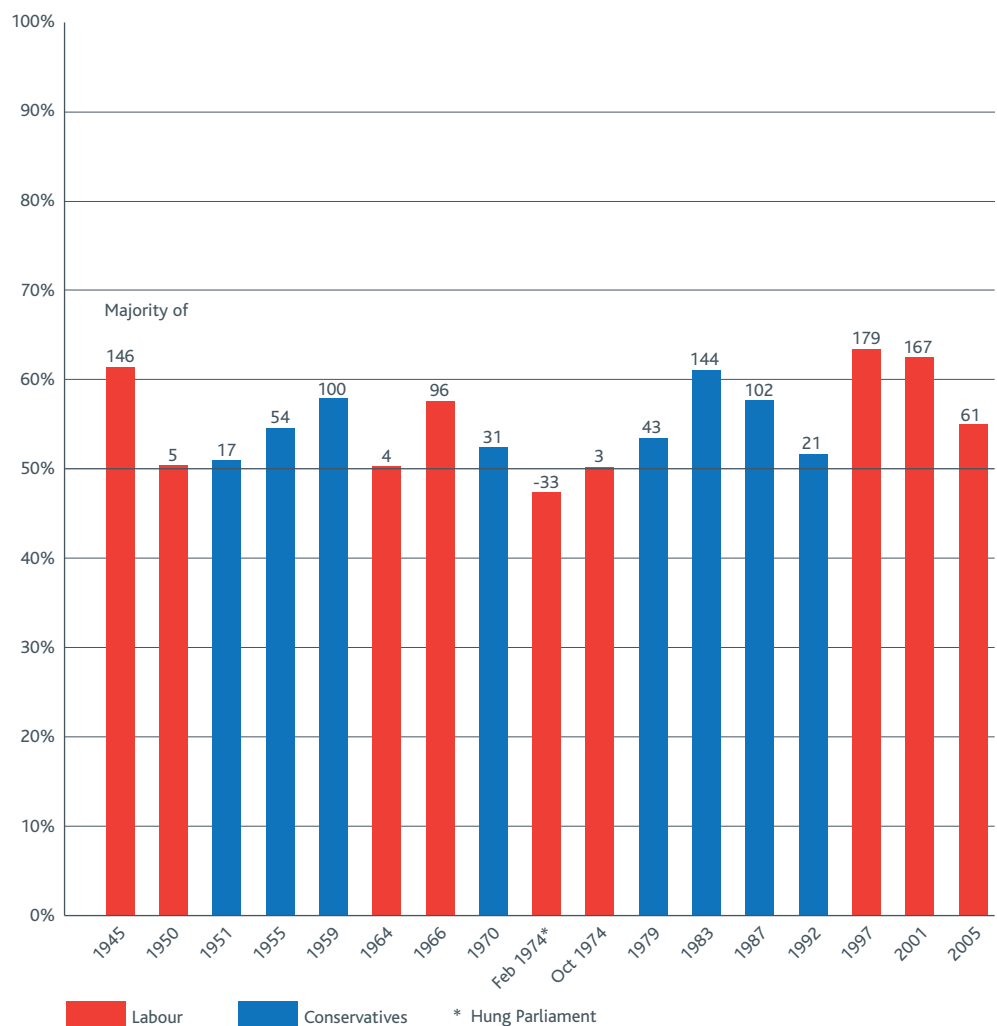
1   It should be noted, however, that the original quotation, by John Bright in 1865, was that '*England* is the mother of parliaments'.

2   On the 'two and a half party' system, see J. Blondel, 'Party Systems and Patterns of Government in Western Democracies', *Canadian Journal of Political Science,* (1968) Vol.1, No.2.

3   At least in the 84% of the UK population that England represents. Even in Scotland and Wales where there is a variable factor in the shape of nationalist parties, the SNP and Plaid Cymru have never collectively won more than 14 seats (2%) in a UK general election. Only Northern Ireland, with 18 seats (2.8 % of the current House) and just 13 active MPs, has a truly separate party system.

The frequency of single-party majorities has helped create a political culture where elections are portrayed as winner-takes-all battles between two great political tribes. In academic discourse, the electoral system, as well as constitutional features such as weak local government and the doctrine of parliamentary sovereignty, has led the UK to be characterised as a strongly majoritarian system, in contradistinction to the 'consensual' democracies to be found in other parts of Europe.[4]

The spectre that haunts the Westminster model is an inconclusive election, in which no one party wins an overall majority. As noted, no election in nearly four decades has returned a 'parliament of minorities', although Jim Callaghan in 1976 and John Major in 1996 both saw their majorities wiped out by by-election defeats and defections. Casting further back into history, however, reveals that Westminster does in fact have significant experience of minority and coalition government (see Box 1 at the end of this chapter).

Looking forward to the general election expected in May 2010, is the return of a 'balanced parliament' a genuine possibility? Opinion polls throughout 2009 have pointed to a comfortable Conservative lead.[5] However, for reasons largely to do with the differential concentration of the parties' respective support bases, Labour has a significant inbuilt advantage under the current electoral system. In 2005, for instance, the Conservatives won one seat for every 44,000 votes gained – fully 65% above the equivalent figure for Labour.[6] On the assumption of a uniform national swing, this means that the Conservatives require a swing of just under 7% to secure a majority.[7] This is higher than the party has managed in any election since the Second World War.[8]

Furthermore, the growing popularity of 'minor' parties and independent candidates in recent years (see figure 1.2) leaves a significant grey area on the swingometer between Labour and Conservative majorities. Recent projections indicate that anything between a dead heat in terms of vote share and a 10% Conservative lead would be likely to return a hung parliament.[9] This 'no man's land' would widen further should there be a further drift of support away from the two main parties, for instance as a result of the parliamentary expenses scandal, or a higher rate of abstention among their supporters.

The election could also be driven closer in the final few months of the campaign, particularly if economic indicators begin to look more positive. There may also be some repeat of the 1992 late swing back to the incumbent government on the basis of the 'better the devil you know' principle.

The purpose of this report is not to predict the outcome of the next election, nor to play the role of advocate for a hung parliament. Rather, we address the question of what could be expected to happen in the eventuality that a future general election fails to deliver a single party majority. We discuss the challenges that would be faced in adapting to this unfamiliar situation, and ask what lessons can be drawn from 'hung parliaments' elsewhere and in the past about how to ensure that effective governance is not undermined.

4   See A. Lijphart, Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries (New Haven: Yale University Press, 1999).

5   For instance, the average of 114 national opinion polls published between 1 January and 25 October 2009 gave the Conservatives a 14% lead. Source: http://ukpollingreport.co.uk/blog/.

6   Author's calculations based on data at: House of Commons Library, General Election 2005, Research Paper 05/33 (2006), at: http://tinyurl.com/yk2kqn8.

7   C. Rallings, R. Johnston and M. Thrasher, 'Changing the Boundaries but Keeping the Disproportionality: The Electoral Impact of the Fifth Periodical Reviews by the Parliamentary Boundary Commissions for England and Wales', The Political Quarterly, Vol. 79, No. 1, p. 84.

8   S. Lightbown, Electoral Swing, House of Commons Library Standard Note: SN/SG/2608, September 2008, at: http://www.parliament.uk/commons/lib/research/briefings/snsg-02608.pdf, p.3.

9   D. Butler, cited in S. Kalitowski, 'Hung up over nothing? The impact of a hung parliament on British politics', in Parliamentary Affairs, (2008) Vol.61, No.2, p.398.

Figure 1.2: The decline of two-party dominance since 1945

Vote share of Labour + Conservatives — Vote share of all others — ····· Turnout

Source: UK Election Statistics: 1918-2004, at: http://tinyurl.com/election-stats
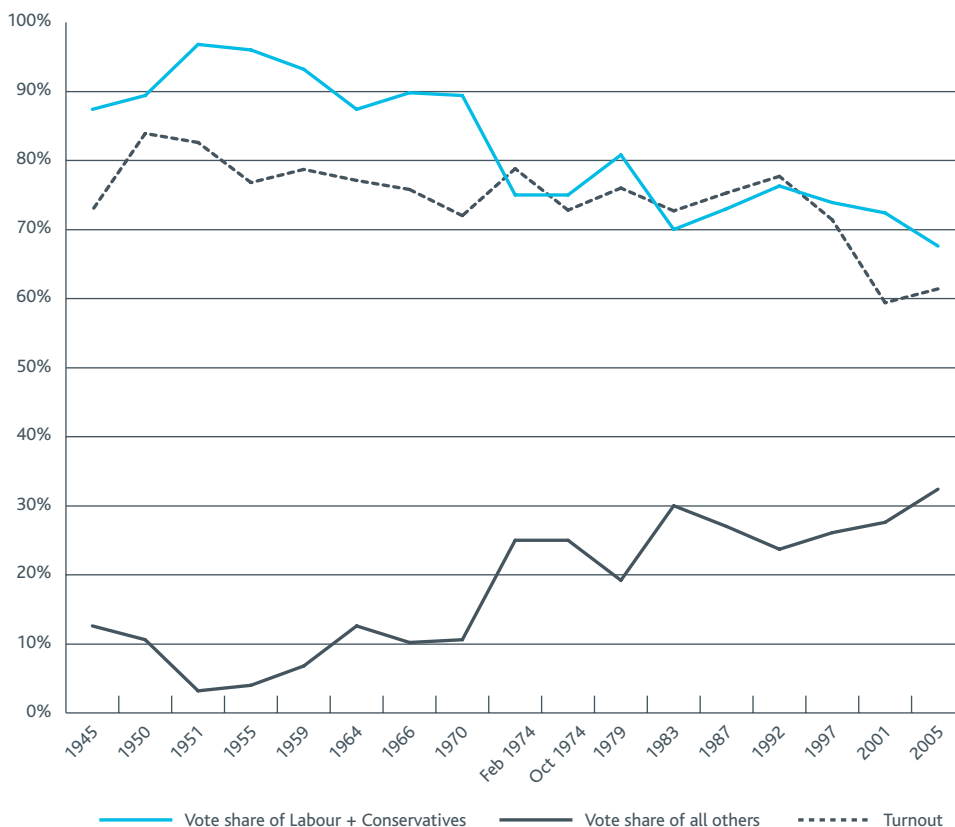
1.2 A Hung Parliament: What next?

The immediate challenge faced in a hung parliament scenario would be the selection of a prime minister. Unlike many other jurisdictions, Westminster has no formal rules for this process. There is no 'investiture vote' by MPs, nor any legal rules about who should be given first option on trying to form a government. Under Britain's uncodified constitution, a prime minister is 'asked to form a government' by the Monarch, who is guided by the strict convention to ask the person best placed to secure the confidence of the House of Commons (that is, the active or passive support of a plurality of its members). After 'normal' Westminster elections, there is little controversy about this matter since the leader of the party holding a majority of seats in the chamber is the only possible appointment the Monarch can make.

When parliament is under 'no overall control' the process becomes more complicated, and may well last longer than usual in a system familiar with removal vans in Downing Street the day after the election. After 1974's inconclusive election, for instance, the narrowly defeated incumbent Edward Heath did not tender his resignation until the Monday after the election, while he considered his options.[10] Half a century earlier, it was a full six weeks before Stanley Baldwin – whose Conservatives lost their majority in the 1923 election, but remained the largest party – was forced out after losing a vote on the King's Speech (by convention the first formal parliamentary test for all administrations).[11]

International evidence also confirms the impression that Westminster's constitutional arrangements, and in particular its electoral system, make for a comparatively swift government formation process. Government formation elsewhere in Western Europe has been calculated to last an average of 39 days, about ten times longer than in the UK.[12]

---

10 See R. Brazier, Constitutional Practice (Oxford: Oxford University Press, 1999), p.35.

11 Ibid., pp.33-35.

12 L. de Winter, 'The role of parliament in government formation and resignation', in H. Doring (ed.), Parliaments and *Majority Rule in Western Europe* (New York: St. Martins Press, 1995), at: http://www.uni-potsdam.de/u/ls_vergleich/Publikationen/PMR.htm, p. 118. The figure refers to average government formation between 1945 and 1994 in the EU15 plus Iceland and Norway.

On the other hand, the government formation process has lasted an average of only 10 days in Scotland, following the three elections to the devolved Parliament in Edinburgh, none of which have returned a single party majority. There is no reason to believe that the UK political system could not cope with a transition of this length.

At Westminster, it is almost certain that in a hung parliament in the near future the two largest parties would continue to be Labour and the Conservatives. But which of the party leaders would be selected to lead the government? In most cases, the leader of the biggest bloc in the Commons could expect to form the government. This reflects what has been described as the 'mysticism about pluralities' which means that even the narrowest leads are often portrayed as unambiguous 'victories', rather than effective dead heats.[13] The Scottish election of 2007, which the SNP 'won' by a single seat, is a case in point. In New Zealand too the largest party has always led the government, despite dramatic fragmentation of the party system since 1996. However, the constitutional position is that the leader of the largest party has no automatic right to the keys of Number 10 or even to be called upon first by the monarch. The key question is which party can, through coalition or support arrangements which other parties, command a majority in the Commons on votes of confidence and supply.

The distinction between incumbent and challenger parties is one relevant factor. If in 2010 Labour were to lose their majority, Gordon Brown would remain in office in the immediate aftermath of the election whether Labour or the Conservatives were the largest party, albeit as caretaker Prime Minister with little political power. As noted, this was the scenario for Edward Heath in February 1974. Likewise, there were many in the Scottish Labour Party keen to formulate a new ruling coalition in 2007, when the party had been overtaken by the Scottish National Party. The current administration would enjoy the advantage of incumbency, and the PM would remain the Monarch's chief constitutional adviser. The PM would be under no obligation to resign unless and until it became clear that a majority of the House were against him.

But there is a countervailing force to this incumbent advantage. The political reality is that a government that had just lost its majority would be on the back foot, and faced with an opposition with political momentum behind them. It may therefore become possible for the opposition to form an alternative government even when the incumbent administration had the greatest number of seats. This was the case when Baldwin was forced out in early 1924 to be replaced in office by a Labour Party that had 67 fewer seats. It was also considered in Wales in 2007, when a Plaid Cymru led coalition came within a whisker of unseating the ruling Labour team.[14]

A resurgent Conservative party that narrowly failed to win a majority might therefore be able to make a persuasive political claim to have earned the right to form the new government. An additional factor that could potentially strengthen this claim to legitimacy – even if the party had fewer seats – would be if the party had also won more *votes* than Labour. This is a not implausible scenario, given the previously mentioned bias to Labour in terms of the translation of votes into seats.

Ultimately, however, the single most decisive factor is likely to be the position taken by the Liberal Democrats and other smaller parties. For at least 15 years the Liberal Democrats have been seen as closer to Labour than the Conservatives. Indeed in 1997 a Labour-LibDem coalition was under serious consideration on both sides up until (and even after[15]) Labour's landslide victory. The foundations of such a deal had even been laid via the Joint Consultative Committee established to drive forward the parties' shared commitments on constitutional reform.[16] Although there is some evidence that Liberal Democrat party members would still rather support a Labour than a Conservative PM,[17] the relationship between the current leaders and senior teams of the two parties is far less intimate. In a hung parliament in 2010 Labour will also, by definition, be in decline, and therefore a less attractive partner than would previously have been the case. The most likely strategy for the Liberal Democrats in

---

13 D. Butler, *Governing Without a Majority* (Basingstoke: Macmillan, 1983), p.102.

14 In the end, the so-called 'rainbow coalition' fell apart after the Liberal Democrats failed to endorse the deal. See J. Osmond, *Crossing the Rubicon: Coalition Politics Welsh Style* (Cardiff: Institute of Welsh Affairs, 2007), pp. 28 - 31.

15 See BBC News, 'Blair considered coalition after 1997', 16 November 1999, at: http://news.bbc.co.uk/1/hi/uk_politics/522526.stm.

16 See *Report of the Joint Consultative Committee on Constitutional Reform: The Cook-MacLennan Agreement,* (1997), at: http://tinyurl.com/cook-maclennan.

17 BBC News, 'LibDems "back Labour pact"', 21 September 2009, at: http://news.bbc.co.uk/1/hi/programmes/the_daily_politics/8266336.stm, though note that the methodology and findings of this poll were challenged on the LibDem Voice blog, at: http://tinyurl.com/ygvwg6u.

a hung parliament would therefore be to support (whether actively or passively) the right of the largest party to form an administration, at least if that party had also won the most votes. However, this might be swayed by any potential deal being offered (and particularly whether it included the holy grail of electoral reform for the House of Commons).

As for the minor parties, only the Ulster Unionists and SDLP are natural ideological allies of either of the major parties (Conservatives and Labour respectively) but their small size means their chances of holding the balance of power are tiny. The same goes for Plaid Cymru, for whom a great success would be to double its current representation of 3 MPs. The SNP have slightly more realistic hopes in this regard (the party's ambitious target is to win 20 seats), but would be unlikely naturally to support either Labour or the Conservatives. Again, their strategy would be influenced by any deal on offer (in their case, this might include the devolution of additional powers, support for a referendum on Scottish independence, or additional funding for Scottish government priorities[18]).

1.3 Minority and Coalition Administrations: A spectrum of options

Which party leader is selected to lead the country following an inconclusive election represents only part of the government formation process. The other element is determining what type of government would emerge. The major choice facing a leader trying to form a workable government is whether to seek a formal coalition with one or more other parties (meaning that ministerial portfolios are shared with the parties in question), or whether to 'go it alone' as a minority administration, dependent on ad hoc 'shifting coalitions' of support to secure majorities in the legislature.

Either of these core options entails a greater degree of compromise and concession than leaders of governments at Westminster are used to. Coalitions typically bind the partners to a joint policy platform. Compromise and negotiation is up front, during the government formation phase, and then subsequently takes place mainly behind closed doors within the executive, with the government presenting a united face in public and in parliament. A coalition with a secure majority can then typically 'get its way' to a similar extent as a single party majority government. To those used to majority rule, stable coalition government (such as that experienced by Scotland between 1999 and 2007, in Wales since 2007 and in Germany since the Second World War) can therefore feel more familiar in terms of the executive-dominated policy-making process it facilitates, and more traditional oppositional role that non-government parties tend to adopt.

Single-party minority government (as currently in Scotland and Canada), by contrast, makes it far more complicated for the government to pass legislation, budgets, and even to survive, since the opposition always has the theoretical ability to overthrow the administration by defeating it on a matter of confidence. However, from the perspective of the lead party, it is easier to maintain unity within the government than in a coalition, as no up-front dilution of party policy is required. Of course, compromise (if not outright defeat) will almost certainly be a necessity when such policies require parliamentary backing. But an advantage for the government can derive from the ability to strike deals with different parties in different policy areas, which increases bargaining power and limits the scale of concessions it must make. And in political terms, it can be preferable to suffer honourable defeat in the face of insurmountable opposition, rather than to make an explicit U-turn on manifesto pledges or dearly-held principles. More importantly, from a wider public interest perspective, minority government may bring a more open and inclusive decision-making process. To its critics, however, it might tend towards weak and unstable government, which is unable to adequately tackle key policy challenges facing the country.

The unpredictability and fluidity of minority government would therefore be likely to pose greater challenges than a majority coalition to the Westminster system as a whole. Supporting Disraeli's maxim that 'England does not love coalitions', it is also notable that outside of times of war and economic crisis, hung parliaments at Westminster have typically led to minority rather than multi-party majority administrations. For these reasons, our focus in this report is predominantly on how government and parliament in the UK would operate

---

18 The party leader Alex Salmond recently set out a list of additional spending pledges totalling a reported £800m which SNP members would seek if they were to hold the balance of power at Westminster. Source: Bolger, A., 'Salmond sets out terms for hung parliament', *Financial Times,* 17 October 2009.

in the absence of an executive majority. How coalition government works was covered in the comprehensive study conducted by our predecessor Ben Seyd.[19]

An additional lesson we emphasise throughout the report is that coalition and minority government should not be considered a simple binary choice in the context of a hung parliament. For a start, the two models can be blended in the form of a minority coalition (as has been the case in New Zealand for much of the past decade). Such governments face the challenges both of maintaining internal unity and of constructing ad hoc issue-based majorities to pass legislation. Counting the Westminster norm of single party majorities too, this makes four ideal types of government along the two axes of minority/majority and single/multi party status.

But the picture is even more complex than this. Experience from elsewhere reveals a complex spectrum of potential cooperative arrangements between parties that blur the distinction between the concepts of government and opposition (see figure 1.3). For instance, minority governments in New Zealand have regularly struck 'confidence and supply' agreements, according to which one or more opposition parties agree to support the government on matters of confidence, but retain the discretion to decide their own position on other policy matters. Sweden and Denmark have also made extensive use of so-called 'contract parliamentarism' arrangements.[20] Scotland in 2007 experimented with a more limited version of this, when a 'Cooperation Agreement' committed the small Scottish Green Party to backing the SNP leader for the position of First Minister principally in return for a committee chair and consultation rights on policy. The 1977 Lib-Lab Pact also falls into this category, with the minority Labour administration granted the security of being able to survive confidence votes, while the smaller Liberal Party gained limited (and ultimately unsatisfactory) scope for input into policy discussions.[21]

In New Zealand, other more innovative variants have included coalition agreements with 'agree to disagree' clauses in place of strict collective responsibility, and the appointment of ministers from minor parties who are bound by collective responsibility only in the policy areas covered by their portfolio. This type of arrangement can often suit the smaller parties who are guaranteed a degree of influence and support from the civil service, but without risking seeing the party's identity subsumed into that of the larger party (which can damage electoral credibility).

Figure 1.3: A typology of government forms
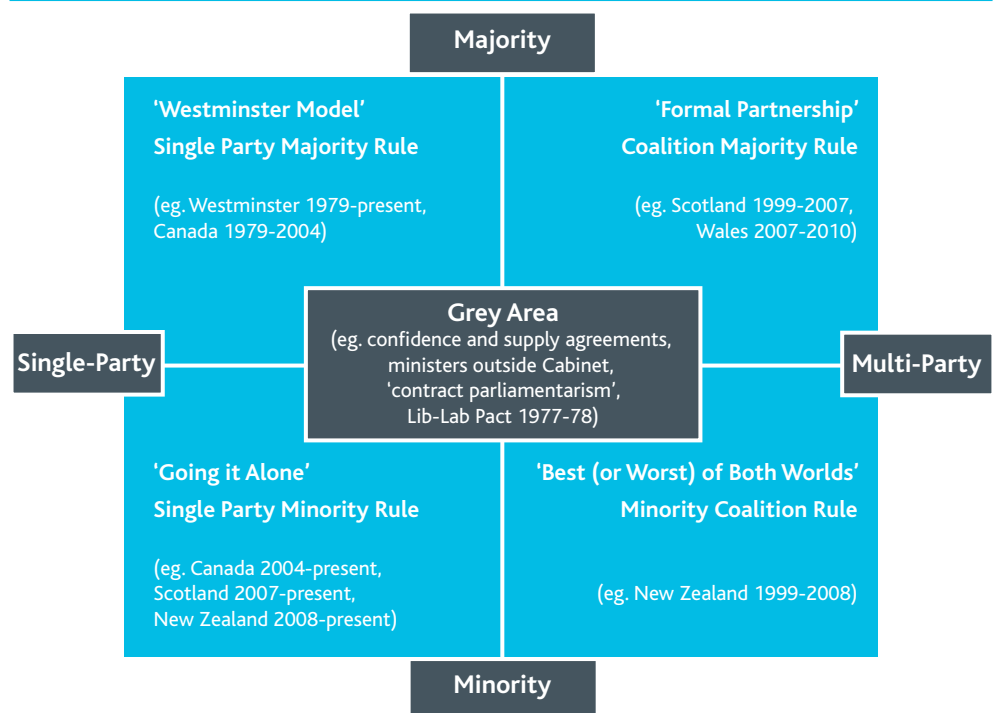
19 B. Seyd, *Coalition Government in Britain: Lessons from overseas* (London: Constitution Unit, 2002).

20 See e.g. T. Bale and T. Bergman, 'Captives No Longer, but Servants Still? Contract Parliamentarism and the New Minority Governance in Sweden and New Zealand', *Government and Opposition*, (2006) Vol. 41, No. 3.

21 See e.g. A. Michie and S. Hoggart, *The Pact: The Inside Story of the Lib-Lab Government, 1977-8* (London: Quartet Books, 1978).

1.4 Making Multi-Party Governance Work: Lessons from elsewhere

At Westminster, as noted above, there are deep-rooted concerns about the likely impact of the lack of a majority on good government, by which is meant stable, effective, accountable and strategic administration.[22] One explanation for these perceptions is that the two most recent examples of minority governments (those of Callaghan and Major) occurred as a result of government decline, and, in the former case, also in the context of economic crisis. As a result, a 'historically bounded' negative view of minority government may have developed.[23] However, there may also be intrinsic reasons why minority rule at Westminster is difficult to make work well, which international comparative study should help to highlight.

Part two of this report presents our substantive findings from studies of non-majoritarian governments in Canada, New Zealand, and Scotland, which all have political systems derived from the Westminster model, though with important variations. Canada, discussed by Mark Chalmers in chapter 3, remains the most similar in terms of its electoral and parliamentary system and wider constitutional context, but has far more recent experience than the UK of minority rule. A strongly majoritarian culture still treats minority administrations as the exception to the rule, but the party system has diverged from two-party dominance to the extent that 'minority parliaments' may become increasingly common. As a majoritarian system manqué, Canada therefore offers important lessons to the UK, though given the perceived failure of the most recent minority administrations, this may be more in the form of cautionary tale than exemplar.

New Zealand, up until 1996, was also similar to Westminster in its electoral system and two-party dominance. A shift to proportional representation at that point, as explained by Ben Yong in chapter 4, led to widespread predictions of political instability, ineffective government, fiscal imprudence, and short-termism. The experience since then, mostly minority coalitions with support party arrangements, suggests that such predictions were exaggerated; and underestimated the ability of political actors to adapt to an unfamiliar electoral system and the outcomes it produced.

Our third country case study, Scotland, was given a proportional electoral system from the outset of devolution in 1999, with the explicit intention that this would foster a more consensual 'power-sharing' political culture. The three Scottish Parliament elections to date have led to the creation of two majority coalitions and one minority government. As discussed by Akash Paun in chapter 5, both these government forms have been reasonably effective and stable, strongly against expectations in the case of the minority government formed in 2007.

To enhance comparability, each of these case study sections adheres to a common template, examining in turn each stage of the life cycle of non-majoritarian governments. We examine in turn their births, lives and deaths (that is their *formation, operation,* and *dissolution*). We discuss both the marriages of formal coalitions and the more promiscuous temporary liaisons that characterise minority administrations, with an emphasis tilted towards the latter, for reasons set out above.

But, as mentioned, Westminster also holds some lessons of relevance. In particular, the Lib-Lab Pact, discussed in detail in chapter 2 by Catherine Haddon, offers insight into how the Westminster system might still react and adapt to a hung parliament scenario. So, to a lesser extent, does the more distant experiences of the early twentieth century (see Box 1, below). In addition, Westminster has more recent relevant experience in the shape of the House of Lords, which was transformed into a balanced chamber by the removal of 90% of the hereditary peers in 1999. The upper house has defeated the government over 500 times on legislative votes since then,[24] requiring the executive to negotiate and compromise with opposition parties in a similar way to minority governments.

---

22 See e.g., the chapters by S. Jenkins and P. Norton in A. Brazier and S. Kalitowski (eds.), *No Overall Control? The impact of a 'hung parliament' on British politics* (London: Hansard Society, 2008).

23 K. Strom cited in J. Mitchell (2008), in A. Brazier and S. Kalitowski (eds.), Ibid., p. 73.

24 Data collected by Meg Russell at The Constitution Unit, UCL.
    See: http://www.ucl.ac.uk/constitution-unit/research/parliament/defeats08-09.htm
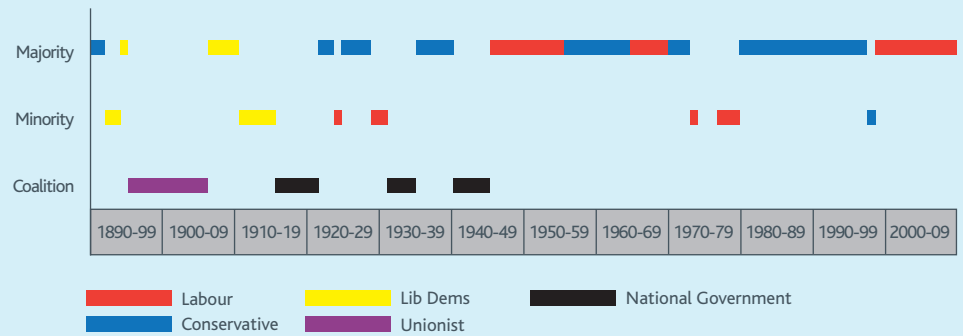
From this range of examples, it is not easy to derive a clear and consistent story of what minority rule entails. The overarching lessons, however, are that there are a range of approaches open to governments without a majority, and that in the right circumstances, and with sufficient willingness of the parties to form effective working relationships, a government that looks extremely weak on paper can be highly successful (just as governments that look powerful in terms of seats held can fail). This is because government's standing in parliament is only one source of their power. An administration with or without a majority in parliament has a range of constitutional resources that enable it to govern. In the UK, these include various prerogative powers (including the right to request dissolution of parliament), control of the budget process, and dominance of the parliamentary agenda. These are supplemented by the significant administrative and informational resources provided by the civil service, to which opposition parties have no access. Finally, there are political resources which have a bearing on the success of a minority government. The party in power – at least when it is popular – can make it difficult for opposition parties to block government proposals by claiming the legitimate right to set the policy agenda. Opposition parties may also find it difficult to present a united front against the government.

How and whether to apply the lessons from our case studies will be a matter for the next PM (or potential PM) confronted by a hung parliament, as well as for other relevant actors such as opposition leaders, backbench MPs, civil servants, and parliamentary officials. It is our hope, however, that this study – and the targeted briefings for different actors that comprise the final two chapters of this report – will go some way to smoothing the process of adaptation if and when the House of Commons is next left without a single party majority.

1.5 Research methodology

The methods adopted by the research team during this project included reviewing the secondary literature (see the Bibliography), and analysis of parliamentary proceedings, government documents and media coverage. Complementing this was a series of semi-structured interviews with politicians, advisers, parliamentary officials, civil servants, and commentators from the four political systems examined: UK, Canada, New Zealand and Scotland. In total, between February and September 2009 over 60 interviews were conducted. In addition, the research was informed by the proceedings at a half-day seminar held in Edinburgh in May 2009, featuring speakers from Wales, Canada and Scotland, and with some 25 officials and other experts in attendance. In writing up findings, the researchers consulted with a subset of the interviewees, receiving written comments from over 35 experts across the countries covered. Finally, aspects of the research included simple quantitative analysis, such as calculations as to the quantity of legislation passed and parliamentary defeats suffered by governments in various periods.

Box 1: Timeline of governments at Westminster[25]

	1890-99	1900-09	1910-19	1920-29	1930-39	1940-49	1950-59	1960-69	1970-79	1980-89	1990-99	2000-09

Labour · Lib Dems · National Government · Conservative · Unionist

During the twentieth century there were a number of periods of minority and coalition government in Britain. In all there were six minority governments and four periods of coalition rule. Only after the Second World War did single party majority government become the norm.

1900-1945

The issue of Irish home rule dominated British politics around the turn of the 20th Century and had split the Liberal Party after the conversion of its leader William Gladstone to the cause of devolution. From 1895 to 1905 the government was formed by a Conservative/ Liberal Unionist coalition. In 1906 the Liberal Party won a majority but was then reduced to a minority from 1910 to 1915 and looked for support from Irish Nationalist and Labour MPs.

During the First World War, opposition members were brought into a Liberal-led national government, which continued after the 1918 election despite the Conservatives winning a majority of seats. In 1922 the Conservatives withdrew from the coalition, governing as a majority for a year before PM Stanley Baldwin called an early election on the issue of protectionism.

The 1923 election remains the most even three-way split to date, with the Conservatives winning 258 seats (50 seats short of the 308 required for a majority), while Labour and the Liberals took 191 and 158 seats respectively. As the leader of the largest party, the Conservative Prime Minister Stanley Baldwin, chose to remain in power until meeting Parliament, six weeks after the election, at which point a Labour-Liberal alliance defeated him on a confidence vote. Labour Leader Ramsay MacDonald instead formed a minority administration.

This first Labour government survived for eight months by 'bringing in no measures that would offend the Liberals' but fell after instigating an 'unnecessary' vote of confidence.[26] In the subsequent 1924 election the Conservatives won back their majority, while the Liberals held just 40 seats, ending the three-way split and reducing the Liberals to the role of third party, a position they would remain in for the rest of the century.

After five years of Conservative rule, the 1929 election saw Labour returned as the largest party for the first time. The party was twenty seats short of a majority and after a period turned to Liberal support, offering electoral reform as an inducement.

In the context of economic crisis, the Prime Minister split his own party in 1931 by forming a National Government with Conservative and Liberal members. This lasted until 1935, by which time a Conservative majority had reasserted itself. A national coalition government was again formed during the Second World War under Winston Churchill. This broke up after victory in Europe and a caretaker government was formed under Churchill until the July 1945 election brought Labour a large majority.

25 Research conducted by Catherine Haddon and Akash Paun.

26 Butler, *Governing Without a Majority*, p. 44.

1945-2009

After 29 years of single party majority rule, the close February 1974 election left Labour 17 seats short of a majority and the incumbent Conservative government 21 seats short. The election had taken place in the context of serious industrial action and the three-day working week. Since his party had taken the greatest share of the popular vote, and the Liberals had polled more than 6 million votes, Heath felt that this meant that 'there was a large anti-Socialist majority', and that 'the nation would expect him to attempt the formation of a right-centre coalition before handing over power to the Labour Party'.[27]

Heath consequently spent a weekend attempting to negotiate a coalition with the Liberal Leader Jeremy Thorpe, offering the smaller party a Cabinet post and a Speaker's Conference on Electoral Reform. The Liberal Party rejected this offer and Heath resigned as PM. A Labour minority government under Harold Wilson consequently took office.

The reluctance of the other parties to return immediately to the polls allowed the Labour government to survive until the summer recess despite numerous parliamentary defeats. When a second election occurred on 10 October 1974 Labour gained a majority of just 3. By 1976 this majority had gone, and in March 1977 the Labour government under James Callaghan was forced to look for Liberal support to avoid defeat. The consequence of this was the Lib-Lab Pact (discussed in the following chapter), under which the Liberal Party offered the government support on confidence motions in return for policy consultation and legislation opportunities.

Following the end of the pact in July 1978, Labour managed to retain power for eight months before losing a confidence motion. This triggered an election, won by Margaret Thatcher's Conservatives in May 1979, and ushering in 18 years of Conservative majority rule.

The most recent example of minority government in the UK occurred in the final few months of John Major's administration, when the PM saw his slim 1992 majority erased by defections and by-election defeats. The government managed to survive until the end of its term due to tactical alliances with different minor parties. Indeed Major had been forced to seek such alliances even before formally losing his majority to compensate for splits in his party, particularly on the issue of Europe. John Major's defeat in May 1997 has been followed by over a decade of Labour majority rule.

27 The National Archives (TNA) CAB128/53/33, Cabinet Conclusions, CM(74), 9th Meeting, 1 March 1974.

2. A Brief History of the Lib-Lab Pact, 1977-78

Catherine Haddon, Institute for Government

> **"**
>
> The most obvious defect [of the Lib-Lab Pact] was the one forecast by the doubters in our own ranks, namely that the failure and unpopularity of the Labour government rubbed off on us.
>
> **"**
>
> *David Steel, A House Divided (1980), p.153.*

2.1 Introduction

Having lost its majority the year before, in March 1977 Jim Callaghan's Labour administration faced likely defeat on a motion of no confidence. To stave off this vote, the PM negotiated a deal with the Liberal Leader David Steel, which came to be known as the Lib-Lab Pact. This secured for the PM the parliamentary support of 13 Liberal MPs on House of Commons votes of no confidence, in return for influence over government policy and legislation.

Though in political terms it is often viewed as a failure, the Pact did achieve its primary aim – it sustained the Labour Government through nearly a year and a half of minority government at a time of great economic and social turmoil. For the Liberal Party, however, the difficulties of having genuine influence over government policy meant that this episode came to be seen as a cautionary tale and a model to be avoided in future hung parliaments.

2.2 The formation of the Pact

On 17 March 1977 the Callaghan Government was facing huge opposition, including within its own party, to public expenditure cuts to help pay for the 1976 IMF loan. The mathematics of the vote meant that even if all 310 Labour MPs voted with their own party, Labour was likely to lose in the face of opposition from 278 Conservatives, 11 Scottish Nationalists, 3 Welsh Nationalists, 2 Scottish Labour MPs, 10 Ulster Unionists and 13 Liberal MPs. The government, as the Whips rapidly became aware of the likely defeat, retreated entirely and conceded the vote by a count of 293-0. To try to force the government's resignation, Margaret Thatcher, Leader of the Opposition, tabled a motion of no confidence, which would take place the following Wednesday. This left the PM less than a week to negotiate with the smaller parties, with Callaghan considering seeking support from the Ulster Unionists as well as the Liberals.

Steel spent the weekend following the government defeat at his constituency, returning on the Sunday to London to conduct discussions with his own MPs. Steel had also used the weekend to carry out a poll of local Liberal chairmen about the likely prospects of the Party in a General Election. On the basis of his survey of regional party chairmen Steel then advised his colleagues at Westminster that though the prospects of a general election were not wholly bad for the Liberals, he felt that they should try for an agreement with Labour.[28] Between the evening of Monday 21 and late-night on Tuesday 22 March at least five drafts of the agreement went back and forth between the Labour and Liberal leaderships and four meetings were held between Steel and Callaghan. Joel Barnett, Chief Secretary to the Treasury, described it as a 'long and tortuous discussion'.[29] Steel met with Callaghan for the first time on the Monday evening, with the PM telling staff that the discussions were 'very unpromising. All too vague'.[30] For Steel the meeting was 'sombre but amicable', providing him with 'sufficient encouragement to think that such an arrangement could be possible'.[31] Steel developed a six-point draft of Liberal requirements that went to Callaghan late on the morning of the Tuesday. The PM's initial reaction was to reject the Liberal draft as unacceptable.[32] The main problem was agreeing the wording on proportional representation (PR) for direct

---

28 D. Steel, *A House Divided. The Lib-Lab Pact and the Future of British Politics* (London: Weidenfeld and Nicolson, 1980), p.36

29 J. Barnett, Inside the Treasury (London: Andre Deutsch, 1982), p.116.

30 B. Donoughue, entry for 21 March 1977, Downing Street Diary. With James Callaghan in No. 10, (London: Jonathan Cape, 2008), p.168.

31 Steel, *A House Divided*, p.35

32 Donoughue, entry for 22 March 1977, *Downing Street Diary,* p.169

elections to the European Assembly. This was a high priority for the Liberals, but intractable for Callaghan because there was so much opposition in the already fractured Labour Party. Steel was only willing to concede a less clear commitment on this issue because Callaghan had given him 'private assurances that when the time came he would back PR himself'.[33]

Callaghan did not consult his party's National Executive Committee or wider membership during the negotiating period, and only called a special Cabinet meeting to discuss Steel's approach and the way forward on Wednesday 23 March, the morning of the no confidence vote, which left his Cabinet colleagues little room for manoeuvre. Having been ratified by Cabinet at this meeting, the agreement was announced by Callaghan during the Commons no confidence debate, to Thatcher's surprise, and subsequently published.[34]

The Pact stated that the Liberal Party would 'work with the Government in the pursuit of economic recovery'. The Pact was initially agreed to 'last until the end of the present parliamentary session' at which point both parties would consider whether 'the experiment has been of sufficient benefit to the country to be continued'. Although it covered some of the most important issues for the Liberal Party, the government made few firm commitments. Legislation for direct elections to the European Assembly for 1978 was to be 'presented to Parliament in this session' but the government merely agreed to 'consultation' on the electoral method and to 'take full account of the Liberal Party's commitment' to proportional representation. Likewise, on devolution, the agreement called for 'progress' and 'consultations' on Liberal proposals, but little more, except that there would be free votes on the electoral systems for both the devolved assemblies and Europe. It was underlined that the Pact would 'not commit the Government to accepting the views of the Liberal Party, or the Liberal Party to supporting the Government on any issue'.[35]

In the end, both sides were under pressure because of the limited time available for the negotiations. For Callaghan, the no-go areas included a commitment on PR, but he did prove willing to allow for more formal machinery of cooperation. For Steel, less binding agreements for legislation and policy were acceptable in return for the apparatus that would bring himself, and his party, closer to power. The failure to secure more detailed commitments would later mean that Steel had little power to force further concessions, and led to a feeling of underachievement in the rest of the party, but to have pushed too far would likely have prevented the Pact in the first place.

2.3 Making it Work

There were three levels to the mechanics of the Pact. First, consultations between the two parties were to take place through the Labour minister and his opposite number. Second, there would be a joint Consultative Committee to 'consider any important issues, including parliamentary aspects, which have not been disposed of by consultation between the appropriate Ministers and Liberal Party spokesmen'.[36] Third, there were to be 'regular meetings between the Chancellor and the Liberal Party economic spokesman ... and the Prime Minister and the Leader of the Liberal Party will meet as necessary'.[37] The Consultative Committee was to be used to settle disputes that could not be resolved at the first level, with the Steel-Callaghan relationship to 'form a final court of appeal'.[38] Rather than making for smooth negotiations at a lower level, however, the Pact instead saw numerous disagreements whereby the leaders were 'constantly drawn into discussions'.[39]

There were to be six members in the Consultative Committee, with three from each side. The Labour members were led by Deputy Leader Michael Foot, and the Liberals by their Treasury spokesman John Pardoe. Additional individuals attended meetings when particular subjects were on the agenda. The meetings were to take place every fortnight, preferably on a Wednesday evening with the agenda agreed between Steel's office and Foot's Private Secretary. Foot's office would also produce minutes and provide a secretariat to the

33 Steel, *A House Divided,* p.39.
34 The National Archives (TNA), PREM16/1399, *Joint Statement by the Prime Minister and the Leader of the Liberal Party*, 23 March 1977. Reproduced at: http://www.liberalhistory.org.uk/item_single.php?item_id=77&item=history , accessed 8 September 2009
35 Source for all extracts from the Pact: TNA, Joint Statement, op cit.
36 TNA, PREM16/1399, *The Prime Minister to All Members of the Cabinet*, 29 March 1977
37 Alistair Michie and Simon Hoggart, *The Pact: Inside Story of the Lib-Lab Government, 1977-78* (London: Quartet Books, 1978), p.100
38 Ibid.
39 Ibid.

Committee. In one of their first meetings, on the first day of the Pact's operation, Steel and Foot agreed that the Committee would be symbolic, providing 'oversight of how the thing is going, not trying to do the work itself'.[40] Consultation between the two parties was supposed to take place largely at the level of Minister and the respective Liberal Shadow.

Though it was serviced by Foot's office, the Consultative Committee did not offer the Liberals access to the full resources of the Civil Service nor to classified government information not expected to be published – unpublished privileged information was only to be given to Steel on the approval of Callaghan. Access to resources was one of the biggest difficulties that the Liberals faced as their financial and manpower capabilities were dwarfed by Labour's support from the Civil Service. The way in which civil servants recorded meetings between the parties and correspondence regarding the Pact shows that the Civil Service continued to treat the Liberals as an opposition party rather than part of the government.[41]

The fact that the Pact was not a formal coalition ensured that the Liberals were not bound to support Callaghan's administration and could maintain their independence. Unfortunately, this also meant that there was confusion to outsiders, jumped on by the Conservatives and the Press, about the issues on which Liberal support for the government would be expected, and how significant disagreements between the parties were. From the Labour perspective, an initial hurdle was the objection put forward by Tony Benn, and others, that the Labour leadership should have consulted the party's National Executive Committee, if not the wider party, over the decision to go into any kind of governing agreement with another political party – even one short of a coalition. Consultation with the wider party would have been more time-consuming, probably more public and therefore likely to tie the negotiating hands of the Labour leadership. Callaghan therefore preferred to push ahead on his own initiative, even at the risk of dividing his party after the fact. It is noteworthy, however, that when confronted with the option of an early election, in July 1977, Callaghan's Cabinet unanimously backed the PM's proposal to renew the Pact for the next parliamentary session.[42]

There were disputes from the outset. One of the most damaging occurred within days of the Pact following the Budget announcement. After the IMF loan of the previous year the Labour Government was under intense pressure to make cuts on public expenditure. Following the Budget, the Liberals informed the government that they would not be able to support the proposed increase in petrol duties. Treasury minister Joel Barnett was highly critical of the smaller party, referring to 'the naivety of the Liberals, who blithely thought that they could defeat us on a Budget Ways and Means resolution … and yet we could carry on as if nothing had happened'.[43]

A meeting between the Prime Minister and David Steel was held to resolve the issue. The record of this meeting is a good example of the disputes and negotiating styles that were seen throughout the Pact. In addition to the policy disagreement itself, both Callaghan and Steel knew how much was at stake. The threat of an election was used by both to bolster their respective positions and there is a clear sense of brinkmanship and of each attempting to call the other's bluff, while emphasising a wish to resolve the dispute in a positive fashion. Callaghan sought to persuade the Liberals either to support the government over the budget vote or to abstain, but could not offer a concession as it 'would destroy the Government's credibility'.[44] Steel argued that though he agreed that the government could not lose a Budget vote and carry on, and he did not wish this to occur, he could not now concede when the Liberals had 'publicly declared opposition' to the petrol tax increase.[45] As when the Pact was agreed in the first place, over the issue of PR, the eventual solution was for Callaghan to 'privately agree, with Mr Steel himself and only Mr Steel, that there could be changes at the Committee Stage'.[46]

40 Steel, *A House Divided*, p. 44.

41 TNA, CAB197/94, Files of the Chancellor of the Duchy of Lancaster, 'Liberal Party (Lib/Lab Pact)', December 1977-April 1978

42 TNA, PREM16/1227, Chequers Cabinet meeting on 26 June 1977 on government strategy: political and economic prospects and electoral implications, 27 June 1977.

43 Barnett, *Inside the Treasury*, p.117.

44 TNA, PREM16/1399, 'Record of a Meeting between the Prime Minister and Mr David Steel', 31 March 1977

45 Ibid.

46 Ibid.

The 1977 budget demonstrated the major difficulty in establishing and maintaining an agreement that was a long way short of a formal partnership in government. In particular, the problem was not just 'lack of Liberal access to information' prior to the budget announcement, but more 'the traditional restriction of key budgetary decisions to the Chancellor and the Prime Minister'.[47] Though members of the Cabinet, not forewarned, may likely support their own government over the budget vote itself (though this was far from guaranteed for Callaghan's government); for the Liberals the issue was of embarrassment if required to support measures that were contrary to stated party policy. In 1978, because they had longer to prepare, the Liberals were able to initiate discussions over the budget much sooner, better able to formulate their approach and priorities for influence, and relatively better at anticipating problems. The Liberals also co-opted outside help from academics and businessmen to develop their strategy.[48]

Despite the early teething difficulties the Pact ensured that the government survived to the summer of 1977. Callaghan's reasoning for continuing the alliance beyond this point was set out in a June 1977 memorandum to the Cabinet, which argued that as Liberal conditions for the Pact did not 'seem excessive', the Cabinet should consider continuing it for a 'fixed longer period', even up to 1979.[49] The fact that the Pact could guarantee the survival of the government, and the argument that the electoral prospects for Labour could well reverse itself if 'the economic basis for National Recovery' were achieved, were enough to convince the Cabinet to continue the Pact.[50] Though there were leaks and major disagreements in the run-up to the 1978 budget, it was the issue of Liberal by-election results and the failure to make headway over devolution and electoral reform that caused the greatest problems for maintaining the Pact.[51] By May 1978, when Steel acknowledged that it was 'increasingly difficult to delay a definitive announcement' on ending the Pact, it had become a relatively open secret that it would not last much longer.[52]

2.4 End of the Pact and Dissolution

The Lib-Lab Pact came to an end in July 1978, after the parties agreed, by mutual consent, to part ways. The Pact's disintegration ultimately resulted from Steel's appreciation that the government would be unable to give any further concessions, particularly on PR, an issue that had loomed in the background throughout (and on which the Liberals had failed to win a Commons vote despite some Labour support). The Liberal Party's worsening electoral performance at by-elections, later described as a 'long parade of humiliating failures', saw Steel's strategy lose significant grassroots support, and therefore also helped to hasten the demise of the Pact.[53]

Even at its end both Callaghan and Steel presented it as having done its job in maintaining a 'stable' government for long enough to allow Labour to make some progress on the economy and on incomes policy. The end of the Lib-Lab Pact did not, however, lead directly to the dissolution of Parliament. It was only on 28 March 1979 – several months later – that Labour lost a no confidence vote, after the failure of the Scottish and Welsh devolution referendums, precipitating the 1979 general election.

2.5 Conclusions

The history of the Lib-Lab Pact and its survival for well over a year shows that the success of minority government by parliamentary alliance depends upon shared interests *and* the ability of the leaderships of both parties to work together. It was dependent in particular upon Callaghan's willingness to compromise and Steel's desire to demonstrate the ability of the Liberals to work in a coalition, not least as an argument in favour of PR. This was somewhat at variance with much of his party who wanted tangible results. Steel effectively had to persuade, cajole and threaten many of his MPs into support and there was little consultation with the wider party membership.

47 I. Marsh, 'Liberal Priorities, the Lib-Lab Pact and the Requirements for Policy Influence', *Parliamentary Affairs*, (1990) Vol. 43, p. 301.

48 Michie and Hoggart, *The Pact*, p.163

49 TNA, CAB129/196/17, Cabinet Memorandum, CP(77)67, 'The Government's Strategy', 23 June 1977

50 Ibid.

51 Steel, *A House Divided*, p.136.

52 Ibid., p.138.

53 Michie and Hoggart, *The Pact,* p.174.

The main aim of the Pact was to avoid a major government defeat. By this measure, and from Callaghan's perspective, it can be seen to have been a success. For Steel, it brought his party something closer to an experience of coalition government. This was 'almost exactly what he wanted: a taste of power... and the invaluable experience of being locked into the mechanism of government, something denied to Liberals since the end of the last war'.[54]

Perhaps the most dominant factor in subsequent measurements of the success of the Pact for the Liberals was in their influence on government policy, or lack thereof. After the conclusion of the Pact the Liberals set out what they considered to be the policy successes they had achieved under the Pact. Later study of this list concluded that although 'the Liberals can be seen to have successfully exerted their veto power and to have achieved modification of government proposals, their failure to advance their own agenda is clear'.[55] As a result, many in the party took from the Pact the lesson that in future hung parliaments the party should seek formal coalition (as eventually achieved in both Scotland and Wales) to avoid being saddled with 'responsibility without power'. However, an alternative lesson to take is simply that aligning the party with an unpopular government, not surprisingly, did not boost the party's political standing.

The 1976-79 period (as well as the February to October 1974 government) does show the means by which governments can survive in Westminster in a hung parliament without entering into formal coalition. Both Wilson and Callaghan were able to survive a significant number of government defeats, though this did not make for a government able successfully to pursue a positive policy agenda. However, it is plausible that resistance within the Labour party would have rendered impossible any attempt to initiate a formal coalition with the Liberals in any case. The choice for Labour was therefore between the Pact and an early election they were likely to lose. The Pact enabled the government, against expectations, to serve almost a full term in office but could not be expected to save the party from ultimate electoral defeat, nor to solve the profound economic and social problems facing the country at the time.

54 Ibid.
55 Marsh, 'Liberal Priorities', p. 309.

3. Canada's Dysfunctional Minority Parliament

Mark Chalmers, The Constitution Unit, UCL

> **"**
>
> The art of minority government is engineering defeat on the most favourable terms.
>
> **"**
>
> *James Travers, Toronto Star, 22 March 2007.*

3.1 Context

Canada developed Westminster parliamentary institutions in the mid-nineteenth century, and these were retained at Confederation in 1867, when Canada gained de facto independence. They are organised on the principle of responsible government, meaning that the executive must be able to command the confidence of the House of Commons. The Federal Parliament consists of the House of Commons, elected on the basis of the first past the post system, and a wholly-appointed Senate. The Queen is Canada's formal Head of State; however the powers of the Crown are exercised by the Governor General on the advice of the PM and Cabinet.

Canada has three major national parties represented in the Commons: the Conservative Party of Canada (Conservatives) and the Liberal Party of Canada (Liberals), which are the traditional 'office seeking' parties, and the 'policy seeking' New Democratic Party (NDP).[56] In addition, the Bloc Québécois, a separatist party that only runs candidates in Quebec, typically wins around a sixth of seats in Parliament.

Since Confederation, Canada has had a total of 13 minority governments (see figures 3.1 and 3.2). These can be divided into three periods: the Mackenzie King government between 1921 and 1925 and again from 1926 to 1930; a second period of on-off minority governments led by both main parties between 1957 and 1979; and the period from 2004 to the present with PM Paul Martin's Liberal minority government and continuing with two Conservative minority administrations under Stephen Harper. By contrast, there has only been one coalition government, and that was created in response to the outbreak of the First World War, rather than an inconclusive election.[57] Canada almost had its second formal coalition government in December 2008 when the Liberals and NDP signed an accord which was backed by the Bloc Québécois. Ultimately this did not happen, following the controversial decision of the Governor General to temporarily prorogue parliament (discussed below).

As a result of its similar constitutional structure, and its tendency to opt for minority rather than coalition rule in the absence of single-party majorities, Canada provides a useful source of learning for the UK. Some of its minority governments are regarded as having been highly successful and effective at governing. For example, Lester Pearson led a minority government over two consecutive Parliaments in the 1960s, and is credited for enacting the Canada Pension Plan and universal health care. His government is viewed by many as one of the 'most productive and creative' in Canadian history.[58] Similarly, John Diefenbaker's minority government in 1957, which introduced a number of important legislative reforms and initiatives, is generally regarded as a major success. However, the current period of minority rule is not generally seen as a success.

---

56 D. Good, 'Minority Government and the Public Service', Notes for a panel presentation at the Conference, 'Minority Report: The Effects of Minority Government in Canada since 2004', at Wilfred Laurier University, 8 February 2008, at: http://publicadmin.uvic.ca/faculty/good/minority_govt.pdf.

57 For a good historical overview of minority governments in Canada see Chapter 3 of P. Russell, *Two Cheers for Minority Government: The Evolution of Canadian Parliamentary Democracy* (Toronto: Emond Montgomery Publication Limited, 2008). It should be noted that PM Borden's government held a 43 seat majority in the House of Commons, and only invited the opposition parties to form a coalition to present a united front on the extremely controversial issue of conscription.

58 P. Russell, 'Learning to Live with Minority Parliaments', in P. Russell and L. Sossin (eds.) *Parliamentary Democracy in Crisis* (Toronto: University of Toronto Press, 2009), pp. 144-145.

Recent voting patterns indicate that the prospect of any one party gaining a majority is unlikely, given that each has a strong regional base of support. Thus, barring a dramatic shift in voter preferences or the collapse of one or more parties, minority governments will in all probability occur more frequently in the future.[59]

Despite the country's experience, minority governments are seen by many Canadians as aberrations, and short-term exceptions to the otherwise normal condition of governments with secure majorities. This has been reinforced by six consecutive elections between 1980 and 2004 which returned governments with sizable majorities. As in the UK at present, Canadians became accustomed to majority governments, and until 2004 a large segment of the population had no memory of, or experience with, minority government at the federal level.

Minority governments are also often portrayed by the media as inefficient, unstable, and ultimately as less effective than governments with secure majorities.[60] It is unclear whether this is a reflection of attitudes towards the current minority government or of a more generalised hostility towards the concept of minority rule. Either way, there does seem to be a fairly broad consensus that minority government has not worked well since 2004.[61]

Figure 3.1: Three Periods of Minority Governments in Canada

Year	Governing Party	Duration (years)	Prime Minister
1921-1925[62]	Liberal	4	William Lyon Mackenzie King
1925-1926	Liberal	1	William Lyon Mackenzie King
1926-1926[63]	Conservative	<1	Arthur Meighen
1926-1930[64]	Liberal	4	William Lyon Mackenzie King
1957-1958	Progressive Conservative	1	John Diefenbaker
1962-1963	Progressive Conservative	1	John Diefenbaker
1963-1965	Liberal	2	Lester Pearson
1966-1968	Liberal	2	Lester Pearson
1973-1974	Liberal	1	Pierre Trudeau
1979-1979	Progressive Conservative	1	Joe Clark
2004-2006	Liberal	2	Paul Martin
2006-2008	Conservative	2	Stephen Harper
2008-Current	Conservative		Stephen Harper

Source: Parliament of Canada; Peter Russell (2008).

59 See J. Simpson, 'Until something changes the road to majority is blocked', *The Globe and Mail*, 28 July 2009.

60 For an example of this type of coverage, see A. Cohen, 'Business the big loser in minority government', Financial Post, 7 November 1988, pp. 1-8.

61 There was a consensus among all of the Canadian interviewees on this point.

62 The Liberals were one seat short of a majority. However, with the support of the Progressive Party, King was able to form a government. Over the course of this legislature, as a result of 2 MPs crossing the floor (December 1922) and 2 lost by-elections (December 1923), the government fluctuated between minority and majority status in the House of Commons.

63 It lasted only 3 days (June 29-July 2) if only days during which it faced Parliament are counted.

64 During this period, King led a de facto majority government as his party was close to a majority in the House of Commons with a range of sources of support.

Figure 3.2: Share of Seats Held by Canadian Governments (%)

Canadian Electoral Outcomes 1921-2008

Percentage of seats gained by winning party
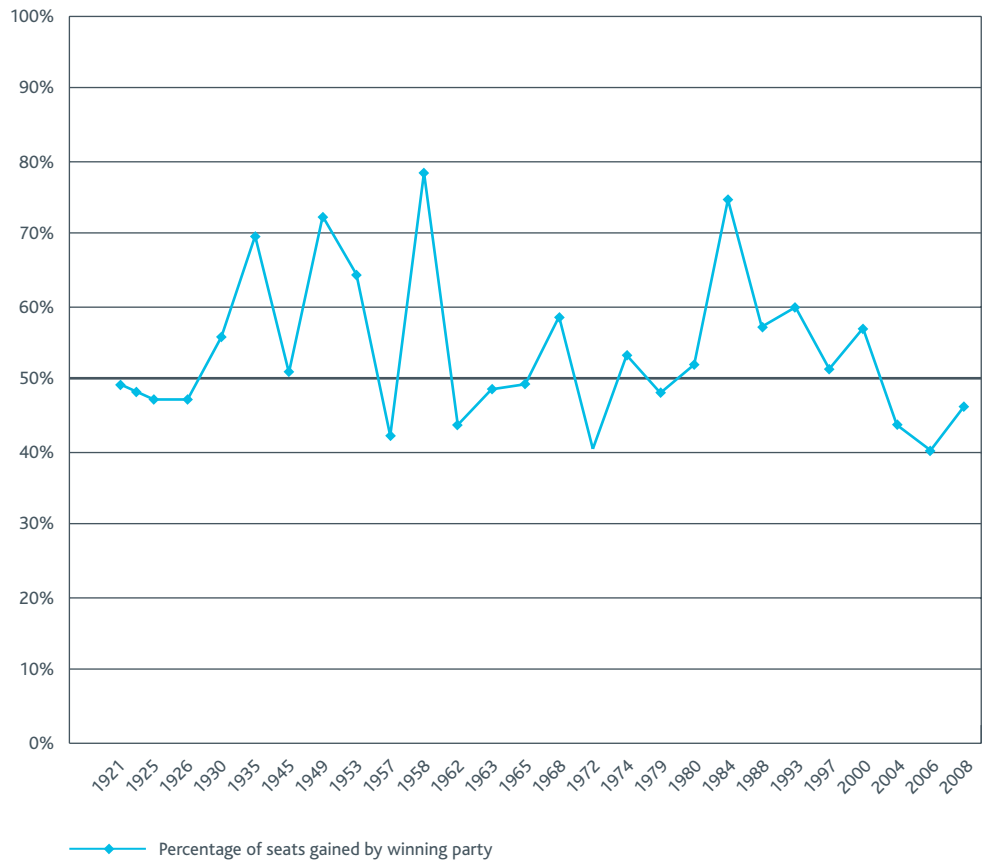
3.2 Government Formation

The Canadian government formation process is highly similar to that of the UK. Following an inconclusive election the incumbent Prime Minister has the option of resigning or meeting the House of Commons to see whether his or her party has the confidence of a majority of MPs.[65] It is not clear how long the PM could wait before making a decision. The only requirement is that there must be a session of Parliament at least once a year.[66]

In the event that the incumbent PM resigns, the Governor General will usually ask the leader of the opposition party most likely to enjoy the confidence of the House to form a government. Thus, following the 2006 election, incumbent PM Paul Martin advised the Governor General to invite Conservative Leader Stephen Harper to form a government as his party had the most seats in the House.

However, it is not an automatic rule or convention that the incumbent PM should resign if another party wins a plurality. The right of an incumbent or newly appointed government to govern derives from its ability to maintain the confidence of a majority of MPs in the House. This is usually tested shortly after an election with the vote on the Address in Reply to the Speech from the Throne which sets out the government's legislative agenda for the forthcoming parliamentary session. Should the opposition parties successfully pass a motion which conveys a lack of confidence in the government and its agenda, then by convention the government must resign.[67]

When a government has been defeated in an election, it remains in office until a new government can be formed. In the case of elections that have resulted in new governments since 1957, the new government has been sworn in 10 to 14 days after the election.[68]

65 E. Forsey, *How Canadians Govern Themselves* 5th Ed. (2003), at: http://lpintrabp.parl.gc.ca/lopimages2/bibparlcat/3000/Ba373601.pdf.

66 Section 5, Constitution Act 1982, states, 'There shall be a sitting of Parliament and of each legislature at least once every twelve months'.

67 A. Heard, 'Constitutional Conventions and Parliament,' *Canadian Parliamentary Review,* (Summer 2005), p. 21.

68 'Government and Canada's 39th Parliament: Questions and Answers' (Ottawa: Library of Parliament, 2005), p. 18, at: http://www.parl.gc.ca/information/library/PRBpubs/prb0543-e.htm.

During this period, the incumbent government's decision-making capacity is significantly curtailed by what is known as the 'caretaker convention'. The convention is an unwritten rule of political behaviour which holds that in such circumstances a government should restrict decision-making to routine, non-controversial matters.[69] Although the consequences for breaching the convention are purely political, governments have generally avoided making major policy decisions or significant appointments until Parliament has reconvened.

The caretaker convention also applies to an incumbent government which has lost the confidence of the House. One day after his minority government was defeated on a confidence vote, PM Joe Clark decided not to proceed with a $2 billion purchase of military aircraft, citing the fact that his government no longer had the authority to make such a major decision.[70]

If a minority government is defeated on a vote of confidence, there are two possible scenarios. First, the PM can advise the Governor General to dissolve Parliament and hold an election. The second option is for the PM to advise the Governor General to ask the opposition whether it can form a government. In both scenarios, the Governor General is not bound to follow the advice of the PM since his or her party has lost the confidence of the House. As such, the Governor General is required to exercise his or her discretionary powers, which are largely based on unwritten constitutional conventions. It is the exercise of these discretionary powers which has caused considerable controversy.

In 1926 the Liberal minority government of PM Mackenzie King faced almost certain defeat on a motion of censure after it lost the support of MPs from smaller parties which had previously backed the government. The PM advised the Governor General, Lord Byng, to dissolve Parliament. Byng refused to grant dissolution for a variety of reasons, but primarily because there appeared to be an alternative government capable of maintaining the confidence of the House in the form of Arthur Meighen's Conservatives. Furthermore, Byng received assurances from members of the smaller Progressive Party that they would support a Conservative government. Consequently, King resigned and Lord Byng asked Meighen to form a government. Following the defeat of Meighen's government in the Commons, King used the Byng controversy to his advantage during the ensuing election campaign.[71]

The Governor General was forced to resolve another dispute in December 2008 when PM Harper, fearing that his government would be defeated on a vote of confidence by the numerically superior opposition, convinced the Governor General to prorogue Parliament for almost two months. During that time the PM made certain concessions to the opposition parties in the form of an economic stimulus package which enabled the government to survive a confidence vote when Parliament reconvened. The decision was controversial because the Liberal and NDP parties had signed an accord to form a coalition government which the Bloc Québécois agreed to support informally. The party leaders also informed the Governor General of their intention to defeat the government and form a viable coalition. Despite these representations, the Governor General granted the PM's request.

This was seen by some as setting a dangerous precedent. However, many commentators agree that it was the prudent option. As one explains, the Governor General's principal concern must be to protect parliamentary democracy which means giving an elected Parliament the opportunity to function properly.[72] Proroguing parliament essentially provided a 'cooling off' period during which the PM and Opposition Leaders could work out their differences away from the combative atmosphere in Parliament.

The crisis of December 2008 highlights some of the challenges and pitfalls facing a Head of State required to resolve politically charged issues concerning the formation of government. Governor Generals are not required to be constitutional experts, and most have not been. They therefore rely heavily on advice from the Clerk of the Privy Council (Canada's equivalent of the Cabinet Secretary)[73], the PM, and on their own personal advisors. The

---

69 J.R. Mallory, *The Structure of Canadian Government* (Toronto: Gage Publishing, 1984), p. 82.

70 J. Wilson, 'Constitutional Conventions and Election Campaigns: The Status of the Caretaker Convention in Canada', *Canadian Parliamentary Review,* (December 1995), at: http://www2.parl.gc.ca/Sites/LOP/Infoparl/english/issue.asp?param=155&art=1057.

71 P. Russell, 'Learning to Live with Minority Parliaments', in P. Russell and L. Sossin (eds.), Parliamentary Democracy in Crisis (Toronto: University of Toronto Press, 2009), pp. 138-139.

72 P. Russell, 'Ignorance of parliamentary rules is distorting debate over legitimacy,' *The Star*, 3 December 2008. It should be noted that many interviewees agreed with this opinion.

73 The Privy Council Office describes the Clerk of the Privy Council as 'the most senior non-political official in the Government of Canada, and provides professional, non-partisan support to the Prime Minister on all policy and operational issues that may affect the government'. For additional information on the role of the Clerk of the Privy Council see: http://www.pco-bcp.gc.ca/.

content of this advice is not publicly disclosed nor are the Governor General's reasons for making a particular decision. Some interviewees suggested that in the interest of democratic accountability the decision-making process should be more transparent. Furthermore, the uncertainty surrounding the existence and content of the unwritten constitutional conventions threatens to create a perception that the Governor General is acting arbitrarily. Accordingly, the existence of a written code along the lines on the New Zealand Cabinet Manual specifying the conventions and processes relating to the formation of government may be of significant value in future controversies.

The events of December 2008 also hold important lessons for the civil service. The Canadian civil service has well developed procedures for dealing with the transition from one government to the next. For the civil service, transitions to minority governments are not significantly different from transitions to majority governments. However, procedures also need to be established for dealing with a potential transition to a coalition government where the cabinet is composed of MPs from two or more parties. As a result of the lack of experience with coalition government at the federal level, there has been minimal planning for the possibility in the future. Had the Governor General invited the Liberal-NDP coalition to form a government, the federal bureaucracy would likely have been caught off guard. Formal planning on the part of the civil service for every eventuality is required as government formation and transition in minority parliaments can be complex and unpredictable.

3.3   Making it Work

3.3.1 Government and Opposition Perspectives

On average, minority governments in Canada last about a year and a half compared to the usual four-year term of majority governments. The longest uninterrupted minority government was that of PM Mackenzie King between 1926 and 1930, although it operated like a majority government because King's Liberals had support from Independent Liberals and some Labour MPs. The second longest was PM Harper's 2006 minority government which lasted almost two years and seven months, during which time 125 government bills were introduced and 65 passed. The least productive minority government was Joe Clark's nine-month Conservative government in 1979 which passed only seven of 38 government bills.[74]

Minority governments in Canada have relied on four strategies to ensure their survival and to secure passage of their legislative agendas, of which the least used is the formal coalition. As C.E.S. Franks explains, in Canada 'a minority government is more likely to make concessions over policy and legislation with a third party rather than to enter into a coalition'.[75]

One reason which militates against the formation of coalitions is the belief, widely held among many politicians, that minority governments are temporary and will soon be converted into majorities.[76] This reduces incentives for long-term formalised cooperation between the parties. The example of John Diefenbaker's minority government in 1957, which less than a year after being elected won a majority government by the largest margin in Canadian history, has influenced the calculations of subsequent PMs leading minority governments.[77] In 1974, Trudeau also succeeded in converting a minority government into a majority; however, PM Pearson was unable to secure majorities in 1963 and 1965. PM Harper also failed to win a majority after calling an early election in the fall of 2008.

Coalitions are also rendered unlikely by the limited number of potential partners, and the fact that the Bloc Québécois, as a separatist party, is seen as an unacceptable coalition partner, at least formally, by the other parties. Hence, cooperation with the Bloc is most likely to occur on an informal basis, as would have been the case if the 2008 Liberal-NDP coalition agreement had come into effect. The three page agreement would have resulted in a Liberal-NDP government with the leader of the Liberal Party becoming PM and six of eighteen cabinet positions going to the NDP. The accord specified that the principles of cabinet confidentiality and solidarity would be maintained, and that the parties agree

---

74 Figures obtained from CBC News, 'The 39th Parliament: A dysfunctional or productive session?' 9 September 2008, at: http://cbc.ca/news/ canadavotes/issuesanalysis/sheppard-legislativetally.html.

75 C.E.S. Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987), p. 49.

76 This opinion was expressed by all interviewees and is echoed in the academic literature; see L. LeDuc, 'Coalition Government: When It Happened, How It Works', in Russell and Sossin (eds.), Parliamentary Democracy in Crisis (Toronto: University of Toronto Press, 2009), p. 130.

77 Ibid.

to work together on a 'no surprises' basis.[78] The Governor General's decision to prorogue Parliament and the PM's willingness to compromise ultimately caused the coalition to break up before Parliament resumed sitting in 2009.

As a general rule, however, smaller parties may be reluctant to enter into coalitions with larger parties as they fear losing their separate identities and potentially angering supporters. It is reported that following the 1980 election PM Trudeau offered cabinet positions to NDP MPs in order to have a more nationally representative cabinet. The Leader of the NDP declined the offer, fearing that it would have alienated the party's supporters in the West. By cooperating on an ad hoc basis with the governing party, smaller parties are able to influence policy while retaining their identities.

With coalitions rarely under serious consideration then, minority governments have traditionally relied on informal agreements with smaller parties or ad hoc cooperation (the second and third strategies) to implement their legislative agendas. The most stable and productive minority governments have been those based on formal or semi-formal alliances. In 2005, PM Martin's Liberal minority government was sustained by an informal agreement with the ideologically compatible NDP, enabling the executive to enact important legislation legalising same-sex marriage. The government was forced to make major changes to the 2005 budget in order to secure support from the NDP. Shortly thereafter the NDP withdrew support for the scandal-plagued Liberal government which was consequently defeated on a vote of confidence.

Similarly, the 1972-74 Liberal minority government of PM Trudeau relied on a semi-formal alliance with the NDP in which the Liberals agreed to consult with and seek the agreement of NDP MPs before introducing legislation or policy.[79] After a successful two years which saw 93 bills introduced and 68 passed, the government, sensing that a majority was within reach, orchestrated its own defeat on the budget triggering an early election.

Following the 2006 election, the first Conservative minority government relied on a shifting pattern of ad hoc alliances with all three opposition parties in order to pass its core election promises. This strategy suited the Conservatives as they have no natural ideological allies in the House of Commons. The first Conservative budget was passed with support from the Bloc Québécois, while a fairly broad consensus was reached on the military's involvement in Afghanistan by allowing a parliamentary debate and by following advice from an advisory committee chaired by a former Liberal deputy PM. It appeared as though the parties and leaders had found a formula to make the minority Parliament work.

The atmosphere changed during the last few months of the first Harper minority government in 2008. Some commentators have suggested that the PM, emboldened by the early successes and strong showing in the polls, began to govern in a far less cooperative way. The PM sought to bring down his government by making each vote a matter of confidence, though because of disarray within the Liberal Party and election fatigue among voters, the Opposition chose to abstain on confidence motions rather than risk angering the electorate by bringing down the government.

Despite some positive signs initially, there is a strong belief that the second, current, Harper minority government has been at least as dysfunctional as the first. The opposition parties regularly threaten to bring down the government while the government dares them to precipitate an early election. This game of posturing and brinksmanship has left many Canadians frustrated. Moreover, recent polling data suggests that Canadians have grown weary of the way minority government has functioned in recent years and would prefer a return to majority rule.[80]

Many attribute the current dysfunction in Parliament to the PM's personal style which is said to be combative, arrogant, and unilateral.[81] An example of this came in November 2008 when the government attempted to eliminate federal subsidies to political parties which would have had a disproportionately negative impact on the opposition parties. The government did not consult or inform the opposition parties before introducing the measures.

78 See, 'An Accord on a Cooperative Government to Address the Present Economic Crisis', 1 December 2008, at: http://www.cbc.ca/news/pdf/081201_Accord_en.pdf.

79 P. Dobell, 'What Could Canadians Expect from a Minority Government?' *Policy Matters,* (2000) Vol. 1, No. 6, at: http://irpp.org/pm/archive/pmvollno6.pdf.

80 J. Walker, 'Canadians Say It's Time for a Majority Government', Harris/Decima Press Release, 12 July 2009, at: http://www.harrisdecima.ca/sites/default/files/releases/071309E.pdf.

81 'Tories seen as secretive, arrogant,' *The Star,* 30 May 2008, at: http://www.thestar.com/News/Canada/article/433910.

Some interviewees suggested that the PM did not even consult his caucus before introducing the measures. The resultant controversy was the catalyst for the proposed Liberal-NDP coalition and the controversial prorogation that followed.

Since the 2008 election, cooperation between the Government and opposition parties has been the exception rather than the rule. However, it should be noted that there was a good deal of cooperation between the Government and the Liberals in making the budget that was passed at the end of January 2009 to deal with the global financial crisis. In fact, the budget passed in a record 26 days which demonstrates that the parties can work together if they want to. Despite this example, cooperation normally occurs as a matter of necessity to avoid an election. Recently, the PM and Leader of the Liberals agreed to work together on the issue of employment insurance. It has been described as an 'important development in power-sharing' as it is the first time the Liberals have been invited to help devise policy.[82]

Unfortunately, this optimism was premature because the Government subsequently broke off discussions with the Liberals and has unilaterally introduced a bill to reform employment insurance, essentially daring the Liberals to defeat it. Liberal Leader Michael Ignatieff recently stated that he will take every opportunity to oppose the government and force an election, including voting against employment insurance reform.[83] However, in early October 2009 the NDP abstained on a confidence vote regarding employment insurance reform thereby permitting the government to survive for a while longer.

The fourth, and perhaps least stable and productive strategy for governing with a minority is to behave as though one has a majority. Under this approach, PMs claim to have 'won a mandate' despite receiving fewer than half the seats in the House. PM Harper has been accused of following this strategy at various times, but the most notable example is PM Joe Clark's minority government in 1979. Despite winning 36 per cent of the popular vote, Clark decided to govern as if his party were in a majority, rather than seeking a coalition or some other support arrangement with members of the Social Credit party.[84] As a result, his government was defeated on a budget vote less than a year after taking office. The PM, with Diefenbaker's example in mind, thought the electorate would punish the opposition for bringing down the government. He was wrong and following the 1980 election the Liberals returned to power with a majority. This strategy may work in the short-term when opposition parties are in a weakened state and the electorate does not want another election.[85] However, over the long-term it is likely to alienate opposition parties and does nothing to instil a culture of cooperation within the Commons.

The effect of minority government on the cabinet is difficult to gauge. As the cost of errors is higher for minority governments, there is a natural tendency for PMs to exert as much control as possible over Cabinet Ministers. Thus, under Stephen Harper there has been a considerable increase in the powers of the Prime Minister's Office (PMO), and a corresponding decrease in the freedom of Cabinet Ministers to speak to the press and public (see section 3.3.4 below).

3.3.2 The impact on Parliament

Under minority government conditions, the capacity of individual MPs to influence policy can significantly increase. The government must ensure that it has the support of MPs from its own party as well as support from some opposition MPs to implement its policies. This requires a government to consult with MPs in advance to ensure their support and possibly to make changes to policies in order to accommodate their specific interests. A minority government can also increase its numbers by offering (legal) inducements to opposition MPs to cross the floor. In May 2005, two days before a crucial confidence vote, PM Martin convinced Conservative MP Belinda Stronach to join the Liberal Party. Stronach was immediately rewarded with a Cabinet position and the government survived by a single vote (that of the Speaker). Similarly, shortly after being elected to Parliament as a Liberal in 2006, David Emerson crossed the floor and joined Harper's first minority government.

82   See T. Flanagan, 'Coming to terms with minority government', *The Globe and Mail*, 23 June 2009.

83   CBC News, 'Liberals push for fall election', 1 September 2009, at: http://www.cbc.ca/canada/story/2009/09/01/ignatieff-liberals090109.html.

84   L. LeDuc, 'Coalition Government: When It Happened, How It Works', in Russell and Sossin (eds.), Parliamentary Democracy in Crisis (Toronto: University of Toronto Press, 2009), p. 130.

85   Harper's Conservatives adopted this approach after the 2006 election when the Liberal Party was in turmoil.

The power of Parliament can also increase in certain policy fields, especially areas with national importance such as foreign policy. In order to achieve a consensus on the controversial issue of Canada's military involvement in Afghanistan, the PM adopted a more cooperative approach which was sensitive to the concerns of the opposition parties. However, this moment of cooperation was a result of the political necessity of achieving a consensus. The Conservatives have generally pursued a divide and conquer strategy, which means winning the support of at least one of the opposition parties. But when the opposition is united against the government (as in December 2008), they can use their superior numbers to extract concessions or to force the government to back down from a policy. The problem with this arrangement is that it produces a continuous game of parliamentary brinksmanship with cooperation as a last resort to avoid an election rather than as the norm.[86]

It is vital that a minority government has a good understanding of parliamentary rules and standing orders in order to identify potential areas of vulnerability in advance. There have been significant changes to the rules governing how committees operate which are particularly relevant to a minority government situation. Committee chairs are selected by the committees themselves rather than appointed by the PM. Because of their superior numbers, opposition parties in a minority parliament collectively hold a majority of seats on the committees. This means that they can elect the chairs, delay legislation, and control committee agendas more than ever before by outvoting MPs from the governing party. Opposition parties may also make substantive changes to government bills at the committee stage before second reading.

Since 2006, the committees in Canada's Parliament have become much more partisan with opposition parties using their superior numbers to launch investigations and studies designed to embarrass the Conservatives.[87] For their part, Conservative MPs tried to obstruct these inquiries, with the result that committee work ground to a halt. This underlines the necessity for the PM to consult with opposition parties.

3.3.3 Challenges for the civil service

Minority government has important implications for the civil service and its relationship with the PM and Cabinet. In Canada, minority governments are constantly looking to the next election in the hope of securing a majority. This creates considerable uncertainty as to how long they will remain in office. Minority governments also face the constant threat of being defeated by the opposition parties on matters of confidence. Both of these factors mean that minority governments want to deliver on their commitments as soon as possible which, in turn, leaves less scope for the civil service to consider, adjust, and improve policies. The heightened uncertainty also has a detrimental effect on budget cycles and other forms of forward planning. Contingency planning is therefore necessary, as is the need to think creatively and act flexibly.[88]

The relationship between the government and civil service is not only determined by the number of seats it has in the House. Nevertheless, the importance of developing a strong trust-based relationship between the executive and civil service is greater when the governing party is vulnerable in terms of seats in the House. The lesson from recent administrations is that by forming a strong relationship with the civil service and maintaining clear lines of communication and accountability, a minority government can be extremely effective.[89] To be successful, minority governments must view the civil service as a partner and as a source of stability. However, a number of commentators, including a former Conservative PM, have expressed concerns at reports that Harper does not trust senior civil servants because he views them as Liberal supporters.[90] For its part, the federal bureaucracy is said to appreciate Harper's 'clear sense of direction', especially following PM Martin who had 'a new top priority every day'.[91]

---

86 It has even been suggested by some that Stephen Harper, an economist by training, is a conscious practitioner of rational choice (game) theory.

87 C. Münster, 'Last Parliament bitter, acrimonious, and longest minority government in history', *The Hill Times*, 8 September 2008, at: http://www.thehilltimes.ca/html/index.php?display=story&full_path=2008/september/8/longest_minority/&c=2.

88 See generally, D. Good, 'Minority Government and the Public Service', Notes for a panel presentation at the Conference, 'Minority Report: The Effects of Minority Government in Canada since 2004', at Wilfred Laurier University, 8 February 2008, at: http://publicadmin.uvic.ca/faculty/good/minority_govt.pdf.

89 Meeting with Canadian Government Official, 14 July 2009.

90 Canwest News Service, 'Harper should curb "control freak" tendencies: Kim Campbell', 27 April 2008, at: http://www.canada.com/topics/news/politics/story.html?id=7c7aa6af-2900-46b2-b79c-113deac3eda1.

91 Ibid.

3.3.4 The Media and Public

By focusing on conflict between the party leaders and not on instances of cooperation, media coverage can have a negative impact on the stability of minority governments. The media regularly reports on threats by the opposition parties to bring down the government and on the PM daring them to precipitate an election. Moreover, coverage of Question Period, in which any MP can ask a question of any minister on any topic, resembles a 'Gladiatorial contest' between the PM and Leader of the Opposition, with each trying to upstage the other for prominence in the evening news. The result is that Canadians receive a somewhat distorted picture of the workings of the House of Commons. A number of interviewees suggested that the current Parliament is superficially dysfunctional but that beneath the heated rhetoric and exchanges there are many examples of cooperation between the parties.

Recent events also illustrate that many Canadians do not understand the basic rules of parliamentary democracy. Following the December 2008 Liberal-NDP accord, the PM and his representatives launched a media campaign designed to convince the public that the coalition plan represented an 'undemocratic seizure of power.'[92] During this period, an opinion poll showed that over half of respondents incorrectly thought that Canadians directly elect their PM, the effect of which was to lend support to PM Harper's position.[93] The public's lack of understanding of the basic rules of parliamentary democracy points to the need for the media to do a better job at educating citizens. Given the UK's even more limited recent experience with non-majoritarian rule, this would be an even more urgent task in the event of a hung parliament at Westminster.

Although all governments seek to 'stay on message' by closely managing relationships with the media, that goal is of even greater importance under conditions of minority government. Ministers straying from or contradicting the government's message can be particularly damaging to minority governments. Therefore, PMs are likely to increase their ability to maintain 'message control' by placing strict limits on what members of the Cabinet and party say to the press. Since 2006, PM Harper has introduced changes to how the Government deals with the media which have not been well received by the press in Ottawa.[94] Members of the media claim that, as a result of these changes, they are not given adequate access to the PM and his Cabinet, and that the PMO is too involved in 'managing' press conferences. Furthermore, everything is vetted by the PMO before becoming public, even MPs' letters to small town newspapers.[95] PM Harper's strategy has proven reasonably successful at keeping his Government 'on message', however, it has also soured relations between the PM and the press.[96]

3.4 Dissolution – How do Minority Governments End?

As in the UK, it is a well established principle that the Governor General will usually grant a request for the dissolution of Parliament from a PM who has the confidence of the House of Commons. But a request for dissolution from a PM that has lost the confidence of the House is more controversial. In that situation, the Governor General has discretion to decide whether any other party or combination of parties is capable of forming a government. PM King's dissolution request was denied by Lord Byng because he felt the Conservatives would be able to form a government and maintain the confidence of the House. In the fall of 2008, PM Harper requested and was granted dissolution, citing his belief that Parliament had become 'dysfunctional' and that an election was needed to end legislative deadlock.

It is important to note that the Governor General does not act as a rubber stamp for the PM, even when he or she has the confidence of the House. Historically, PMs have taken the view that the unelected Governor General is required to act on the basis of advice from the PM. However, in recent years this view has been challenged by constitutional experts and the former Governor General Adrienne Clarkson, who wrote in her memoirs that had Paul Martin asked for a dissolution shortly after the 2004 general election she would have denied his request. In her opinion, 'To put the Canadian people through an election before six months

---

92 L. Whittington, B. Campion-Smith, T. MacCharles, 'Liberals, NDP and Bloc sign coalition pact', *The Star,* 1 December 2008.

93 See P. Russell, 'Ignorance of parliamentary rules is distorting debate over legitimacy,' *The Star,* 3 December 2008; and, 'In Wake of Constitutional Crisis, New Survey Demonstrates that Canadians Lack Basic Understanding of our Country's Parliamentary System', Ipsos Reid Press Release, 15 December 2008, at: http://www.ipsos-na.com/news/pressrelease.cfm?id=4208.

94 G. Darling, 'Freedom of the Press and Prime Minister Harper's Media Policy', Centre for Constitutional Studies, at: http://www.law.ualberta. ca/centres/ccs/issues/freedomofthepressandprimeministerharpersmediapolicy.php.

95 C. Clark and B. Curry, '"Message discipline" often springs leaks, experts caution PM', *The Globe and Mail,* 18 March 2006.

96 Author's interview, July 2009.

would have been irresponsible...'.[97] Most experts agree that the Governor General may refuse a dissolution request if there has been an election recently (opinions range between six and nine months).[98]

A request to dissolve parliament before it has even met would be an abuse of the electoral system which the Governor General is entitled to refuse.[99] However, the situation would be different if the party leaders unanimously asked the Governor General to call a new election before Parliament resumed because none felt that they could command the confidence of the House. There are two examples at the provincial level of new elections being called before the assemblies had met after a recent election; in both cases the legislature was unable to even select a speaker.[100]

Alternatively, following the 1985 elections for the Ontario Legislature, the incumbent Conservatives won a plurality of seats but were defeated on an initial confidence motion by the Liberals and NDP who announced that they had reached an accord to work together. The Conservative Premier asked the Lieutenant Governor for a dissolution but was refused on the basis that there was a viable alternative government; namely the Liberals supported by the NDP. Although this was not a formal coalition as the NDP did not join the government, the Liberal government lasted for two years before winning a majority in the next provincial election.

In an effort to bring some predictability to the electoral cycle and to prevent PMs from abusing their power to seek early dissolution, Parliament passed an Amendment to the Canada Elections Act stipulating that elections are to be held every four years. However, the Amendment also states that it does not affect the power of the Governor General to dissolve parliament, as illustrated by the early dissolution granted in 2008.[101] Removing the Governor General's discretion to dissolve parliament would require constitutional amendment. This is an unlikely option given the difficulties of amending the constitution. It is also undesirable as there would be no way to dissolve parliament if it became truly dysfunctional or unworkable before the next election date.

When a government is defeated in the House on a question of confidence, it must resign or seek the dissolution of Parliament thereby triggering an election. However, determining what constitutes a question of confidence has been the source of considerable controversy largely because it is a political rather than a legal judgment. It is not an issue on which the Speaker can make a determinative ruling.

There are roughly three types of votes which involve matters of confidence in Canada. The first type is any motion which the government states in advance to be a matter of confidence. The second involves motions to approve key government policies, such as the main budget and supply motions or the Address in Reply to the Speech from the Throne. The third type of confidence vote relates to motions, introduced by the opposition, which are worded to express loss of confidence in or censure of the government.[102]

Yet the potential for uncertainty was illustrated by the events of May 2005 when the House passed a motion relating to a committee report which the opposition parties interpreted as a vote of no-confidence in the government. The Liberal minority government argued that the motion was purely a procedural matter and not a confidence vote. In response to severe criticism, the government tabled a budget bill which was designed to test the confidence of the House. The government won but only by a single vote. While this manoeuvre defused the controversy on that particular occasion, the uncertainty surrounding what constitutes a vote of confidence may give rise to similar problems in the future unless it is settled in a definitive way.

Another important issue is whether the 'caretaker convention' applies during an election campaign after Parliament has been dissolved. Many of the authorities point to a general rule

---

97   A. Clarkson, *Heart Matters* (Toronto: Viking Canada, 2006), p. 192.

98   This is discussed in the open letter to the Governor General which was signed by 35 constitutional experts on 18 January 2009, at: http://www.constitutionacts.blogspot.com/.

99   P. Hogg, *Constitutional Law of Canada* 4th Ed. (Toronto: Carswell, 1997), 9.6(d).

100   Discussed in A. Heard, *Canadian Constitutional Conventions: The Marriage of Law and Politics* (Toronto: Oxford University Press, 1991), p. 23.

101   See E. McWhinney, 'Fixed Election Dates and the Governor General's Power to Grant Dissolution', *Canadian Parliamentary Review,* (Spring 2008), pp. 15-16.

102   A. Heard, 'Just What is a Vote of Confidence? The Curious Case of May 10, 2005', *Canadian Journal of Political Science,* (2007) Vol. 40 No. 2, pp. 395-416.

that a government must act with caution as soon as Parliament is dissolved. Following the 1993 general election, the newly appointed Liberal government suggested that the previous Conservative government may have violated the convention by signing an agreement to privatise Pearson International Airport three weeks before the election. Although there were no precedents directly on-point, the general consensus is that the decision should not have been taken during the election because it was controversial (the then Leader of the Opposition said he would cancel it if his party won the election), involved a large amount of public money, and was not urgently required. It is the responsibility of the Clerk of the Privy Council to ensure that PMs and cabinet ministers are aware of the applicable rules, conventions and customs, however, the ultimate decision to act or not rests with the executive.

There is evidence of a practice of acting with caution during election campaigns within the Privy Council Office and among senior civil servants.[103] As Clerk of the Privy Council, Madam Bourgon, who was the Deputy Minister of Transport at the time of the Pearson Airport controversy, stated that there are a variety of factors which must be considered as part of the general rule of caution, including: whether the measure will bind a future government; what are the alternatives; is it a matter of urgency or required by emergency; is there an obligation on the government to act; and whether the measure is controversial.[104] The advice which the Clerk of the Privy Council and Deputy Ministers offer to the PM and cabinet ministers as to what measures are appropriate during the caretaker period will be heavily influenced by these considerations.

Furthermore, following the events of December 2008, a debate has emerged regarding whether the caretaker convention applies during a period of prorogation. Based on his actions, it is reasonable to suggest that PM Harper did not feel constrained by the caretaker convention, evidenced by the large number of Senate appointments made during this period.[105] It will be interesting to see whether this becomes a precedent for future situations where there is, or may be, a change of government within a parliament.

3.5 Conclusions

Canada's experiences with minority government have been paradoxical. Despite their relative frequency and the effectiveness of at least some minority governments, they are still viewed as temporary aberrations. Moreover, many citizens and political actors view minority governments as less stable and less productive than governments with secure majorities. This is partly explained by the 25 years of majority rule up to 2004, which meant many citizens and practitioners had no experience of working with minority government. It is also due to the fact that many regard recent minority governments as having not worked well.

There are a number of factors which have played a role in the poor performance of minority government in the twenty-first century. Perhaps the greatest obstacle to making it work has been the reluctance of the Conservative and Liberal parties to accept that minority government is here to stay for the foreseeable future. Instead, they continue to act as though majorities are the norm, which is why cooperation is so rare. The PM's personal style and tendency to behave as though he is leading a majority administration has also contributed to the current problems in Parliament.

The failure of the party leaders to find a way to work together has drawn the Governor General into a highly controversial political dispute. This places the de facto Head of State in the uncomfortable position of making discretionary decisions which determine who will form the government. Ultimately, these disputes risk politicising the office of Governor General. Moreover, the lack of clarity surrounding the constitutional rules and conventions on which the Governor General must base her decisions risks creating a perception of arbitrariness.

It is worth noting that the Government of Canada has a number of official documents which provide guidance to Ministers, Deputy Ministers and MPs generally on their respective roles and responsibilities before, during and after an election. However, what is lacking is a

103   J. Wilson, 'Constitutional Conventions and Election Campaigns: The Status of the Caretaker Convention in Canada', *Canadian Parliamentary Review*, (December 1995), at: http://www2.parl.gc.ca/Sites/LOP/Infoparl/english/issue.asp?param=155&art=1057.

104   Discussed in J. Wilson, ibid., at notes 20 – 23; quoted from, 'Proceedings of the Special Senate Committee on the Pearson Airport Agreements', no. 19, 14 September 1995, pp. 57-60.

105   CBC News, 'Wallin, Duffy among 18 named to fill senate seats', 22 December 2008, at: http://www.cbc.ca/canada/story/2008/12/22/senate-harper.html.

common understanding of the of the guiding principles which apply in periods of minority or coalition government, and a political understanding of how issues will be resolved to avoid bringing the Governor General into political controversies.[106]

For minority government to work in Canada there needs to be a dramatic shift in political culture which emphasises cooperation and accommodation rather than conflict and partisanship. PMs leading minority governments should act with humility, and recognise that they do not have a mandate to force their agendas through Parliament. The media has a responsibility to report on the accomplishments of minority governments as well as their failures. Past experience suggests that minority government can be successful in Canada. However, it is ultimately the responsibility of the political actors to find ways to make it work. Since 2004, Canada's politicians have failed to make minority government work well, the result being that many Canadians now want a return to majority government.

106   Author's interview, October 2009.

4. New Zealand's Experience of Multi-party Governance

Ben Yong, The Constitution Unit, UCL

> "
> [Pure] minority government is doomed: it's too hard. Larger parties should look for stable partners who know how to play the game and want to be there for the long-term, form a proper arrangement and govern. The alternative is too exhausting: you have to have a framework and process.
> "

Former government minister, New Zealand, interview with author, 2009.

4.1 Context

For much of its history, NZ has been seen as a 'pure' Westminster democracy. Its parliamentary traditions are in origin British; it has a relatively 'unwritten' constitution; the NZ Parliament is unicameral; and until the end of the 20th century, it had a first past the post ('FPP') electoral system.

The key constitutional rule of NZ politics is that the Head of State, in practice the NZ Governor General,[107] must never be without advisors who enjoy the support of a majority of Parliament on matters of confidence and supply. Prior to 1996, this was usually not an issue: FPP ensured that one political party secured a majority in Parliament. The adoption of a proportional representation system (mixed member proportionality, or 'MMP') in 1996, however, meant that winning a majority of seats became extremely difficult.

Since 1996, no election has returned a single party majority. All governments in the MMP era have been led by a large, established party (either Labour, from 1999-2008, or National, from 1996-99 and again since 2008) with support from one or more much smaller parties provided via various arrangements. Under MMP no smaller party has gained more than 17 seats in Parliament (15% of the total). There has therefore always been a strong imbalance between parties 'in government', though the nature of the support agreements struck under several administrations has meant that that it has often been difficult to determine whether a party is in fact 'inside' or 'outside' government.

This has led Boston and Bullock to suggest the term 'multi-party governance' to describe the panoply of arrangements that NZ political parties have designed in order to assemble a workable majority. 'Multi-party governance' involves 'arrangements where two or more political parties cooperate on a regular basis to enable the business of government to be transacted.'[108] As a whole, multi-party governance in New Zealand has led to relatively stable and durable government. Of the governments formed after the five MMP elections to date (see figure 4.2), the first in 1996 ended with coalition collapse mid-term, with the larger party governing as a minority till the scheduled election, and the second coalition in 1999 continuing till the end of the parliamentary term despite the smaller coalition partner breaking into two factions. In contrast, the 2002 and 2005 governing arrangements survived intact until the next election.

---

107   The NZ head of state is in fact the Queen in right of NZ: the Governor General is her local representative: Constitution Act 1986, s2.

108   J. Boston and D. Bullock, 'Experiments in Executive Government under MMP in New Zealand: Contrasting Approaches to Multi-Party Governance,' (forthcoming).

Figure 4.1: New Zealand Political Parties

Party	Description	Date of establishment	Average number of MPs under MMP
Labour Party	Centre-left party; socially progressive	1916	46.2 (1996-present)
National Party	Centre-right party; socially conservative	1936	43.2 (1996-present)
The Greens	Concerned mainly with environmental issues; socially progressive	1990	6.8 (1999-present)[109]
The Alliance	Left-wing party; socially progressive	1991	11.5 (1996-2002); 0 (2002-present)[110]
New Zealand First (NZ First)	Populist, nationalist party; socially conservative	1993	10.5 (1996-2008); 0 (2008-present)
Association of Consumers and Taxpayers (ACT)	Right-wing party; libertarian	1994	6.6 (1996-present)
United Future New Zealand (UF)	Centrist party; socially conservative	United New Zealand formed in 1995; amalgamated with Future New Zealand in 2002.	2.8 (1996-present)[1116]
The Progressive Party	Left-wing party; socially progressive	2002	1.33 (2002-present)
The Maori Party	Concerned mainly with improving Maori conditions; socially progressive	2005	4.5 (2005-present)

109   In 1996-1999, the Greens were part of the Alliance; 3 Green MPs were elected during this term.
110   In 1996-1999, the Greens were part of the Alliance; 3 Green MPs were elected during this term.
111   This combines United New Zealand's results with United Future New Zealand's results.

Figure 4.2: New Zealand Elections and Governments Formed Since 1996

Term/total period in power	Parties										Characteristics				
	Labour	Alliance	Greens	Progressive Coalition/ Progressives	National	ACT	United NZ/United Future	NZ First	Maori Party	Other	Total No of Seats	Govt *	Govt type	Govt formation time	Mode of termination
1996-1998	37	13	--	--	44	8	1	17	--	--	120	National-NZF	Majority coalition	8 weeks	Coalition breakup Aug 1998
1998-1999	37	12	--	--	44	8	1	8	--	4; 6	120	National	Minority govt	n/a	Scheduled election
1999-2002	49	10	7	--	39	9	1	5	--	--	120	Labour-Alliance	Minority coalition	Within 2 weeks	Early election
2002-2005	52	--	9	2	27	9	8	13	--	--	120	Labour-PC	Minority coalition	2 weeks	Scheduled election
2005-2008	50	--	6	1	48	2	3	7	4	--	121	Labour-PC	Minority coalition	1 month	Scheduled election
2008-	43	--	9	1	58	5	1	--	5	--	122	National	Minority	11 days	n/a

* 'Government' and 'Government type' here refers to the parties that are full members of an executive coalition, thus excluding parties with 'ministers outside Cabinet', which are discussed below.

4.2 Government formation

4.2.1 Constitutional rules and conventions

NZ has a very open government formation process, a legacy of FPP and its British constitutional heritage. There is no investiture vote: no formal constitutional requirement for a newly-formed government to show it has a majority in the House. There is no time limit to the government formation process. Finally, there is no fixed parliamentary term, but constitutionally Parliament must dissolve within 3 years from the return of the electoral writ.[112]

But there are clear constitutional conventions about government formation, and associated political practices. Any grouping of parties deciding to form a government must provide clear evidence to the Governor General that they have the confidence of the House. This is now often provided through written coalition and/or confidence and supply agreements. But similarly to Westminster and Canada, confidence is also traditionally tested by the opposition moving a motion of no confidence in the government at the Address in Reply to the Speech from the Throne. And while there is no legal time limit on government formation, a former Governor General has suggested that the opening of Parliament ought to function as an informal time limit: this can potentially amount to eight weeks.[113] Theoretically, the government formation process could continue even after Parliament opened; politically, this does not seem likely.

Various NZ Governor Generals, speaking from papers carefully prepared by Cabinet Office Advisors, have set out their understanding of their role in the government formation process.[114] The purpose of these speeches was part of careful 'advance constitutional

---

112   Constitution Act 1986, s17.

113   Under the Constitution Act 1986, s19, the opening of Parliament must take place within six weeks of the return of the electoral writ: but there is also a period of about two weeks after the election for the return of the writ, so in practice this can amount to eight weeks. Sir M. H. Boys, 'Change and Continuity', (1997) at: http://www.gov-gen.govt.nz/node/471.

114   These announcements can all be found on the New Zealand Governor General's website. See in particular, Sir Michael Hardie Boys: see Sir M. H. Boys 'Change and Continuity', (1997) at: http://www.gov-gen.govt.nz/node/471; 'Governing under MMP: the Constitutional and Policy Challenges', (1998) at: http://www.gov-gen.govt.nz/node/403; Dame S. Cartwright, 'The Role of the Governor General,' (2001) at: http://www.gov-gen.govt.nz/node/538.

diplomacy' to send clear signals to political parties and their advisors on how to proceed in the event of uncertain election results. This practice was prompted by the uncertainty on the night of the 1993 election, when it was initially unclear whether National or Labour had won a majority of seats.

The message of these statements has been that the Governor General's key concern is to determine where the confidence of the House lies. Where this is uncertain, it is up to the political parties to give clear public indications of their loyalties, and within a reasonable time. This clear enunciation of principle is widely regarded as having ensured that no NZ Governor General has yet been put in the position of being asked to make controversial decisions, instead laying the ground for a formation process managed by the parties.

In anticipation of a protracted government formation process before the first MMP election, the 'caretaker convention' was clarified.[115] In essence, this states that where a government does not have the confidence of the House, the day-to-day business should continue as normal, but decisions or policies which are controversial or have long-term implications should be deferred. Where this is not possible, the other political parties should be consulted to see if a solution acceptable to a majority of the House can be found. In practice, politicians have closely adhered to the convention for the simple reason that it is in their short- and long-term interest to do so.[116] Caretaker government has not been a serious issue for politicians or civil servants, despite initial concerns.[117]

Prior to an election, the civil service (or the public service, as it is known in NZ) will begin to identify issues and decisions which can be brought forward to minimize potential problems (e.g., appointments) and those which can be deferred till a new government can be formed. Developments and policy proposals of the various parties are monitored, and various potential scenarios are planned.

The civil service plays a low-key role in supporting government formation after inconclusive elections. Early in the MMP era, processes were established to shield officials from direct contact with political parties while it remains unclear who would form the government. These involved the vetting of requests for advice through a committee of senior civil servants, with face-to-face contact allowed under strictly controlled conditions, and with the consent of the (caretaker) Prime Minister. This process was successful, but cumbersome;[118] and in recent years it has been streamlined.[119] In practice, during the negotiation phase, matters are left to the political parties; but once there is agreement between parties to form a government (the 'preferred partner' stage), the level of civil service involvement increases.

4.2.2 Government formation in practice

The government formation process following the first MMP election in 1996 was excessively long, taking eight weeks to form a government. In fairness, this was the first MMP election; there was no clear 'winner'; and the parties had little experience of negotiating to form a government and had refrained from making pre-election cooperation commitments. But it was made worse by the decision of NZ First's leader, Winston Peters, to engage in simultaneous negotiations with both National and Labour Parties. Ultimately, NZ First formed a majority executive coalition with National – a surprise because the bulk of NZ First voters preferred NZ First to form a coalition with Labour; and NZ First was considered one of the least popular coalition partners by National supporters.[120]

The coalition agreement signed between National and NZ First is widely considered to have been a failure.[121] At 17,000 words, it covered everything from process to policy (including the budget) over a three-year parliamentary term in great detail. In practice, it became a straightjacket, and was one reason for the coalition's early collapse in mid-1998; although the bigger contributing factor was the enmity between the party leaders and the poor political management of NZ First.

115   The most current version of the caretaker convention can be found in the *NZ Cabinet Manual* (2008), 6.16-6.35.

116   J. Boston, S. Levine, E. McLeay, N. Roberts and H. Schmidt, 'Caretaker Government and the Evolution of Caretaker Conventions in New Zealand', *Victoria University of Wellington Law Review,* (1998).

117   J. Boston, S. Levine, E. McLeay, N. Roberts and H. Schmidt, 'The Impact of Electoral Reform on the Public Service: The New Zealand Case,' (1998) *Public Administration*, (1998) Vol. 57, pp. 64-78.

118   R. Shaw 'Rules or Discretion? Officials and Government Formation under MMP,' *Political Science*, (1999) Vol. 51, pp. 32-57.

119   State Services Commission, 'State Servants, Political Parties and Elections: Guidance for the 2008 Election Period', at: http://www.ssc. govt.nz/display/document.asp?NavID=321.

120   J. Vowles, 'Coalition Government: The People's Choice?', in Jack Vowles (ed.), *Voters' Victory?: New Zealand's First Election under Proportional Representation* (Auckland University Press, Auckland, 1998), pp. 120-134.

121   The coalition agreement is available at: http://www.hinz.org.nz/journal-pdf/77.

The 1999 government formation process took just under two weeks. Labour and the Alliance learnt from the 1996-1999 experience and spent a great deal of time prior to the election working out the best way to proceed. Both parties signaled to voters prior to the election their willingness to work together. The coalition agreement was the polar opposite of the 1996 agreement: it was short (just under 500 words) and focused almost entirely on process – policy was left entirely to the normal government decision-making processes.[122] The key features were the specification of processes for coalition management – in particular, a requirement of good faith and no surprises, the provision of ministerial and associate ministerial posts for the smaller party, and the provision of a right to 'agree to disagree' where an issue touched upon a party's political identity. This was a response to the 1996-1999 term, in which it was felt the rigidity of the coalition agreement gave the smaller party – NZ First – little room to assert itself. Ultimately, however, this did not prevent the Alliance split into two factions in 2002, (although 'the government' continued to have majority support).

Falling just short of a majority, the Labour-Alliance coalition also arranged a 'protocol' with the Greens, by which the Greens agreed to abstain on matters of confidence and supply. This protocol was never finalised,[123] because of poor relations between the Alliance and the Greens.

The government formation process after the 2002 election was also very short: just under two weeks. Labour was the clear winner, in terms of getting more seats than any other party. True to pre-election promises, Helen Clark signed an executive coalition agreement with the Progressive Party (a splinter group of the Alliance), giving a cabinet post to the smaller partner. There was again provision for the right to agree to disagree and an insistence on 'good faith and no surprises'. There was also a section devoted to policy, but the agreement remained brief (under 450 words).[124]

To secure a working majority, the Coalition signed a confidence and supply agreement with the centrist party United Future (a 'legislative coalition'). UF, aware of the difficulties of being in executive coalition government, and of the inexperience of its own MPs, opted to remain outside government. The agreement between the Coalition and UF was short (just over 1000 words), setting out provisions on good faith and no surprises; support of the government on confidence, supply and procedural issues; and a requirement of consultation and policy concessions.[125]

The Coalition also signed a cooperation agreement with the Greens (1100 words).[126] The Greens did not promise support on confidence and supply – only that they would abstain. Moreover, the Greens determined the level of their involvement with the government according to a hierarchy of issues: in certain categories the Greens would require consultation, access and input into policy.

Forming a government in 2005 was a more protracted affair: it took just under one month. The numbers were close; but on the whole favoured Labour. National could technically cobble together a majority government of 64 seats with four other parties (ACT, NZ First, UF and the Maori Party), but this would have been difficult to manage in practice (in particular, relations with NZ First would have been problematic). Labour, on the other hand could form a one-seat majority of 61 seats with three parties (NZ First, UF and the Progressives), and support from the Greens.

Labour ultimately signed four different agreements: an executive coalition agreement with the Progressives; a hybrid, or 'enhanced' confidence and supply agreements with NZ First and UF; and a cooperation agreement with the Greens. The agreements were remarkably innovative; and despite predictions of failure, the government survived for the entire parliamentary term.

The coalition agreement between Labour and the Progressives followed the same format as before.[127] The 'enhanced support' agreements also had a standard format. The smaller party

122   The coalition agreement is available at: http://www.executive.govt.nz/coalition/.

123   Thus, there is no public copy of the protocol available.

124   The coalition agreement is available at: http://www.beehive.govt.nz/sites/all/files/ACF3F.pdf.

125   This agreement is available at: http://www.beehive.govt.nz/sites/all/files/conf%20and%20supply%20govt%20and%20UF.pdf.

126   This agreement is available at: http://www.beehive.govt.nz/sites/all/files/greens-agreement-26-Aug.pdf.

127   The coalition agreement is available at: http://www.beehive.govt.nz/Documents/Files/Progressives.pdf.

agreed to provide support both on confidence, supply and procedural motions; there was to be good faith, no surprises, regular briefings and consultations. There was an 'agree to disagree' clause and a section outlining the smaller party's policies. In general, these were of 1000-2000 words in length.[128]

However, what made the agreements with NZ First and UF 'enhanced' was the provision of ministerial posts for the small party leaders: they would be 'support party ministers' – ministers who sat outside the full Cabinet, but would participate at Cabinet committee level as invitees and represent the government on their given portfolio. Support party ministers were only subject to collective responsibility in terms of their portfolio – for all other issues, they were not considered part of the government. These arrangements were formulated to allow NZ First leader Winston Peters to make good on his pre-election claim that he would never take 'the baubles of office'. Here, then, was a special kind of executive coalition agreement, where a political party was 'in' government for some matters and 'out' for others. This innovation therefore gives rise to differing interpretations of which parties actually comprise the government at any particular point (see Figures 4.3 and 4.4).

The Greens had a cooperation agreement with the Labour-led government, because both NZ First and UF had insisted they would not be party to any arrangement which included the Greens as part of 'government'. The 2005 agreement with the Greens followed a similar format to the 2002 agreement.[129] Complicating matters, however, was the provision of 'spokesperson' positions, where Green representatives would develop policy and speak for the government on particular issues.

The 2008 government formation experience was the most surprising so far. National, who almost secured a majority purely on its own, chose *not* to form a majority coalition with its closest ideological partner, ACT. Instead it formed a self-styled 'minority government' with support party arrangements from three other parties: ACT, the Maori Party and UF; and a 'memorandum of understanding' with the Greens.[130] Reflecting National's numerical superiority, government formation took just 11 days. Currently, there are five support party ministers outside Cabinet, who now sit in Cabinet committees as formal members.[131]

From this brief summary, we can see that government formation under MMP has been a learning experience – each term producing lessons and innovations in political and parliamentary management. Political parties have learnt to avoid long government formation periods through pre-election discussions, negotiations and signaling, and to avoid excessive rigidity in coalition and support agreements.

Although the party with most seats has led the government after each MMP election so far, it is not clear that this must always be the case. Everything depends on gaining a workable majority, and the relative strengths of the parties in Parliament. Agreements are normally negotiated between a select few: the leaders, perhaps one-two senior MPs, and the Chiefs of Staff of the leaders of the relevant parties. In the larger parties, the wider parliamentary wing and party membership have either been asked to ratify the agreement later or given no role at all;[132] in the smaller parties the party membership generally has more input. Finally, the negotiations have been bilateral, with the larger party talking to small parties individually.

In terms of the time taken to form a government, the more complex the results, the more complex the government formation process becomes. In 1996, when neither of the two established parties won an obvious numerical superiority, the formation process took two months, but this has never been repeated to date. Where numbers were clearer, the process was usually completed within two weeks.

The type of government that emerges on any particular occasion is determined by a number of factors. Parliamentary arithmetic is the obvious key variable, but again, everything depends on gaining a workable majority on confidence matters, and cooperation on

128   These agreements are available at: http://www.beehive.govt.nz/sites/all/files/NZFirst.pdf; http://www.beehive.govt.nz/sites/all/files/United.pdf.

129   This agreement is available at: http://www.beehive.govt.nz/sites/all/files/Green.pdf.

130   These agreements are available at: http://www.national.org.nz/files/agreements/National-Act_Agreement.pdf; http://www.national.org.nz/files/agreements/National-Maori_Party_agreement.pdf; and http://www.national.org.nz/files/agreements/National-UF_agreement.pdf. The Greens' 'memorandum of understanding' can be found here:http://media.nzherald.co.nz/webcontent/document/pdf/National%20and%20Green's%20agreement.pdf.

131   http://www.beehive.govt.nz/release/cabinet+committees+announced.

132   Interview with former government minister.

legislative matters. Thus, what matters is the relative strength of the parties in Parliament. For a larger party, lower numbers mean arrangements with other parties become necessary; higher numbers offer greater flexibility. For the smaller parties, the fewer their number of MPs, the less attractive it is to enter into a pure executive coalition with a larger party – the smaller party is likely to be overwhelmed. Smaller parties find it difficult to spread themselves across the whole of government; entering into an executive arrangement may mean the loss of a number of experienced party members to ministerial positions with onerous workloads; and simply maintaining a relationship with another party is a heavy resource cost.

Policy similarities and differences are also important. Some parties are 'captive' in that they could only realistically enter into a relationship with one of the two larger parties due to ideological preferences. But the importance of ideological closeness can be overstated: it is possible to find points of common interest to negotiate upon, even if the two parties' overall ideological standpoints clash – an example of this is the current 'understanding' between the Greens and National.

Finally, recent political history also has an influence on the process. The experience of previous multi-party arrangements and personal relationships between party leaders may be more important in determining the shape of the government formed.

Of the range of options open to smaller parties, interviews revealed a near-universal belief that enhanced confidence and supply agreements are currently the best means of having influence over government without diluting the party's identity (discussed below in section 4.3.1), despite the fact that most smaller parties that have entered into an arrangement with the government have lost votes at the next election.

For the larger party, the ideal case might be thought to have as few parties in coalition as possible – since too many disparate views import instability[133] – but as many parties bound into confidence agreements as possible. The larger established parties have also seen the advantages of enhanced confidence and supply agreements as providing an ideal combination of flexibility and stability for the government.

Figure 4.3: NZ Government composition by regular cabinet participation[134]
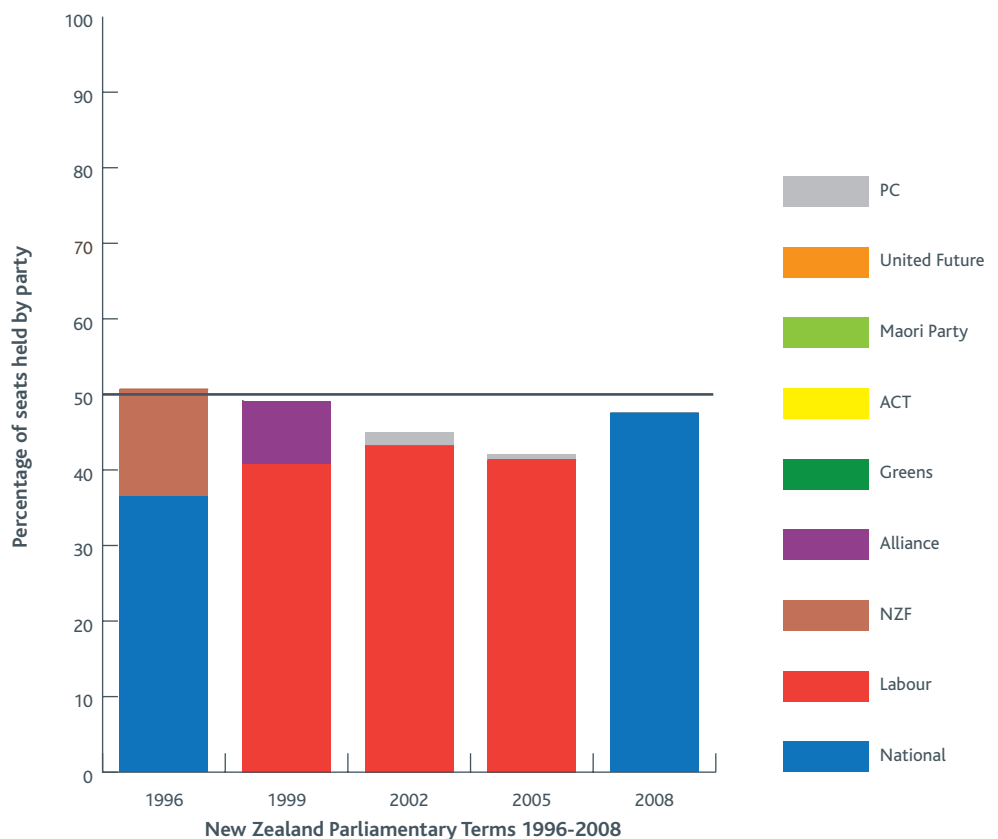
133   Interview with former government minister.

134   This table is a representation of all those parties sharing executive responsibilities in the form of full Cabinet participation. It excludes parties with ministerial posts outside cabinet.

Figure 4.4: NZ Government composition by executive responsibilities[135]
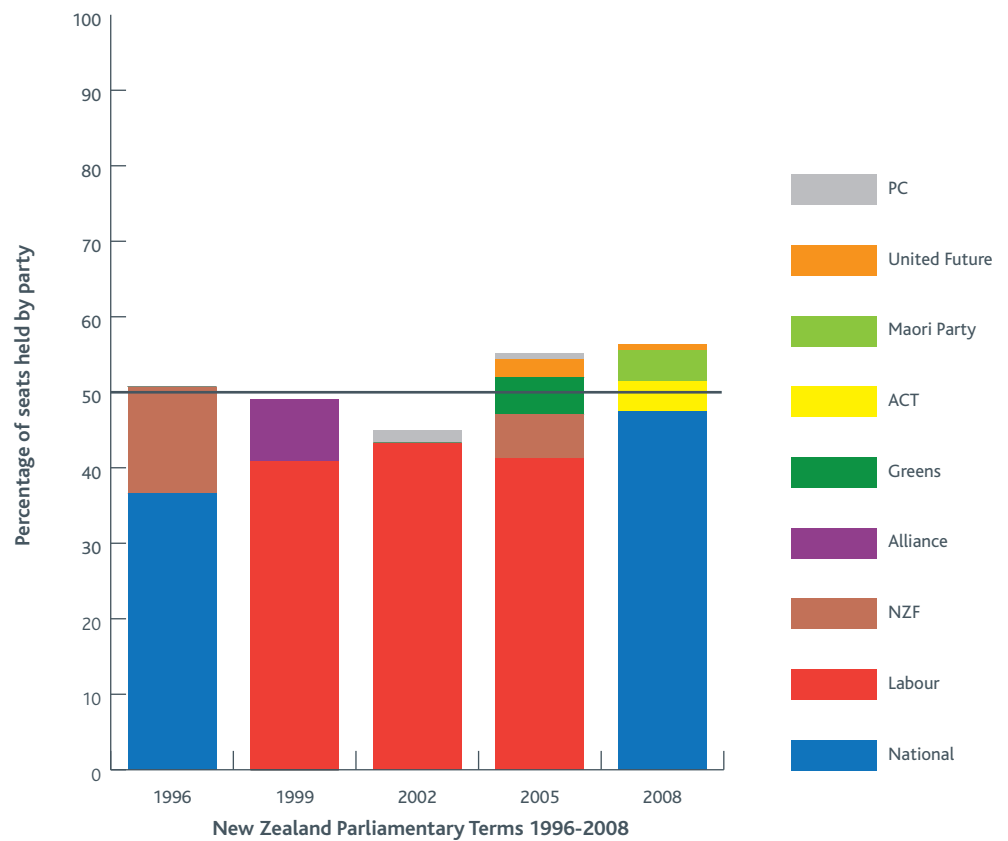
4.3   Making it work

The key issue is always numbers. But the mix of constitutional conventions, political agreements and informal processes have so far ensured the existence of relatively stable parliamentary majorities on confidence and supply. No MMP NZ government has yet lost a confidence vote.

4.3.1 Political Party Perspectives

In pure coalitions, and to a lesser extent, for any party with an association with the government, the key problem is the 'unity-distinctiveness' dilemma: there is a tension between the need to maintain sufficient unity and cohesion in government, with the equally important need to maintain party distinctiveness and differentiation. The history of MMP government in NZ is a history of finding means of successfully managing this tension, which can potentially destabilise governance arrangements.[136]

The unity-distinctiveness dilemma has manifested itself most clearly in pure executive coalitions: the coalitions formed after the first two MMP elections both suffered instability as a result of small party problems with party identity and declining popularity, although some of this can also be attributed to poor political performance. But it can also be seen in the fact that small parties in any form of association with the government have tended to do very poorly in the second round because they are unable to differentiate themselves from the larger party.

Unity: Parties in government must present a united front: hence collective cabinet responsibility and interparty discipline. Party discipline – always much stronger in NZ than in Westminster – has remained tight under MMP.[137] There is also popular pressure: small parties are often seen as a source of instability, a presumption which they are constantly under pressure to disprove. Moreover, smaller parties connected to the government walk a fine

---

135   This table represents all those parties who are in some way 'in' the executive, including those parties with ministerial posts either inside or outside cabinet; and those with 'spokesperson' roles (the Greens in 2005). However, it excludes those parties only in legislative coalition with 'the government': i.e.,, those who give support on confidence and supply, such as the Greens in 1999, 2002, and 2008.

136   J. Boston and A. Ladley, 'The Efficient Secret: The Craft of Coalition Management', *New Zealand Journal of Public and International Law*, (2006) Vol. 4, pp. 55-90; and J. Boston and D. Bullock, 'Experiments in Executive Government under MMP in New Zealand: Contrasting Approaches to Multi-Party Governance', (forthcoming).

137   R. Vandervorst, 'Parliamentarians' Perspectives on Proportional Representation: Electoral System Change in New Zealand', *Political Science* (NZ), (2003) Vol. 55, pp. 19-38.

line between exercising influence and being perceived to be the 'tail wagging the dog'. These pressures increase already-existing tensions within the smaller party, and make the business of multi-party government difficult for all .

Distinctiveness: Preserving distinctiveness is a major problem for smaller parties connected to the government. Small parties receive little credit for being responsible and ensuring stability, and often feel overshadowed by their larger partner. They must keep faith with their own principles and that of their supporters. If a smaller party gets too close, the public will identify it with the larger party. But if a multi-party government is successful, credit goes to the larger party, which will often fail to acknowledge the support or contribution of the smaller party, or will even take credit for a successful policy of the latter. However, the converse is also true: the actions of a smaller party may have a negative impact on the larger party's public standing (as occurred with the Greens' controversial 'anti-smacking' legislation, which became law in 2007).

The two key means of managing this tension between cohesiveness and distinctiveness have been the 'agree to disagree' provision, and the development of 'ministers outside Cabinet', as mentioned above, both of which aim to reduce the onerous nature of collective cabinet responsibility.

The right to disagree on key issues was seen as a necessary means of providing a safety valve and preserving small party identity. The provision seemed to violate collective cabinet responsibility, which requires unanimity once a decision in Cabinet had been made. However, the counter-argument made by Marie Shroff, then Secretary of the NZ Cabinet, was that if Cabinet agreed that some may disagree, then there was no violation of collective cabinet responsibility.[138] This modification to collective cabinet responsibility was later recorded in the 2001 edition of the *Cabinet Manual*.

Initially, the agree to disagree provision was rarely used publicly, for fear of creating the perception of instability – the Alliance in 1999-2002 only used this provision once, objecting to the Closer Economic Partnership with Singapore in 2000. However, the potential for its use was always there and may have encouraged compromise. More recently, the 'agree to disagree provision' has fallen into desuetude. Ministers outside Cabinet have had several public disagreements with 'the government', but these are on matters outside their portfolios. This has not led to instability for the government as a whole.

Arguably, the modification to collective cabinet responsibility also laid the grounds for the second development, ministerial positions outside Cabinet. Generally speaking, this experiment has worked well, as have the accompanying modifications to collective cabinet responsibility. Support party ministers sit in Cabinet committees, receive some or all papers relevant to their portfolio, and occasionally even sit in Cabinet. Confidentiality has not been violated.

The key issue was the impact on the principle of unanimity under the convention of collective cabinet responsibility. 'Selective' collective cabinet responsibility might confuse lines of accountability: 'the government' would differ in composition according to the subject matter. Others argued in response that unanimity was an ideal and from time to time Prime Ministers everywhere had relaxed the rule in practice;[139] moreover, it was unfair to ask smaller parties to accept decisions made by a much larger body.[140] This has been a non-issue with the public; and NZ political parties seem to have accepted the modification.

There have been a couple of noted incidents, however, relating to the relaxation of collective responsibility. In 2008, Winston Peters as Minister of Foreign Affairs stated that his party disagreed with the NZ-China Free Trade Agreement deal being negotiated by the Labour-led government. Peters did not technically violate collective cabinet responsibility, since the FTA fell outside his portfolio (there was a separate Minister for Trade), but this was a fine line to draw given the close links between foreign policy and trade.[141]

Dr Pita Sharples, leader of the Maori Party and support Minister of Maori Affairs, has recently distanced himself from the National-led government's decision to omit Maori seats from the

---

138   M. Shroff, 'The Role of the Secretary of the Cabinet-The View from the Beehive', Victoria University Centre for Public Law, Occasional Paper 5, 2001, at: http://www.victoria.ac.nz/nzcpl/Files/Occ%20papers/Shroff%20web%20paper.pdf.

139   One example of this being Harold Wilson's decision in 1975 to allow a number of Cabinet Ministers in the UK Labour government to 'agree to differ' on EEC membership.

140   N. White, 'Deconstructing Cabinet Collective Responsibility', *Policy Quarterly* (NZ), (2005) Vol. 1, pp. 4-11; and G. Palmer, 'The Cabinet, the Prime Minister and the Constitution', *New Zealand Journal of Public and International Law*, (2006) Vol. 4, pp. 1-36.

141   http://www.nzherald.co.nz/trade-deal-with-china/news/article.cfm?c_id=1501819&objectid=10502911; and see NZ Cabinet Manual (2008), 5.27 on Ministers outside Cabinet representing the government internationally.

proposed Auckland supercity council.[142] It was not clear whether Sharples was doing so as party leader or as minister. But Sharples' comments have not excited public outrage or even interest.

Minority government, as opposed to MMP, has not generally increased the power of the 'true' opposition parties: those who have no relationship with the government – particularly the large party out of power at any given point. A key tactic of the established governing party has been to draw around it a broad church of smaller support parties, isolating the other established party – as Labour did in 2005-2008, and National is currently doing. It has thus proved very difficult for 'the opposition' to act in a coordinated manner to oppose the government, although this has happened on occasion.[143] Moreover, the main opposition party has little to offer the smaller opposition parties. The large party in government can always offer resources, policy influence and publicity. Finally, the smaller opposition parties remain separated by policy and personality differences: cooperation between the smaller parties remains uncommon.

4.3.2 The challenges of government management[144]

In terms of the day-to-day business of multi-party government management, various mechanisms have been utilised. Over time, arrangements have become more systematic, formalised in Cabinet Office circulars and the NZ *Cabinet Office Guide*.[145]

Under 'pure' executive coalition government (1996-1998; 1999-2002), there were various means of ensuring participation and cooperation. At the Cabinet level there was proportional allocation in working groups and Cabinet committees; various systems were set up to ensure consultation between parties before decisions were made at Cabinet; there was shared decision-making via the 'twinning' of ministers (whereby a primary minister was shadowed by an associate minister from the other party, or responsibility was jointly managed); and certain areas were distributed to a particular party for branding purposes. There were also regular meetings between the leaders, chiefs of staff and the formation of ad hoc groups of ministers.

In the 2002-2005 term, matters became more complex because of the multi-party governance arrangements.[146] Between Labour and the Progressives, who had a 'pure' executive coalition, there was general consultation and cooperation; access to all Cabinet committee meetings and papers; and on certain issues involvement at policy development stage. Between 'the Government' and UF, there was to be general consultation and some cooperation on agreed-upon policies set out in the confidence and supply agreement. Between the Government and the Greens, matters were different again: the cooperation agreement required different levels of involvement depending on policy area, ranging from cooperation to consultation in areas of Green interest. Overall management of the various parties rested with the Prime Minister, Helen Clark and her Chief of Staff, Heather Simpson.

Similar arrangements were developed for the 2005-2008 term.[147] Clark and Simpson were once again in charge of overall management of multi-party relations. For both NZ First and UF, there was consultation and involvement on policy development in specified areas; and attendance at Cabinet committees relevant to their portfolios with select, but not full, access to committee papers. The Greens had an arrangement similar to that of the previous term, again ranging from consultation to cooperation and involvement in policy development.

The administrative arrangements for the current administration have not yet been made public,[148] but are likely to be organised along the same lines as the 2005-2008 term, with consultation and cooperation determined by the respective confidence and supply agreements that each 'support' party has with the National Party. One key difference,

---

142   http://www.stuff.co.nz/national/2321006/Supercity-to-exclude-Maori-representation; and see the discussion of this by D. Knight and A. Geddis, respectively: http://www.laws179.co.nz/2009/04/dissenting-views-of-minister-of-maori.html and http://pundit.co.nz/content/decisions-dissent-and-the-myths-of-collective-cabinet-responsibility.

143   The most recent example being Labour, the Greens and the Maori Party voting against the Auckland Supercity legislation: see, 'Super City Bill Passed into Law', NZ Herald, 17 September 2009, at: http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10597922.

144   This section draws on J. Boston and A. Ladley, 'The Efficient Secret: The Craft of Coalition Management', *New Zealand Journal of Public and International Law*, (2006) Vol. 4, pp. 55-90.

145   The Cabinet Office Circular setting out administrative arrangements for the 2002-2005 term is available at: , 'Coalition, Support and Co-operation Agreements: Administrative Arrangements' CO (02) 11, 3 September 2002, is available at: http://www.dpmc.govt.nz/Cabinet/circulars/co02/COC_02_11.pdf. The equivalent for the 2005-2008 term, 'Coalition, Support and Co-operation Agreements: Administrative Arrangements' CO (06) 04, 2006, is not available online, but follows a similar format.

146   'Coalition, Support and Co-operation Agreements: Administrative Arrangements' CO (02) 11, 3 September 2002, available at: http://www.dpmc.govt.nz/Cabinet/circulars/co02/COC_02_11.pdf.

147   'Coalition, Support and Co-operation Agreements: Administrative Arrangements' CO (06) 04, 22 August 2006.

148   Although administrative arrangements have been formalized, a circular detailing these for the present government is currently being developed: correspondence with official.

however, is that ministers outside Cabinet are now full members of Cabinet committees, with the right to receive all papers and attend all meetings.[149]

Consultation is of primary importance to multi-party governance. It quickly became formalised: a form providing a checklist of all those with whom consultation was required became standard.[150] Ministers bringing policy or proposed legislation to Cabinet were required to specify whom they had consulted; and ministerial offices and departments were told to not to implement policies still subject to consultation between parties. Much of this consultation was often not done by the minister but rather his or her adviser. Similar kinds of consultation practices applied to support party arrangements.

The various joint decision-making processes used for 'pure' executive coalition arrangements (e.g. between Labour and the Alliance), including negotiation and consultation, were hugely cost- and time-intensive exercises. Support party arrangements were in some ways easier, although this depended on the type of 'support'. While still requiring formalised consultation and negotiation processes, and even joint decision-making on specific areas of executive responsibility in some cases, the degree of integration needed for support parties was generally lower than it was with 'pure' executive coalition government. Integration was only needed in certain areas, not across the board.

The heavy demands on ministers working in multi-party governments has led to the increasing importance of Chiefs of Staff to party leaders and special advisors ('political advisers' in NZ parlance). They play a vital role formally and informally in maintaining and strengthening interparty relations. To some extent these actors provide the institutional glue for multi-party government. Boston and Ladley note they have at least three crucial roles:[151]

- Ensuring they are on top of issues and good lines of communication are maintained with relevant players,

- Bearing some of the strain of sorting out disputes,

- Helping ensure various understandings are observed.

For instance, Chiefs of Staff of the 'governing' parties may regularly talk informally on upcoming legislation, or on issues involving interparty relationships. This is a matter of self-preservation for all parties: if something reflects badly on the government, it may reflect badly on the support parties as well.

The principle of 'good faith and no surprises' has become essential in coalition and support party relations: it signals that parties are genuinely committed to making an arrangement work in the long term. This principle is cited in the various agreements, and in Cabinet Office Circulars setting out administrative arrangements for multi-party governance. Multi-party government, more than any other form of government, relies on strong personal relationships: it simply cannot work without solid personal relationships and trust between key figures.[152] Generally speaking, while there have been 'violations' of this rule, they have been unintentional rather than deliberate.

'Good faith' has many aspects. For example, Prime Ministers and ministers in a multi-party government must be careful not to act as if they had a single party majority: they must, as much as possible, take the other parties seriously.[153] Similarly, there is little evidence of 'brinkmanship', i.e., specifying an issue as a confidence matter in order to secure support. This was the 'nuclear option', the ultimate breach of good faith: once the threat was made, it was unlikely that interparty relations could return to normal.[154] To get to this stage would indicate that the large party had probably lost control of its constructed majority.

---

149   http://www.beehive.govt.nz/release/cabinet+committees+announced.

150   CAB 100/2008/1: Consultation on Cabinet and Cabinet Committee Submissions available at: http://dpmc.govt.nz/cabinet/forms/cab100-2008-1.pdf.

151   J. Boston and A. Ladley, 'The Efficient Secret: The Craft of Coalition Management,' *New Zealand Journal of Public and International Law*, (2006) Vol. 4, pp. 55-90.

152   A point stressed by almost all various interviewees. See also G. Gillon, 'Formation, Durability and Susceptibility: Coalition Traits that Affected New Zealand's MMP Governments of 1996-2002', (PhD Thesis, Massey University (NZ), 2007).

153   All interviewees stressed this.

154   A number of MPs (former and current) made this point.

4.3.3 Policy-making and legislation

Minority status may force a government to be more flexible, but this does not mean a surrender of long-term policy objectives.[155] The practices of governments which developed over the period 1999-2008 illustrate this.

From 1999 to 2008, overall coordination of government policy was managed by Heather Simpson, Labour's Chief of Staff. She, along with others, created strategic frameworks within which more specific policies were set. These frameworks were both an assortment of objectives and an analytical framework with which to measure success. More generally, these frameworks were used to locate policy in the medium term, and also to ensure 'horizontal integration'.

Simpson also had oversight over implementation. Ministers and ministerial advisers played a crucial role in policy and policy implementation, the latter meeting weekly with the Chief of Staff to ensure a coherent, consistent, whole-of-government response. Moreover, Simpson worked very hard to maintain good relations with Labour's coalition and support partners by weekly meeting with their chiefs of Staff.

This network of relationships between leaders, chiefs of staff, ministers, special advisors and MPs is essential to the informal 'executive phase' of the legislative process, whereby prior to formal introduction ('the legislative phase'), ministers gauge the support for proposed legislation through discussions and negotiations with coalition partners and support parties.[156] A tremendous amount of time is spent at this stage to achieve majority support, often involving various modifications to proposed enactments. The roles of the chiefs of staff and special advisors are crucial here. Where majority support cannot be garnered for proposed bills at this informal stage, they are either placed on hold or dropped.

Support in the executive phase does not determine success at the legislative phase, so the careful attention to numbers continues. Support parties sometimes only promise support till the select committee stage, where they can judge public reaction.[157] Similarly, having a majority on select committees or having the chairperson position can no longer be taken for granted. It is now more common for select committees to initiate inquiries and make amendments to legislation.[158] Governments have sometimes circumvented this by guiding legislation towards a 'friendly' committee, or by establishing an *ad hoc* select committee stacked with a majority. This is not common, however; and generally, most committees are non-partisan and do not obstruct legislation.[159]

There is some debate about the impact of MMP on the amount of legislation passed and the speed by which this is done.[160] There has been an absolute drop in the amount of legislation, though this may be due in part to procedural changes. In the FPP period, an average of 160 government bills were passed every year; under MMP, the average was 107 a year. Moreover, under a FPP government, a government bill took on average 20 days to enact; under an MMP coalition minority, it took 66 days.

However, a minority government is able to pass a bill very quickly if necessary. The Electoral (Vacancies) Amendment Act 2003 suspending part of the Electoral Act 1993 was passed under 'urgency'[161] within one sitting day when it was discovered that a Labour MP had breached the Electoral Act: this affected the Labour-led government's majority and so was given priority.[162]

---

155   J. Boston, S. Church and T. Bale, 'The Impact of Proportional Representation on Government Effectiveness: The New Zealand Experience', *Australian Journal of Public Administration*, (2003) Vol. 62, pp. 7-22. All interviewees agreed on this point.

156   Various interviewees.

157   Select committees in NZ combine the functions of UK standing committees (which scrutinise legislation) and select committees (which shadow government departments).

158   G. Palmer and M. Palmer, *Bridled Power: New Zealand's Constitution and Government,* 4 ed. (Auckland: Oxford University Press, 2004), p. 171.

159   R. Malone, *Rebalancing the Constitution: The Challenge of Government Law-Making under MMP* (Wellington: Institute of Policy Studies, 2008).

160   For two differing views on the impact of MMP on legislation, see Malone, *Rebalancing the Constitution*; and D. McGee, 'Concerning Legislative Process', *Otago Law Review,* (2007) Vol. 11, p. 431.

161   'Urgency' is the functional equivalent of the UK's 'fast-tracking' procedure, or the procedure used for emergency legislation: it allows business to be expedited and completed before the House rises on that day. See D. McGee, *Parliamentary Practice in New Zealand*, 3rd ed. (Wellington: Dunmore Publishing Ltd, 2005), p. 154.

162   However, urgency motions under minority government have dropped considerably under minority government. For instance, in 2005-2008, there were only 11 successful urgency motions, mostly because Labour relied on the Greens, who were opposed to urgency; but in the 2008-present term there have already been nine urgency motions. Our thanks goes here to the Office of the Clerk of the House of Representatives, and in particular to David Bagnall and Wendy Hart.

Overall, since the adoption of MMP, there has been no serious decline in NZ governments' ability to enact the legislative programmes they have set out to enact.[163] Indeed, during the periods of Labour-led governments, the National Party in opposition complained of the government engaging in radical legislative reform. Critics of the current National-led government are now making similar claims.[164] This is not the language of weak and ineffective government.

The budget process in NZ also has an executive phase and a legislative phase. The executive phase begins with Cabinet determining the broad strategy and outcomes it wishes to achieve; departments then prepare draft budgets and proposals. Bilateral negotiations then take place between the Minister of Finance and Ministers. Cabinet makes a final review, and the budget is then prepared for the legislative phase, where the budget is tabled and debated by the House.

Multi-party governments in NZ have maintained overall control of the budget in both phases.[165] As with legislation, major issues are to a large extent resolved in the executive phase. Generally, the larger party sets out a broad figure of what is available, and then asks the smaller parties what they want in terms of specific policies. The impact of small parties is seen more in the addition of their own policies rather than any change in direction in the larger party's overall fiscal policy.[166] Most, if not all, issues are resolved in the executive phase; as a result, in the legislative phase, there have been no real threats of amendment or loss of votes on supply. Moreover, there has been little evidence of a decline in fiscal prudence: indeed, for much of the period covered there were fiscal surpluses.

There are a number of reasons for the relative success of budgets and maintenance of fiscal prudence under minority government in NZ. First, the Fiscal Responsibility Act 1994 (now incorporated in the Public Finance Act 1989) constrains short-term spending by requiring governments to set out the medium and long-term fiscal implications of proposed and actual expenditure at various points in the financial year. Second, all key parties involved in the process have shared a belief in fiscal prudence. Third, the smaller support parties have never sought to challenge overall budgetary strategy, making only modest proposals or additions to budgets themselves.[167]

4.3.4 Parliament

In 1995, the Standing Orders Committee of the NZ Parliament revised the standing orders in anticipation of multi-party politics and minority governments.[168] Many changes were formulated to ensure that government would not grind to a halt because of a government's minority status – in particular, the right to abstain;[169] party and proxy voting;[170] a financial veto on legislative amendments having more than a minor impact on the government's fiscal plans;[171] time limits on debates to avoid unnecessary and deliberate prolixity;[172] time limits on select committee reporting times;[173] and the establishment of an interparty business committee to organize the House's weekly business.[174] Other changes, however, were implemented to recognize the principle of proportionality, and might conflict with the former principle – for example, the requirement of overall proportionality within membership of select committees;[175] or the rule that committee chairs no longer have a casting vote.[176]

Some of the changes have been invaluable for minority governments. The right to abstain from voting has been fundamental: governments can continue on simple majorities (a majority of those voting, not those who are present). This also allowed smaller parties to

163   Both Malone and McGee agree on this point.

164   M. Chen, 'Is the MMP Referendum Likely to Result in Electoral Reform?' *New Zealand Lawyer*, May 2009, at: http://www.nzlawyermagazine.co.nz/Archives/Issue111/111F1/tabid/1720/Default.aspx.

165   J. Boston and S. Church, 'The Budget Process in New Zealand: Has Proportional Representation Made a Difference?' *Political Science*, (2003) Vol. 54, p. 21.

166   Interview with former senior government minister.

167   J. Boston and S. Church, 'The Budget Process in New Zealand: Has Proportional Representation Made a Difference?' *Political Science*, (2003) Vol. 54, p. 21.

168   Excerpts from the 1995 Report of the Standing Orders Committee can be found in J. Boston (ed.), *Electoral and Constitutional Change in New Zealand: An MMP Source Book* (Palmerston North: Dunmore Press Ltd. NZ, 1999).

169   2008 New Zealand Standing Orders 135.

170   SOs 137 and 139; 150-151.

171   SOs 316-320.

172   SO 117.

173   SO 286.

174   SOs 74-78.

175   SO 181.

176   SO 205 simply states a quorum is half the committee membership.

vote against motions without causing a crisis over confidence. Party and proxy voting have also been useful.

Other changes proved less effective. Time limits on debates have resulted in less argument and more declaration. Limits on select committee reporting have paradoxically produced greater delays. In practice, the financial veto has rarely been used; similarly, the requirement that amendments made by a select committee majority must be struck out if the House does not approve the motion to adopt them.[177] The Business Committee has been less effective than envisioned, as an informal process supplanted the formal process: business is usually drawn up by the Leader of the House, with some consultation with coalition and support parties.

Select committee membership is distributed proportionately, but because of the lack of numbers, disproportionality remains. There is no proportionality requirement in relation to committee chairs, but these have remained relatively non-contentious. There is often a requirement of negotiation on select committee positions in coalition and confidence and supply agreements. Although NZ governments now have fewer 'natural' majorities on select committees, they usually have 'constructed' majorities – majorities consisting of members from the larger party and the support parties. It is the loss of natural majorities on committees that has led to the initiation of more inquiries by select committees, and a general slowdown in the legislative process.

4.3.5 Civil servants

Minority and coalition government has involved a steep learning curve for civil servants but it has not been unmanageable. It has been a matter of careful modification of already-existing rules.

Officials now recognize that government now involves a great deal more negotiation on all matters; government generally has become more 'politicised'. Interparty relations are considered political matters and thus are managed by chiefs of staff and special advisors. Generally speaking, the relationship between special advisors and civil servants has been a cordial one, and there have been few significant conflicts or issues.[178]

In relation to everyday government, the inter-party arrangements were the initial challenge for civil servants; and in particular the lines of responsibility of associate ministers and spokespersons. But politicians have learnt to negotiate between themselves their respective areas of responsibility at the beginning of the parliamentary term; this is then communicated to civil servants.[179] Even briefing and working with the Green Party's spokespersons – technically, non-government MPs – on government policy has not been problematic. Neither has the maintenance of confidentiality.

Perhaps most importantly, MMP highlighted the need to have certain constitutional conventions clearly spelt out, and the importance of setting out authoritative guidance in advance.[180] Rules are often set out in Cabinet Office Circulars and later incorporated in the *Cabinet Manual*.[181] The *Cabinet Manual* has been revised twice (in 2001 and 2008) since the advent of MMP to accommodate changes made necessary by coalition and minority government.[182]

4.3.6 The public and media

Had there been a referendum on the electoral system during or after the 1996-1999 parliamentary term, it is likely that New Zealanders would have voted to switch to another electoral system because of the well-publicised conflicts between the coalition

---

177 SO 291. Amendments recommended by the entire committee are adopted automatically. Interview with former senior government minister.

178 J. Boston, S. Levine, E. McLeay, N. Roberts and H. Schmidt, 'The Impact of Electoral Reform on the Public Service: The New Zealand Case', *Public Administration*, (1998) Vol. 57, pp. 64-78; C. Eichbaum and R. Shaw, 'Enemy or Ally? Senior Officials' Perceptions of Ministerial Advisers before and after MMP', *Political Science*, (2006) Vol. 58, pp. 3-23; and 'Minding the Minister? Ministerial Advisers in New Zealand Government', *New Zealand Journal of Social Sciences Online*, (2007) Vol. 2, p. 95.

179 In practice, civil servants made little distinction in 2005 between ministerial posts outside cabinet, and the Greens' 'spokesperson' positions: interview with senior civil servant.

180 Interview with former senior official. See also M. Shroff, 'The Role of the Secretary of the Cabinet-The View from the Beehive', Victoria University Centre for Public Law, Occasional Paper 5, 2001, at: http://www.victoria.ac.nz/nzcpl/Files/Occ%20papers/Shroff%20web%20 paper.pdf; and R. Kitteridge, 'The Cabinet Manual: Evolution with Time', at: http://www.dpmc.govt.nz/Cabinet/reports-and-speeches/pdf/ the-cabinet-manual-evolution-with-time.pdf

181 Many of these are available online: see the NZ Cabinet Office website, at: http://www.dpmc.govt.nz/cabinet/index.htm; and the State Services Commission website, at: http://www.ssc.govt.nz/display/home.asp.

182 In 2001, changes were made to the sections on elections, transitions and government formation; collective cabinet responsibility; and the Prime Minister's powers; in 2008, changes were made to the matters of collective cabinet responsibility and dissolution.

partners National and NZ First.[183] Since then, though, there has been little criticism: MMP is questioned more because of various anomalies produced by the system rather than the type of governments it produces.[184] However, the current National-led government is to hold a binding referendum in 2011 to consider the future of the electoral system, with a second referendum in 2014 to follow if there is a vote for change from MMP.[185]

Most voters have not seen MMP-era administrations as 'minority governments' – they are simply 'the government', and are treated as if they had a majority.[186] The government's 'minority' status only becomes important where there is an inability to garner numbers for a particular policy or piece of legislation, or conflict between government partners. Nor have citizens understood the subtleties of the support party arrangements and the modifications to the convention of collective cabinet responsibility. The unusual arrangements have worked to maintain stability and relatively stable government, and that is what seems to matter.

4.4 Durability and Dissolution

There are a number of measures of government durability: a change in Prime Minister, a change in the party composition of Cabinet; a change from majority to minority support; an election; a reconstruction of the same government mid-term. It does appear that government durability has declined under MMP under most measures. However, this is offset by strong continuities: the Prime Minister remained the same for nine years from 1999; most ministers served for two or more parliamentary terms; and there were only two changes in the ideological orientation of the government over the entire period (in 1999 and 2008).[187]

There are a number of ways in which governments can end in NZ: by scheduled election; by early dissolution; or by a loss of confidence. In NZ, no minority government has lost the confidence of the House; the most common way for a minority government to end is by scheduled election. There has, however, been one early dissolution since 1996.

The 1996 National-NZ First coalition ended with a breakup in mid-term. After a major disagreement, the NZ First Ministers walked out of Cabinet. Prime Minister Shipley then advised the Governor General that she was dismissing Peters, the NZ First leader, from his posts. The coalition partners met shortly afterwards and agreed to terminate the coalition within a week. Within two weeks of the initial disagreement, Shipley announced the composition of a new government, complete with agreements. A week later, Shipley moved a confidence motion, which her government won. This entire process took about four weeks.

The then Governor General, in another carefully choreographed speech, later set out what he saw as the key principles for mid-term crises.[188] The Governor General's key priority remained the same: to determine where the confidence of the House lay. The Governor General would continue to act on the Prime Minister's advice, provided the latter appeared to command the support of the House of Representatives. Where this was uncertain, it was up to the political parties to clarify, within a reasonably short timeframe, whether the Prime Minister continued to enjoy that support. In short, political crises remained a matter for politicians to resolve.

Where a government has lost the House's support, the Prime Minister will either indicate a readiness to resign (which meant the resignation of all Ministers), if another government can be formed, or seek a dissolution. The incumbent Government was expected to operate in accordance with the caretaker convention.

The Prime Minister's power to dissolve Parliament was clarified in 2008 to resolve a potential conflict with the caretaker convention: a Prime Minister who has lost the confidence of the House must demonstrate they have the confidence of a simple majority of MPs before the Governor General will grant a dissolution.[189]

---

183   S. Levine, N. Roberts, N. Salmond and R. Salmond, 'A Wider View: MMP Ten Years On', in S. Levine and N. Roberts (eds.), *The Baubles of Office: The New Zealand General Election of 2005* (Wellington: Victoria University Press, 2007), pp. 445-475.

184   For instance, 'overhang' or 'backdoor' MPs: see S. Levine and N. Roberts, 'MMP and the Constitution: Future Political Challenges', Paper delivered at the MMP and the Constitution: 15 Years Past, 15 Years Forward Symposium (2008), available at: http://ips.ac.nz/events/downloads/2008/Levine%20and%20Roberts%20August%202008%20MMP%20symposium%20paper.pdf.

185   Http://www.beehive.govt.nz/release/mmp+referendum+be+held+2011+election; see also, 'Two-Stage MMP Vote Gives NZ Plenty of Time to Decide', *NZ Herald*, 21 October 2009, at:. http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10604414.

186   All journalist interviewees confirmed this point.

187   J. Boston, S. Church and T. Bale, 'The Impact of Proportional Representation on Government Effectiveness: The New Zealand Experience', *Australian Journal of Public Administration*, (2003) Vol. 62, pp. 7-22.

188   Sir M. H. Boys, 'Governing under MMP: the Constitutional and Policy Challenges', (1998), at: http://www.gov-gen.govt.nz/node/403.

189   2008 Cabinet Office Manual, 6.58.

The other example of an early end of a government – although not dissolution – took place in 2002. The Alliance had by this time broken into two warring factions, although both factions agreed to uphold the coalition arrangements and remain part of 'the government'. Prime Minister Helen Clark called an early election, on the basis that the Alliance's troubles were making it difficult to govern. But there was never a dissolution, and at all times, Clark had the confidence of the House.

There is little evidence of brinkmanship, or a willingness to push for an early election. All parties are afraid of snap elections in NZ: the history of snap elections has been that those who initiate them tend to lose them.[190] New Zealanders have punished parties – small and large – who subject them to an earlier, costly election. This militates against early elections and thus increases government durability.

4.5 Conclusions

Drawing lessons from the NZ experience is not easy: the NZ Parliament consists of only 120 (currently 122) MPs; party discipline is far stronger than at Westminster; parliamentary terms are short; and the proportional representation electoral system, which means the ongoing likelihood of hung parliaments, provides a strong incentive for all parties to cooperate over the long-term.

But there are some general lessons. First, a hung Parliament need not be disastrous. Multi-party governance, where two or more political parties cooperate on a regular basis to govern, can be far more stable than critics suggest, if sensibly and practically managed. Concerns about government durability, executive ineffectiveness and small parties holding a disproportionate influence have not come to pass. There are various reasons for this, but amongst them are the fear of punishment by the electorate; the conflict-averse nature of politicians; the imbalance of power between the larger established parties and the smaller supporting parties; and perhaps most fundamentally, good coalition and support management.

Second, multi-party governance is difficult, but not impossible to manage. The tools are already present, but may need modification and a flexible attitude from those involved.

Third, 'nothing succeeds like success'. Unusual arrangements will be accepted if they work; and these can be made to work if managed by careful and sensible people.

Fourth, multi-party governance, more than any other form of government, relies on maintaining strong personal relationships. Conducting interparty relationships on the basis of good faith and no surprises is essential. This does not mean a 'touchy-feely' approach, but rather a pragmatic stance which acknowledges that relationships with other parties cannot be taken for granted.

Finally, there are real benefits in setting out authoritative guidance on constitutional issues and procedures in advance, rather than formulating them in the heat of the moment.

---

190 The exception is 1951. Interviewees split over whether Helen Clark's decision in 2002 to have an early election was successful or not. Labour was doing relatively well in the polls, yet was unable to secure a majority; but it was possible that had Clark not called an early election, Labour's popularity would have affected by the collapsing Alliance Party.

5. Learning from Scotland's Parliament of Minorities

Akash Paun, Institute for Government

> [The lack of a majority] makes it imperative for this Government to rely on the strength of argument in the Parliament rather than on the argument of parliamentary strength.

Alex Salmond MSP, First Minister of Scotland, 16 May 2007.

5.1 Context

There have been three elections to the Scottish Parliament since it was created – or 'reconvened', in the words of its first chairperson[191] – in 1999 (see figure 5.1). The first two of these left Labour the largest party but some way short of a majority, winning 43% and 39% of seats respectively. On both occasions Labour was able to form a majority coalition with its bedfellow of choice, the Liberal Democrats. These coalitions were underpinned by detailed 'partnership agreements' setting out a shared policy platform, and by an approximately proportional distribution of ministerial portfolios between the two parties.

Partnership government survived for eight years, but the 2007 poll brought about the earthquake of a Scottish National Party 'victory', in the simple sense that the SNP for the first time became the largest party at Holyrood (by a single seat) though with 36% of seats were even further from a majority than Labour had been. Unlike Labour, and not for want of trying, the SNP was unable to form a majority coalition. With no feasible alternative government, the party reluctantly formed Scotland's first minority administration, with limited external support from the two Green members. Contrary to many initial expectations, the SNP remains securely in power two and a half years later, with every sign of governing for the full four-year term.

Figure 5.1: Distribution of Scottish Parliament seats (No, %)
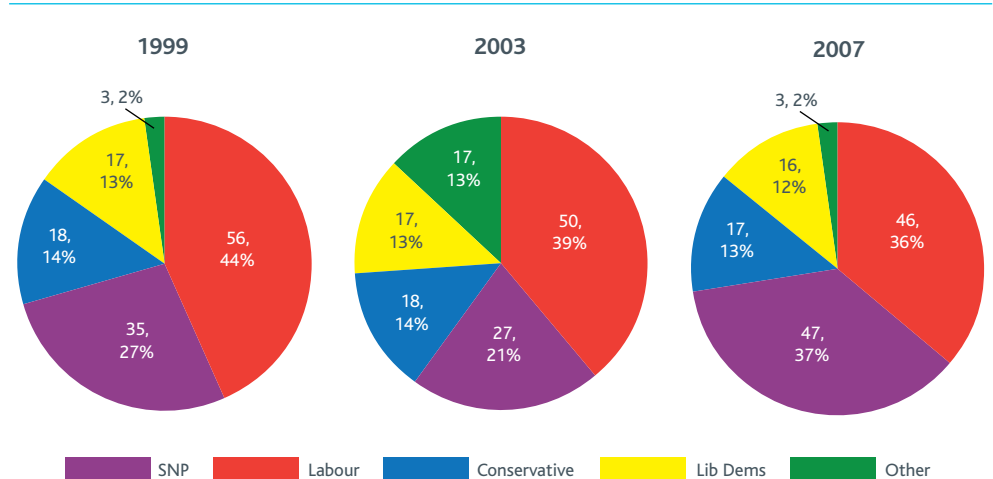
Scotland has therefore, in its still brief experience of devolved governance, experienced what are arguably the two most likely types of administration to emerge from a future hung parliament at Westminster: a two-party coalition, between one large and one medium size party, and a minority government, led by the largest party in parliament.

More significantly, the experience so far is that both these forms of government can be made to 'work', in that they are (a) not bound to collapse in the short term, (b) able to command legitimacy as a valid way of governing the country, and (c) capable of delivering at least some important policy commitments of the governing parties.

---

191   Winnie Ewing MSP, a veteran nationalist politician, famously opened the Parliament with the words: 'The Scottish parliament, adjourned on 25th March 1707, is hereby reconvened'. Scottish Parliament Official Report, 12 May 1999, col. 5.

There are of course a number of important differences between Scotland and Westminster, which should be borne in mind. These include the Scottish Parliament's:

- *Proportional electoral system*, the Additional Member System[192];

- *'Investiture' process*, whereby the First Minister (and his/her ministerial team) is elected by the Parliament before being formally appointed by the monarch[193];

- *Fixed term electoral cycle*, which makes early dissolution far less likely than at Westminster.[194]

But much else about the Scottish political system – including the fundamental relationships between executive and legislature, government and opposition, and ministers and civil servants – remains sufficiently similar to that of Westminster that cross-jurisdictional lesson-drawing can be a worthwhile exercise. Given that three of the main parties present in the Scottish Parliament are also the three major players at the UK level, it is also likely that lessons from Edinburgh will find a receptive audience at Westminster.

Figure 5.2: Scottish Government Composition
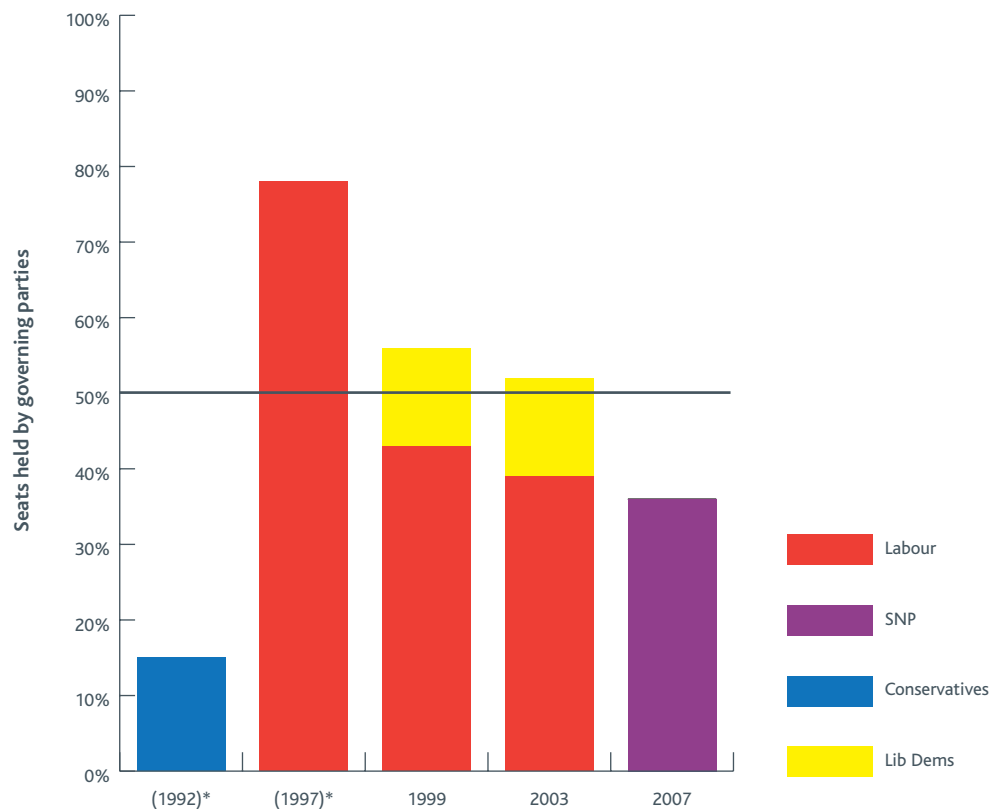
* Figures for 1992 and 1997 show Scottish seats won by victorious party in UK general election under the first past the post system. The 1999-2007 data are for Scottish Parliament elections, held under the proportional Additional Member System.

5.2 Government Formation

The government formation process in Scotland has been relatively swift and painless in the aftermath of all three Scottish Parliament elections. The Scottish Parliament is legally required to nominate a First Minister within 28 days of an election, and this limit has never been in danger of being breached. There are a number of factors which have had a bearing upon the government formation process and its ultimate outcome.

First, Scotland's proportional electoral system means that each election is virtually certain not to produce a single party majority, particularly given that there are four medium-large

---

192   Under this system, 73 Members of the Scottish Parliament (MSPs) are elected in single-member constituencies under first past the post rules, and an additional 56 are elected on regional 'top up' lists, which balance out the disproportionality in the distribution of single member seats.

193   Scotland Act 1998, sections 46-47.

194   Early dissolution can occur only if a two-thirds majority vote in favour, or if no First Minister is elected for 28 days following an election or government resignation. Source: Scotland Act 1998, sections 2-3.

parties in Scotland.[195] Indeed this outcome was seen as a necessary prerequisite for the 'new politics' many advocates of devolution hoped to engender, which was to be 'free of old-style, elitist, confrontational politics' as at Westminster.[196]

The absence of the shock element of an 'inconclusive election' means that the relevant actors are more likely to be well prepared for the challenge of forming a government. In 1999, however, since many of the leading politicians and virtually all the senior officials had been schooled in the Westminster-Whitehall system, there were some signs of unpreparedness that might be replicated (if not accentuated) at Westminster. For instance, there was an initial misalignment of expectations between Labour and the Liberal Democrats about the type of deal each other would be seeking – with the Liberal Democrat leader Jim Wallace arriving at negotiations with a 25-page list of points to cover in the negotiations, as opposed to Labour leader Donald Dewar's sketchy four pages of notes.[197] A former Labour minister suggested also that having become accustomed to majority rule at Westminster and in most Scottish local authorities, the party had been significantly less 'practically and psychologically prepared' for coalition than the LibDems. The civil service meanwhile came in for criticism from the Liberal Democrats for seeming to provide preferential treatment to Labour during the coalition negotiations, which was arguably a result of insufficient planning for the post-election context.[198]

A second important factor is the number of options for the composition of the administration. Without the clarity of a single party majority, the process of forming a government inevitably becomes less certain. In Scotland – as at Westminster – government formation is wholly 'unordered', with no '*formateur*' or '*informateur*' to coordinate the process of forming a new administration.[199] This is a potential source of problems – or at least delays – in a scenario where more than one possible government could be formed.

The process is simplified when there is at least no dispute about which party has 'won' the election and therefore the right to lead the new government, as was the case with Labour in 1999 and 2003. On both of these occasions, Labour could theoretically have formed a majority coalition with any of the other three main parties, but the Liberal Democrats were the only politically compatible partner. The alternative was to form a minority administration, but there was a great deal of scepticism about the merits of this path.[200] A stable majority was seen as necessary both to implement the party's policy plans and also to ensure the success of devolution itself, by no means a certainty, particularly in 1999. Coalition negotiations were therefore initiated almost immediately after the election.

The waters were muddier in the aftermath of the 2007 election, due to the narrowness of the election result and the fact that the combined outgoing parties of government were still larger (by 15 seats) than the SNP as single largest party. Some in Labour held out hopes of forming a third coalition for a short while after the election (allegedly, consideration was even given to an outlandish unionist grand coalition involving the Conservatives[201]). But the political momentum clearly lay with the nationalist party, which made a point of 'calling the election' in their favour even before the final results were in.[202] Most reports followed suit, interpreting the result straightforwardly as an 'SNP victory'[203] meaning that any attempt to keep the party out of power would have attracted significant controversy. Perhaps fortunately, the Liberal Democrats swiftly ruled out a new deal with Labour, accepting the validity of the SNP's right to seek to form an administration, consequently exiling Labour to opposition for the first time.

195   The four parties being Labour, SNP, Conservatives and Liberal Democrats, all of whom have received an average of between 15% and 40% of the vote in national elections over the past decade.

196   J. Mitchell, 'New Parliament, New Politics in Scotland', *Parliamentary Affairs*, (2000) Vol. 53, No.3, p. 605. The key documents espousing the doctrine of 'new politics' include the reports of the Scottish Constitutional Convention (1995) and the Consultative Steering Group (1998).

197   M. Laffin, 'The Politics of Coalition in a Devolved Britain: How the Liberal Democrats Have Shaped Scottish and Welsh Public Policy', paper delivered to PSA Conference 2005, at: http://www.psa.ac.uk/journals/pdf/5/2005/Laffin.pdf, p.4.

198   A point made by former Scottish Liberal Democrat leader Lord Wallace at an event at Canada House, London on 7 May 2009.

199   The 'formateur' is a party leader (or other individual) formally granted the right to make the first attempt to form a government (usually by the Head of State). The 'informateur' is a non-partisan figure tasked with exploring the different government options and/ or facilitating negotiations. These roles are discussed in detail in B. Seyd, *Coalition Government in Britain: Lessons from Overseas* (London: The Constitution Unit, 2002), at: http://www.ucl.ac.uk/constitution-unit/files/publications/unit-publications/84.pdf, pp. 41-45.

200   Author's interview, May 2009.

201   I. MacWhirter, 'LibDems and Labour: the could-have-beens and the has-beens', *Sunday Herald*, 12 May 2007, at: http://www.sundayherald.com/misc/print.php?artid=1394818.

202   P. Lynch, 'Political Parties', in A. Paun (ed.), Scotland Devolution Monitoring Report: September 2007, at: http://www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/Scotland_Sept07.pdf, p. 65.

203   See for instance P. Wintour, 'SNP wins historic victory', *The Guardian*, 4 May 2009, at: http://www.guardian.co.uk/uk/2007/may/04/scotland.devolution

Many commentators at this point expected the SNP to seal a coalition deal of its own. Just as for Labour, the LibDems were the only plausible partners, along with the Greens, the addition of which would have given the notional coalition a majority of one. Forming a majority was the strong preference of the nationalist party too, which feared the devastating effect on its credibility an unstable and brief period of minority rule might have.[204] In the event the SNP managed only to sign a limited 'cooperation agreement' with the Greens. In addition to a handful of joint policy commitments, this committed the Greens to support SNP leader Alex Salmond in the vote for First Minister in return for a committee chair and regular policy consultation.[205]

The Liberal Democrats met to discuss their options the weekend after the election, during which meeting the party's leader took a call from Alex Salmond, who was reportedly 'desperate for coalition'.[206] These overtures were rejected by the Liberal Democrats, however, on the grounds of disagreement with SNP policy on independence.

Policy dissensus can thus be a major barrier to the creation of coalition governments, particularly when it is assumed that the convention of collective Cabinet responsibility will be fully upheld (since this rules out public agreements to disagree). Yet the 1999 and 2003 partnership deals explicitly retained this cornerstone of the Westminster system, demonstrating that when political will is sufficient quite serious differences of opinion can be surmounted. This is easier in Scotland than at Westminster, however, since a number of major sources of political dispute are reserved to Westminster and therefore outwith the scope of any collectively binding partnership agreement. Thus Labour and the Liberal Democrats were free in 2003 to openly disagree on the war in Iraq without undermining the unity of the executive.

When the parties disagreed on areas of devolved competence, different approaches were adopted. For instance, the mechanism used in 1999 to gloss over the sensitive subject of tuition fees (which Labour at Westminster had just introduced, but the LibDems opposed) was to refer the subject to an independent inquiry, allowing the parties to postpone a decision on this subject while pressing ahead with what they did agree upon. The eventual solution, the 'graduate endowment', also managed to find middle ground between the two parties' initial positions. An alternative tack was to strike de facto cross-issue bargains, as for the 2003 deal which led to Labour supporting proportional representation for local government in return for LibDem backing of elements of Labour's anti-social behaviour agenda.

Another facilitator of the Labour-LibDem deal in 1999 were the existing strong links between the two parties (and in particular their leaders) in Scotland, which were based on cooperation during the campaign for devolution over the preceding decade as well as the links Tony Blair had cultivated with the LibDems in the pre-landslide anticipation that a centre-left coalition might be required.[207]

By contrast, the SNP had virtually no history of cooperation with any of the other parties on which to build, other than limited joint working with the Greens and other minor movements on the 'Independence Convention'. This might have made the statutory 28-day government formation deadline quite pressing had negotiations with the Liberal Democrats got under way, although pre-election scenario planning within the civil service for this eventuality may have helped smooth the process. Even Labour and the Liberal Democrats faced significant difficulties in working together as a result of the parties' differing cultures, summed up in the line that 'The Labour party is a machine, the Liberal Democrats are an organism',[208] and a belief among many Labour members that the junior partner was given too much.

By 2011, the SNP are likely to have developed closer ties with other parties, due to the development of more cooperative relationships with opposition parties in the Parliament (notably including the Conservatives) in order to construct majorities for its business.

204   Author's interview, May 2009.

205   Scottish National Party & Scottish Green Party Cooperation Agreement, 11 May 2007, at: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/11_05_07_agreement.pdf

206   Author's interview, May 2009.

207   See *Report of the Joint Consultative Committee on Constitutional Reform: The Cook-MacLennan Agreement*, (1997), at: http://tinyurl.com/cook-maclennan.

208   A. Myles, cited in Laffin, op cit, p. 5.

Since 2007 the SNP has also formed coalitions with other parties (principally the Liberal Democrats) in local councils across Scotland.[209] These developments arguably make a future SNP-led majority coalition at Holyrood more likely. On the other hand, Alex Salmond's comment after a year in office that minority government had been 'absolutely the best thing that could have happened to us' signals that the SNP will be less desperate for coalition next time round, and therefore more likely to drive a hard bargain.

Coalitions are often referred to as a marriage between two parties. However, as one former special adviser emphasises, they are better viewed as a 'ménage à trois' with the civil service completing the threesome. The role of the administration in the government formation process is particularly important, since in a hung parliament scenario officials would be called upon to provide policy advice and administrative support to various parties. However, as noted, the way the civil service carried out this function in 1999 was criticised by the Liberal Democrats for treating Labour as the de facto incumbent party to whom prime loyalty was owed. For instance, it was suggested that the the Labour delegation was supported by more senior officials, and that advice provided to the LibDems on costings of their policy proposals (such as plans to abolish bridge tolls) had to be cleared by the Labour leadership before being passed on.[210] Government officials query this interpretation, however, arguing that lack of familiarity with civil service procedures on the part of the Liberal Democrats may have contributed to a degree of misunderstanding.

In 2003 the process was seen as fair by both sides (both were by then incumbents) while in 2007 the SNP reported being pleasantly surprised by the support received from officials. But should a future election (to either Holyrood or Westminster) produce a less conclusive result – in the sense that the incumbent party of power were one of two potential lead parties in a new administration – the civil service would have to be prepared to handle the tensions of continuing to support incumbent ministers while also providing fair assistance to potential new parties of government.

5.3   Making it Work

5.3.1 The government perspective

A principal concern of minority administrations is the fact that the opposition commands a majority of parliamentary votes and can therefore – if united – block any government proposal that requires the approval of the legislature. But even before it reaches that point, the government faces the preliminary hurdle of finding time in the parliamentary schedule for its business. At Westminster, the executive's control of the agenda is hard-wired into parliamentary procedures, but at Holyrood the timetable is determined by a cross-party committee of 'business managers' (similar to whips), chaired by the Presiding Officer, and then subject to veto or amendment by Parliament as a whole. The 1999-2007 majority coalitions could generally rely on an in-built supportive majority to push through its proposed agenda, even after 2003 when a reduced majority and growing policy tensions led to occasional defeats in parliament.[211] A minority government, on the other hand, must maintain a positive working relationship with the opposition to facilitate the smooth functioning of the system.

Interviews reveal that the system has functioned well thus far, with positive relationships on a personal level between the business managers of the four main parties and open dispute rare. To facilitate this consensual approach the Minister for Parliamentary Business Bruce Crawford has weekly bilateral meetings with each of his counterparts, while the three opposition whips hold a separate weekly trilateral meeting.[212] Knowing they cannot command a majority should the matter come to a vote, the executive has had to make compromises of a kind that would be unfamiliar to a majority government, such as the agreement to increase by 25% the amount of time controlled by the opposition.[213] In return,

209   L. Bennie and A. Clark, 'The Transformation of Local Politics? STV and the 2007 Scottish Local Government Elections', *Representation*, (2008) Vol. 44, No.3.

210   Author's interview, May 2009.

211   Between 1999 and 2007, the Executive lost a total of 28 of 657 votes on amendments to its legislation at committee stage, but only 1 of 481 such vote in plenary (at Stage 3). Source: Data collected by Steven MacGregor at the University of Aberdeen as part of unpublished doctoral research.

212   Author's interview, May 2009.

213   This was agreed among the whips on an informal basis (without the need to amend standing orders) early in the new session. Source: Author's interview, May 2009.

the opposition have accepted the prerogative of government to control a disproportionate share of the agenda, though this is partly driven by the consideration that displaying outright opposition to a popular government is unlikely to play well politically, and may therefore be a temporary and contingent phenomenon.[214] The reduced quantity of legislation in the early part of the parliamentary term also made parliamentary time a less scarce commodity, which may change. And in particular, the introduction of the highly controversial planned bill on an independence referendum may seriously test the current consensus on the informal rules of the game.

But even if government can secure adequate time for its business, piloting this through parliament unscathed is another matter. Of course, all government requires compromise to some degree. As noted, while leading the previous coalition administration, Labour had to make significant concessions on its policy agenda (on subjects such as tuition fees, free personal care, and electoral reform). The difference is that those compromises were made with its coalition partner, within a structured and predictable framework of relations between the two parties. The coalition could then be confident that its parliamentary groups would back the Executive line, once this had been hammered out between the two parties' leaderships (more so, perhaps ironically, than could the Labour majority administration at Westminster[215]). For a minority government, there is inevitably a greater degree of uncertainty about what happens to its legislative plans once they are introduced to Parliament. Defeats in the public arena of the parliamentary chamber or committee room also carry more risk of political embarrassment, so a minority administration must think hard about how to reduce their frequency and their impact.

One approach adopted by the First Minister from the outset was to downplay the significance of parliamentary defeats. This included his reminding the Parliament of the words of his predecessor Donald Dewar: 'The Scottish Executive is not necessarily bound by resolutions or motions passed by the Scottish Parliament.'[216] While this stance has some constitutional truth to it (many parliamentary debates are on declaratory or advisory motions only), this has unsurprisingly been a source of controversy when applied in practice (as on the Executive's decision to cancel the planned establishment of a community court in Glasgow despite losing a vote on the matter in May 2009[217]).

At the same time, the government has adopted a parallel strategy of 'making a virtue of necessity' with its inability always to get its way recast as welcome evidence that the long-promised 'new politics' of consensus has arrived at last.[218] In this vein, Alex Salmond heralded the fact that his government would have to 'rely on the strength of argument in the Parliament rather than on the argument of parliamentary strength'.[219]

The First Minister's undoubted ability to make a strong argument has not prevented the government from suffering some notable defeats. It has been forced to abandon or delay central planks of its 2007 policy platform such as planned reform of local taxation. It has also lost one bill (the Creative Scotland Bill) on a vote in the chamber. Most dramatically of all, in 2009, its Budget Bill was defeated, triggering talk of an early election, before negotiations led to a second bill being passed almost unanimously a week later (discussed further below).[220]

It has been suggested that in some cases the party deliberately included unrealistic promises in order to have chips to negotiate away in the coalition formation process. Similarly, an interviewee who had been closely involved in the Labour-LibDem negotiations in 2003 claimed that the Labour leadership had included their party policy of introducing elected health boards (which was popular amongst backbenchers) in the expectation that the Lib Dems would object, only to be 'horrified' when the LibDems indicated they wouldn't oppose it if Labour really wanted it. Ultimately, the leadership of both parties agreed to drop the proposal.[221] For a minority government, a slightly different dynamic can operate wherein

---

214   A point conceded by a senior Conservative, author's interview, May 2009.

215   See for instance, P. Cowley, *The Rebels: How Blair Mislaid His Majority* (London: Politico's, 2005).

216   Alex Salmond, Scottish Parliament Official Report, 31 May 2007, Col.312.

217   Scottish Parliament Official Report, 7 May 2009, Col 17310.

218   See P. Cairney, 'New Politics at Last?', in A. Paun (ed.), *Scotland Devolution Monitoring Report,* September 2007 (London: Constitution Unit, 2007), at: http://www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/Scotland_Sept07.pdf

219   Scottish Parliament Official Report, 16 May 2007, Col. 34.

220   See Scottish Parliament Official Report, 4 February 2009, Cols 14649-14700, and 14704.

221   Author's interview, May 2009.

policies (perhaps such as the SNP's local income tax proposal) that are revealed to be poorly-thought through or unaffordable can be dropped with the blame placed on the opposition. The party's determination to introduce legislation on an independence referendum may turn out to be another example of how a minority administration can make capital out of defeat (virtually inevitable in this case) – as the SNP would then campaign in the 2011 election as the only party willing to trust the people to decide on Scotland's future.

In general, however, defeats are not seen as desirable, and the minority government has sought to make as much progress with its policy plans as possible within the unavoidable constraints it faces. Thus there have simply been fewer bills than in the previous parliamentary sessions – after two and a half years in office just 15 executive bills have received Royal Assent (6 per annum), compared with an average of 13 per annum over the previous eight years.[222] This has led to accusations from the opposition about the government's 'legislation-lite' approach,[223] although an alternative perspective is that there is less need for legislation now after the early years of devolution 'cleared the backlog' of changes to Scottish law that the House of Commons had not found the time to make. The First Minister also made the case that 'Our purpose is not to legislate – we legislate for a purpose.'[224] Perhaps surprisingly, there has been no surge in non-executive bills either, with just 4 passed between May 2007 and October 2009.

Those bills that the Government has introduced have also been heavily amended by shifting coalitions of parties. Recent analysis found that in proceedings on the 13 executive bills enacted between May 2007 and July 2009 amendments had been passed against the Government's will a total of 16 times in plenary and a further 50 times in committee.[225] But as noted earlier, only one government bill has fallen in Parliament (probably a result of miscalculations on both sides, rather than entrenched opposition) pointing to a success by the government in building majorities in favour of the basic principles of its legislation, if not its detail.

Given the difficulties of passing primary legislation, the Government has also sought to prioritise changes that can be accomplished without primary legislation.[226] These have included reductions in prescription charges and business rates and a freeze in council tax, as well as the vetoing of UK government plans to construct new nuclear power plants in Scotland. This approach has incited accusations of populism and grandstanding from Opposition members: one stating that 'the SNP has served the dessert first, burnt the starters, and its main course [independence] is unpalatable'.[227] Opposition parties also argue that the SNP has 'neutered' parliament, by deliberately seeking to bypass it where possible.[228] From the SNP's perspective, however, the logic is that rather than getting bogged down in parliamentary trench warfare, the best way to strengthen the party's position is to 'get on and do stuff' for which parliamentary approval is not needed.[229] In addition, certain major pieces of legislation (such as on climate change and judicial reform) have now been enacted, but required lengthy consultation and scrutiny processes before they could reach the statute book.

It has further been suggested that the Government has made greater use of softer tools at its disposal such as guidance and engagement processes (as in the case of the National Conversation on Independence). Similarly, relations with local government have been cultivated through the Central-Local Concordat, which gave councils greater spending autonomy while tying them more closely to a nationally-determined delivery agenda.[230] The SNP has also made the most of its ability to determine the shape of government, slimming down the number of ministers, and adopting a more coherent 'strategic' approach to government, in line with plans already being developed within the civil service.

222   Source: Scottish Parliament Information Centre, Factsheets on 'Parliamentary Business', at: http://www.scottish.parliament.uk/business/research/factsheets/index.htm, accessed 1 Nov 2009.

223   S. Carrell, 'Opposition parties mock SNP as Salmond unveils reforms', *The Guardian*, 6 September 2007, at: http://www.guardian.co.uk/politics/2007/sep/06/scotland.devolution.

224   A. Salmond, *Principles and Priorities: The government's programme for Scotland* (Edinburgh: Scottish Government, 2007), p.1.

225   Source: Data collected by Steven MacGregor at the University of Aberdeen as part of unpublished doctoral research.

226   A point made by Minister for Parliamentary Business B. Crawford at the 'Ten Years of the Scottish Parliament: Achievements and Futures', conference at Dynamic Earth, Edinburgh, 12 May 2009.

227   Author's interview, May 2009.

228   Author's interview, May 2009.

229   Author's interview, May 2009.

230   Author's interview, May 2009.

5.3.2 Challenges for the civil service

Not being able to take Parliament for granted was a lesson that had to be learned by the civil service early in the new session. Officials involved in policy development could no longer rely upon the government line carrying the day in the legislature so the challenge increasingly became looking outwards to the opposition, committees and backbench members to assess what was likely to happen in the legislature and what would be the impact on government plans. In addition to the increased frequency of legislative amendments, one particular challenge derives from forced changes to spending plans. Although only ministers can move formal amendments to Budget Bills, the minority administration has had to make concessions in the form of spending promises in order to construct the necessary majority to pass the budget as a whole. This can have obvious implications for government-wide financial planning.

According to some interviewees it took a while for some parts of the administration to adapt to the new context, since many officials were not used to keeping a finger on the pulse of party politics. Another senior official confirmed that the new regime had expected officials to become more 'politically attuned'.[231] To make this happen, a central team within the Constitutional and Parliamentary Secretariat coordinates an extensive information gathering exercise, with officials tracking parliamentary developments, assessing the impact of proposed amendments, and feeding back information gathered to relevant actors across Government. Intelligence gathered in this way is fed to the Minister for Parliamentary Business, helping to inform his negotiations with opposition parties on the forthcoming agenda of the Parliament.

But becoming more 'politically attuned' can hold potential threats to the neutrality, or at least the perceived neutrality, of the civil service. For instance, tensions have emerged in the context of disputes between the SNP and UK Labour governments. One controversial case occurred in autumn 2007 when the Scottish Government's Permanent Secretary became embroiled in the row about the size of Scotland's block grant in the 2007 Comprehensive Spending Review.[232] Another official concurred that since 2007 there had been 'an expectation that we will prepare lines with a greater political slant than would have been the case previously'.[233]

There have also been claims that Scottish officials have become improperly involved in the promotion of SNP party policies (in particular relating to the 'road to independence'),[234] prompting the response from the Scottish Government's Permanent Secretary that officials 'don't pick and choose which manifesto commitments we help ministers work on'.[235] While these minor controversies must be interpreted in the context of partisan conflict between SNP and Labour, it may be that they are more likely to emerge when a minority administration (of any colour) is in office. The hypothesis would be that a minority government without the votes to *implement* party policy is naturally attracted to the idea of using its time in office to *promote* that policy, which can drag civil servants into tricky political waters.

If the uncertainty of minority rule poses particular types of challenge to the civil service, in terms of the internal workings of government, the situation is far simpler in comparison to coalition majority rule in that officials are largely spared the difficult work of acting as brokers between ministers of different parties. Unity is accomplished not by centralisation and bargaining between party leaders, but by a 'shared common purpose',[236] which is jointly owned by the entire Cabinet (traditional departments having been abolished) and cascaded through the organisation via strategic objectives, 'national outcomes' and performance indicators. As noted, this approach to government was under development within the Scottish civil service before the 2007 election, but it arguably became easier to implement under a single-party minority administration.

231   Author's interview, May 2009.

232   P. Cairney, Scotland Devolution Monitoring Report, January 2008, p.10, at: http://www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/Scotland_Jan08.pdf

233   Author's interview, May 2009.

234   'SNP accused of using civil servants for party gain', *The Scotsman*, 10 August 2009, at: http://www.scotsman.com/latestnews/SNP-accused-of-using-civil.5537629.jp

235   M. Rhodes, 'A very civil servant', *Holyrood Magazine*, 28 August 2009.

236   The official Purpose of the government is 'to focus the Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth'. Source: Scottish Government, 'Our Purpose', at: www.scotland.gov.uk/about/scotperforms/purposes, accessed 5 August 2009.

5.3.3 Lessons for the opposition

It has been pointed out[237] that *minority government is a challenge for the opposition as much as a challenge for government*. This is true in that the combined opposition holds the power at any moment to form an alternative administration or at least overturn government policy. This can make it harder to oppose without proposing, placing the onus on opposition leaders to think hard about what defeats to inflict upon the government and what proposals of their own to seek to push through Parliament.

A second important dictum to bear in mind is that *the absence of a government majority does not imply the existence of an opposition majority*. By this is meant that since opposition parties are in general in competition with one another as much as with the government it rarely makes sense to consider the opposition as a united political bloc with a shared agenda. Indeed, if such unity existed, then one might expect those parties to unseat the sitting administration and take power themselves.

Although this latter option is not a serious possibility at Holyrood, it is not uncommon for the opposition parties to combine to defeat the government. Opposition alliances sometimes come together simply to score political points, as often for votes on non-binding motions such as the September 2009 vote on the release from prison of Abdelbaset al-Megrahi.[238] But this is not always the case. For instance, in the first two and a quarter years of SNP rule, a Labour-LibDem-Tory alliance defeated the government 13 times in votes on amendments to government bills.[239]

Occasionally, these temporary alliances have even made something happen entirely against the wishes of the government, rather than having a merely 'obstructive' or 'modifying' impact on the SNP's agenda. One notable example of a 'constructive' opposition alliance came in June 2007, when the government was defeated on its intention to scrap existing plans for an Edinburgh tram system. The government subsequently agreed to finance the tram scheme, but its decision to do so was not legally required. Neatly illustrating the point about minority government placing new burdens on the opposition, the scheme has become highly unpopular in the capital (due to high costs and disruption), with Labour and the Liberal Democrats in particular having to shoulder the blame.[240]

In December 2007, the three unionist parties also combined to approve the establishment of the Commission on Scottish Devolution, which would make recommendations to amend the powers of the Scottish Parliament while ruling out the SNP's favoured option of independence. This example of opposition collaboration is atypical, however, and was made possible by the unusually entrenched divide between the SNP (plus Greens) and the rest on the issue of Scottish independence. On few other issues is there such a binary division, with the result that each opposition party tends to plot its own course through the turbulent waters of parliamentary conflict.

Each opposition party is guided by the desire to advance its own policy preferences and increase its popularity but without undermining the Scottish Government to the extent that it falls (since an alternative coalition is, as noted, highly unlikely, while an early election would be financially and possibly politically expensive). In this context, the rational strategy has often been to negotiate bilateral accords with the government, though this depends on what deals the government is itself willing to strike. These dynamics are illustrated in particular by the processes of passing the 2008 and 2009 Budgets. In 2008, the government sought to construct a 'minimal winning coalition' for its budget (so as to have to concede as little as possible), securing Conservative support by cutting business rates and funding more police recruitment. Conservative backing was sufficient to pass the bill as all other parties abstained (with Labour reportedly fearful that they might bring down the government by blocking the bill).

In 2009, as noted, the first Budget Bill was unexpectedly defeated, despite Conservative backing once more (secured by commitments on policies such as a town centre regeneration fund and a reduction in business rates[241]) because of the government's failure to persuade the two Green members to support it. A week later, however, the government's Budget was passed by 123 votes to 2, after concessions were made to Labour and Liberal Democrat

---

237   Including by B. Crawford, at 'Ten Years of the Scottish Parliament', op cit.

238   See Scottish Parliament Official Report, 2 September 2009, from col. 19021.

239   Source: data collected by Steven MacGregor at the University of Aberdeen as part of unpublished doctoral research.

240   R. Dinwoodie, 'Why Alex Salmond sheds no tears over trams debacle', *The Herald*, 21 February 2009, at: http://tinyurl.com/ml78le

241   P. Cairney, 'Scottish Parliament Budget 2009', *The Press and Journal*, February 2009, at: http://paulcairney.blogspot.com/2009/05/scottish-parliament-budget-2009.html

demands (such as extra funding for modern apprenticeships). The SNP's concessions amounted to less than 1% of the total £33bn,[242] but the Sword of Damocles the First Minister had hung above the parliamentary chamber in the form of a threat to resign may also have had some persuasive power over opposition members.

After two years of minority government, it is generally believed that it is the Conservatives who have developed the closest relationship with the government. Analysis of voting records supports the suggestion that the Conservatives have indeed sided with the government most frequently, though not by a huge margin.[243] This has prompted somewhat predictable accusations from Labour that the two parties are 'eager to get into bed with each other'.[244] The Conservative perspective is that they are rationally using the bargaining power at their disposal to achieve policy objectives, after a decade of having virtually no influence over the Scottish policy process.

The positive relationship between SNP and Tories is in part due to the difficulties Labour and the Liberal Democrats have faced in adapting to opposition. A senior parliamentary official argued that the Conservatives had been the only opposition party able to 'hit the ground running', while a Conservative interviewee alleged that the former coalition partners were hobbled by their 'sense of grievance' at losing power. SNP officials also believe that the Conservatives have adopted the most 'mature' attitude to opposition, though the SNP itself may well have singled out the Conservatives as its partner of choice because of the limited electoral threat the latter pose to the nationalists.

The Greens too have gained from the minority situation. The policy deals (on nuclear power, climate change and independence) in the original cooperation agreement with the SNP did not represent concessions since the two parties already agreed on these matters. But the granting of a committee chair to the Green leader was a major prize, as has been the regular contact with ministers – in marked contrast to the 1999-2007 period.[245] As noted, however, this did not prevent the relationship from breaking down in 2009 however, when the Greens felt there had been inadequate consultation around the budget process. This led the party's two MSPs to oppose the initial Budget Bill thereby, like the mouse that sank the boat,[246] bringing down the bill.

The former parties of government are less sanguine. Although the Liberal Democrats made a deliberate decision to go into opposition the party would now prefer to be back in government as 'that's where you can get things done'.[247] There have been cases of SNP-LibDem collaboration since 2007, notably the abolition of the graduate endowment, but compared to the big wins of the coalition era this has felt like a lean period for the party. A close observer of the Parliament also thought that going into opposition may have been, in retrospect, a mistake for the party and predicted a gradual repositioning of the party so as to make a coalition with the SNP after 2011 feasible. On the eve of the party's autumn conference, this looks like it may be borne out as speculation mounts that the Liberal Democrats will drop their outright opposition to a referendum on independence, which scuppered hopes of a deal last time round.[248]

A senior Labour figure, meanwhile, referred scathingly to the 'dewy eyed view of minority government' in which everyone gets their say as 'bunkum'. He contrasted the transparency and accountability of the Partnership Agreements with the opacity of the current situation, in which the SNP was able to propose policies which it knew it would be unable to implement, subsequently blaming the Opposition at Holyrood and the UK government. At the same time, although Labour had not seriously considered minority government in 1999 or 2003, now the 'rubicon had been crossed' a former MSP reports that many in the party have a preference for minority over coalition government if the party overtakes the SNP at the next election.[249]

242   P. Cairney, 'Political Parties and the Annual Budget', in Scotland Devolution Monitoring Report, May 2009, at: http://tinyurl.com/scotdevomay09, p.33.

243   For instance, analysis of contested motions in plenary on government legislation between May 2007 and July 2009 reveals that the Conservatives sided with the SNP on 49% of votes, compared with 44% (Liberal Democrats), 37% (Greens), and 22% (Labour).

244   D. Maddox, 'Tories call for 2-year minimum sentence to tackle knife crime', The Scotsman, 14 May 2009, at: http://news.scotsman.com/scottishconservativeparty/Tories-call-for-2year-minimum.5265042.jp

245   Author's interview, May 2009.

246   http://www.lnc.k12.nd.us/Resources/LessonPlans/Terri/Who_Sank_The_Boat.pdf

247   Author's interview, May 2009.

248   D. Maddox, 'We'll rethink opposition to referendum, say Lib Dems', The Scotsman, 9 October 2009.

249   Author's interviews, May 2009.

Labour figures also confirm that adapting to life without the support of the civil service has been difficult, although the Scottish Parliament Information Centre (SPICe) has filled this gap to an extent. The disparity of resources between government and opposition parties has arisen in particular in the context of the budget scrutiny process. As noted, the government has had to make concessions about its spending plans but the opposition's capacity to negotiate in this area is weakened by insufficient analytical capacity. Following a Finance Committee inquiry, it was eventually decided to establish a small Financial Scrutiny Unit in the Parliament to provide independent analysis of different spending options.[250] The option of requiring civil servants in the Finance Department to provide direct assistance to opposition parties and committees was ruled out however. Opposition parties have also been invited to participate in a Joint Strategic Review of Public Spending, to consider Scottish public spending in the context of the UK-wide budget squeeze. While these developments are unlikely significantly to shift the balance of power in this area, they illustrate the small steps toward greater influence that opposition parties can take in the absence of majority government.

Another important resource that opposition parties can draw upon is the committee system, which from the dawn of devolution was intended to act as the 'engine room' of the Parliament.[251] In practice, in the coalition majority era, government legislation dominated the work of the specialist subject committees (which have a greater role in the legislative process than at Westminster), while tight whipping generally meant that the executive got its way on key votes.

Since the beginning of minority rule, there has been surprise (and some disappointment) at the limited role the committees have played in the new session. Having been freed from the 'legislative treadmill' of scrutinising a steady stream of government bills, committees were expected to step into the breach either by proposing their own legislation, or by conducting detailed inquiries into particular policy areas. This has not happened to a great extent. One reason appears to be the reluctance of SNP members to criticise the government, due to the executive's inherent vulnerability to defeat. Another explanation put forward is that members of the former executive parties are unwilling to criticise the implementation of policies passed by the pre-2007 administration.

There are also suggestions that opposition parties have disengaged from committees as part of a general shift in emphasis at Holyrood from committees to the chamber, which promises more exciting 'political theatre' in the shape of government defeats. Labour, for example, took the decision to remove its frontbenchers from committees, forming them into a Westminster-style Shadow Cabinet rather than engaging in the policy process via the committee system.[252]

5.3.4 Procedural challenges for the Parliament

The immediate challenge each new Parliament faces is the election of its Presiding Officer (Speaker equivalent). In 2007, there was initial reluctance to give up a voting member, given the tight parliamentary arithmetic. In the end a Conservative member was persuaded to stand, and with Labour and SNP each taking one of the deputy positions so as not to upset the delicate balance.

Appointments to parliamentary committees also posed something of a quandary for the SNP given the limited number of members they had available for committee work. Following significant horse trading, the committees were reduced in size and number to overcome this problem. Reflecting its position in the Parliament, the SNP have a majority on none of the committees meaning that the government must construct ad hoc coalitions to win votes as in the chamber itself.

Few changes have needed to be made to the formal procedures of the parliament since 2007, with the original standing orders flexible enough to adapt to the minority government situation. The Parliamentary Bureau and Presiding Officer are argued to be particularly important in enabling the workings of the Parliament to reflect the new power balance, for instance by brokering the agreement to grant additional parliamentary time to the opposition. Commons standing orders are dominated to a far greater extent by government prerogatives (over time, appointments etc) while there is no equivalent of the Bureau to

---

250   See Scottish Parliament News Release, 'Parliament Creates Financial Scrutiny Unit', 24 September 2009.

251   See for instance, D. Arter, 'The Scottish committees and the goal of a 'New Politics': a verdict on the first four years of the devolved Scottish parliament', *Journal of Contemporary European Studies*, (2004) Vol. 12 No. 1.

252   Author's interview, June 2009.

broker cross-party compromises over agenda control. This raises the spectre of conflict or deadlock over procedures and agenda control at Westminster in a hung parliament scenario.

One area where tensions have arisen relates to the rule that only the government can introduce a Financial Resolution (FR) for a bill but is required to do so only if 'significant' expenditure is involved. In the case of one recent bill, opposition amendments were ruled to incur significant expenditure but no FR from government had been produced so the amendments were ruled invalid (causing dispute, and putting the Presiding Officer in an uncomfortable position). Under a majority government the same situation might arise, but in practice the executive could simply use its votes to defeat the amendments, thereby avoiding this problem.

Another potential source of controversy is the use of casting votes. The Presiding Officer himself sticks to the Westminster norm of supporting the status quo, and has set a new convention of announcing in advance of tight votes how he would use his casting vote. No equivalent convention has developed for committee chairs, however, who effectively have two votes in the not infrequent case that a committee is evenly split. This caused some controversy when a Labour chair used her casting vote to push through several amendments (against the status quo convention).

5.4 Dissolution – How do Minority Governments End?

Under the terms of the Scotland Act, governments in Scotland can see their time in office come to an end in two ways other than via a quadrennial 'ordinary general election'. First, early dissolution can occur, but only with the support of two-thirds of Parliament, putting this option beyond the reach of even a fully united opposition at present. Even if the arithmetic or the rules permitted this, unity on this issue would be hard to attain, so long as the government remained popular, since all the main opposition parties would have to be confident that a new election would enhance their position. The costs of fighting an election and the risks of 'election fatigue' among voters also act as a powerful disincentive to early dissolution.[253]

Second, a simple majority of members could bring down the government via a vote of no confidence, and then either form a new administration or, by failing to do so for 28 days, force an early election by this route. However, for reasons stated above, neither a unionist grand coalition nor consensus in favour of early dissolution are likely to be attainable. Alternatively, the government itself could seek to engineer its own defeat (as governments in Canada and Germany, for instance, have done). This would be a risky strategy, however, and would only be rational for a government unable to govern and confident of improving its position in an election. The First Minister did indeed threaten resignation if his 2009 budget were blocked, but this was widely interpreted as a calculated bluff, taken in the knowledge that his opponents were more scared of an early election than was he.

5.5 Conclusions

For eight years, Scotland experienced effective and stable majority rule by two closely aligned parties willing to compromise with each other but disciplined in then adhering to the line agreed. This posed a challenge in terms of internal government management, but perhaps no more so than that faced by many Westminster governments, which have a wider range of policy issues on which to disagree, and a more fragmented departmental structure to coordinate. In terms of relations with parliament and the opposition, the coalition governments also closely resembled single party governments at Westminster, as a result of collective responsibility and party cohesion.

Minority government, by contrast, represented a leap into the unknown. After less than three years of this experiment, it is still too early to say whether Scotland represents the best of minority government. Yet it has certainly been no disaster thus far. There have been challenges for all actors concerned, but the SNP's continuing popularity is a fair indicator that its time in office is not widely viewed as a failure. It is of course sensible not to succumb to 'dewy eyed' naïveté about minority government as consensual decision-making and group hugs. But there is without question greater scope for all parties to make an impact on policy. Parliament has consequently become more important (even if committees may have suffered in consequence), without serious disruption to established procedures. While the different constitutional context must be borne in mind, should Westminster face a minority situation at some future point, Scotland should surely be one source of learning for all those affected.

253   This issue rears its head particularly high in Scotland since the rules specify that an 'extraordinary' early election would be in addition to, rather than in place of, the next scheduled general election (unless it was less than six months in advance of polling day).

6. Lessons for Whitehall and the Palace

Robert Hazell, The Constitution Unit, UCL

The final part of our report draws out the lessons for Westminster (see chapter 7) and Whitehall from past experience of minority and multi-party government, and the more recent experience in other political systems. It does so in an overtly prescriptive way, identifying the main lessons for all the key actors who are involved in making non-majoritarian government work.

The first three sections of this chapter summarise the lessons for the executive branch – Prime Minister and Cabinet, and the civil service – as well as for the Crown. They adopt a broadly chronological approach, beginning with the formation of a new government, before discussing strategies for the effective conduct of government once it has been formed. The last three sections offer a reminder that parliamentary support is only one facet of a government's power, and set out the constitutional, administrative and political resources available to governments.

6.1 Lessons for the Prime Minister and Cabinet

6.1.1 Advise the Monarch as guardian of the constitution

The Prime Minister is the Monarch's principal constitutional adviser. This includes advising on government formation and dissolution, in which the Prime Minister may also be a leading political actor. Putting aside party interest, the Prime Minister must advise the Queen who is likely to command the confidence of the House of Commons. The golden rule is not to draw the Monarch into controversy or political negotiations; especially in the light of recent difficulties in Canada.

The negotiations between the parties are political matters to be conducted between the party leaders. The Prime Minister can informally keep the Queen's Private Secretary informed, through the Cabinet Secretary. But the formal advice on whom to invite to form a government should only be tendered once the negotiations are complete, and it is clear who can command the confidence of the House of Commons. Minor party leaders may need to declare publicly their intention to support the new government, if that support is necessary for it to command confidence.

Similar principles apply if the government loses the confidence of the House of Commons mid term. The Prime Minister should then advise that his government will resign; and may want to seek a dissolution. But the government does not immediately resign, so that the monarch is never without responsible advisers. It acts as a caretaker government until the next step is clear. This is discussed further in section 6.3 below, on Lessons for the Crown. For the Prime Minister the key lesson is that when he acts as the Monarch's principal constitutional adviser, he must cast aside party interest, and advise on the constitution and the national interest: with the guiding principle being who can command the confidence of the Commons.

6.1.2 Consider minority government as well as coalition

When no party has an overall majority, a prospective Prime Minister will need to consider whether to govern as a minority government, or to explore the possibility of coalition, or a combination of the two. There is a spectrum of possibilities rather than a binary choice. On the whole, minority government decreases stability and requires continuous *ad hoc* cooperation with one or more opposition parties. In contrast, coalitions increase stability but may also reduce flexibility of action for the government as well as increasing the amount

of time spent on managing interparty relationships. Minority government with confidence and supply agreements with one or more minor parties may prove the best option for larger parties. It offers stability of support, without necessarily requiring major policy concessions. The PM may also want to consider the possibility of offering ministerial posts to minor parties without inviting them formally to join a full coalition, as has happened in New Zealand (see chapter 4).

The decision to govern as a minority government or to form a coalition is heavily dependent on the context. Factors such as policy consensus between potential coalition partners, whether there is a history of cooperation, and existing links between parties will all influence a decision (see section 7.2.2 below). Possible support from separatist parties, as in Scotland and Canada, creates additional difficulties, as they are not generally viewed as acceptable coalition partners, at least formally.

6.1.3 Do not govern in a majoritarian way

It is wise for a Prime Minister to develop cordial and respectful relations with opposition parties, and with coalition partners or support parties. In a hung parliament, this becomes particularly important. In the case of coalitions and confidence and supply agreements, this involves establishing both formal and informal channels of communication and mechanisms to resolve disputes. Above all, Prime Ministers must work to create a culture of good faith and no surprises between the larger party and support parties. In New Zealand these have become the guiding principles, helping to produce relatively stable and effective minority governments since the introduction of proportional representation in 1996. Consultation with opposition parties prior to any major policy changes can avoid unnecessary conflict. This is illustrated by the reaction of the opposition parties in Canada to the Prime Minister's surprise announcement in November 2008 that his Government intended to cut public funding for political parties: a move which immediately triggered threats to bring down the government and a major political crisis.

Canada provides other examples of how not to lead a minority government. Joe Clark also governed in a majoritarian way, and as a result his 1979 minority government lasted less than a year. By contrast Lester Pearson was a very diplomatic character, and his two minority governments (1963-65, 1966-68) were longer lasting and highly successful. Alex Salmond too has worked hard to maintain good relations with at least some of the opposition parties. Prime Ministers leading minority governments should act with courtesy and respect toward opposition parties. You never know when their support will be needed, and it is unwise to alienate them. For parties whose support may frequently be called upon, it may be sensible to establish regular machinery to facilitate consultation and resolution of policy differences.

It may also be sensible to provide them with additional resources. Governments and the civil service do not realise how desperately little research support and policy advice is available to the smaller parties in Parliament. If the government wants them to make well informed contributions on issues where it needs their support, it will need to share information and supply specific briefings. If it wants their support on a semi-permanent basis (e.g. over a programme of budget cuts in 2010) it may need to second a small finance and economic team to advise them.

6.1.4 Be realistic about parliamentary defeats, and lower public expectations

Since there is a greater risk of the government being defeated in a minority parliament, it is important to recognise that in advance. One strategy is to clearly state to the public that the government will be defeated from time to time, but that this will not necessarily be considered a matter of confidence. The Scottish First Minister adopted this strategy immediately after the 2007 election, the effect of which was to downplay the significance of parliamentary defeats in the eyes of the public and the media.

It is possible for a Prime Minister to make a virtue of the fact that there may be less legislation in a minority parliament. By using the government's minority status as the reason to drop policies which will be difficult to pass in parliament, the PM can blame opposition parties for the failure to act. The government may want to prioritise small but popular policies that can be implemented without the need for legislation, as the SNP government has done. The slower pace of legislative output can also be portrayed as representing a more inclusive and rigorous approach to policy formulation and scrutiny, and therefore an improvement on majoritarian rule.

6.1.5 Set out a clear strategy

Similarly, it is advisable for the Prime Minister to set out a strategy which focuses on a set of clearly defined objectives. This creates a realistic set of expectations as to what the government hopes to achieve and shifts the emphasis from measuring government success in terms of the scale of its legislative output to assessing its effectiveness at implementing existing legislation and managing the public services under its control. Governments in all three of our case study countries have used this strategy effectively. For instance, following the 2006 election in Canada, Stephen Harper announced that his government would pursue five main priorities. In Scotland the SNP government has similarly set out five strategic objectives to guide the work of all parts of government.[254]

It is advisable for a Prime Minister to reach out beyond parliament and political parties to build coalitions of support with other interests. The SNP government have sought to build partnerships with local government through the central-local Concordat, which gave councils greater autonomy over spending while tying them more closely to a nationally determined set of priorities and delivery targets.

Perhaps the most important lesson for a Prime Minister, whether in a minority or coalition government, is that his or her personality and leadership style help to set the tone for how parliament will function. An obdurate PM with a confrontational style is likely to alienate the opposition and have greater difficulty in passing the government's legislative agenda. In contrast, a PM who respects political and parliamentary realities, and the need to seek cooperation from the opposition parties will help create a more collegial atmosphere within parliament, which offers the best chance of having success as a minority government.

6.2 Lessons for the Civil Service

6.2.1 Plan for all possible government scenarios

The UK civil service has virtually no recent experience of minority or coalition government. The last occasion was the last few months of the Major government in 1997; before that was the Callaghan government of the late 1970s, described in chapter 2. Neither experience was edifying: there was little by way of clear or strong policy, and both governments were forced into short term expedients to survive. Canada may suggest that minority government is bound to be like this; but Scotland and New Zealand show this is not necessarily so. Minority governments there have been reasonably stable, capable of developing clear strategies, and effective in delivering their programmes.

There is therefore plenty of recent experience for the UK civil service to draw upon. The general lesson is that to ensure a smooth transition, to support the process of government formation, and then to provide an effective service to a new minority or coalition government the civil service needs to plan carefully for each stage of the process.

Pre-election planning needs to prepare for different election outcomes, and not just single party majority administrations. Whitehall needs to monitor the policy proposals of all the parties, including the minor parties, to prepare for various scenarios. These should include ones in which one or more of the minor parties are involved in negotiations to support one of the major parties. Scotland and Wales have recent experience: in Wales before 2007 senior officials used 'awaydays' to plan for every eventuality. These should also include what might appear to be politically unfeasible administrations – the Welsh 'grand coalition' deal of 2007 (like that of Germany in 2005) showed that even the unlikeliest of allies may find a way to share power in certain circumstances. Negotiations may start immediately after the election, and Whitehall needs to be prepared.

6.2.2 Be prepared for prolonged government formation

The preparations need to include planning for a prolonged period of government formation. In New Zealand the negotiations in 1996 lasted eight weeks, in 2005 four weeks, and in 2008 11 days. In Scotland it took 6 days to negotiate the first Lab/Lib Dem coalition government in 1999; 13 days to negotiate the second in 2003; and 12 days before the SNP minority government took office in 2007. In Wales in 2007 the prolonged negotiations between the different parties meant that two months elapsed between the Assembly elections and formation of the eventual Labour/Plaid Cymru coalition government. In the interim Rhodri Morgan was re-elected as First Minister, and led a caretaker government until the negotiations were concluded. Modern requirements of internal party democracy can also make the

254   Scotland Performs, at: http://www.scotland.gov.uk/About/scotPerforms.

negotiations more protracted: it may not be enough for a deal to be signed off by party leaders.

In Whitehall the previous government remains in office until the new government is sworn in. The incumbent government is still the lawful executive authority, but must constrain their actions in accordance with the caretaker convention. The New Zealand Cabinet Manual contains five pages explaining in detail how the caretaker convention operates (paras 6.11-35). In essence the normal business of government continues, but where significant or controversial issues arise, or there are long term implications, decisions should be deferred if possible. If deferral is not possible, major decisions should be made only after consultation with other political parties. In cases of doubt Ministers should consult the Prime Minister, and all approaches to other political parties must be cleared in advance with the Prime Minister or Cabinet (paras 6.30-32). In practice New Zealand politicians have been cautious in interpreting the convention, prompting a Cabinet Office circular reminding Ministers that the day-to-day business of government must continue.

6.2.3 Be prepared to support negotiations between political parties

The civil service must continue to serve the incumbent government, while facilitating the formation of a new government. This gave rise to difficulties in Scotland in 1999, when the Liberal Democrats felt the civil service did not distinguish adequately between facilitating the Labour/Lib Dem negotiations and serving the Labour Secretary of State (who was also head of the Scottish Labour Party and subsequently became First Minister). In 2003 the procedures were changed. Each negotiating party was offered the support of two officials attached to the parties, with a wider pool of officials responsible for policy advice and drafting. This ensured that the parties had good access to official information and advice, provided on an equal basis. The parties themselves also introduced different arrangements in 2003, with more input from the parliamentary and wider party, to tie them into the negotiating process. Before the 2007 Scottish election, the Permanent Secretary had established two small teams of officials to be seconded to the parties involved in any coalition negotiations, though in the event they were not called upon to play this role.[255] In Wales the Permanent Secretary and senior officials met with each of the parties involved in negotiations, and advised on the feasibility and affordability of their draft programmes for government.

In New Zealand rules have been formulated to guide the role of civil servants in supporting negotiations between the political parties. Where there is need for civil service involvement, access is controlled by the Prime Minister and a senior group of officials. Information and analysis is provided in written form, although face-to-face access can be authorised. However, in practice, the process is left chiefly to political parties in the *negotiation* phase. Once there is agreement between parties to form a government – the *preferred partner* phase – the civil service has greater involvement, and in practice it is at this point that the civil service has offered both written and oral advice, with the consent of the Prime Minister.

6.2.4 Be prepared to relax collective Cabinet responsibility

The other lesson from New Zealand is that Whitehall must be ready to contemplate some relaxation in the rules of collective responsibility, especially in a coalition government, or in a minority government with support parties which are not formally part of the government. New Zealand has seen an extraordinary range of innovative developments, including having a Minister for Foreign Affairs who was not in the Cabinet, and whose party was not in the government. But the core concept of collective responsibility remains. The extract from the New Zealand Cabinet Manual at Appendix A shows how they explain the concept, and the exceptions which they have developed to cope with coalition and minority government. There is an 'agree to disagree' provision in para 5.25, which is not wholly unknown in the UK: remember the Wilson government's similar device to allow members of the Cabinet to campaign on opposing sides of the EC referendum in 1975. More exotic to British eyes are the portfolio-specific limitations on collective responsibility for ministers from support parties in para 5.27. These provide that

> **5.27** Ministers outside Cabinet from parliamentary parties supporting the government may be bound by collective responsibility only in relation to their particular portfolios. Under these arrangements, when such Ministers speak about issues within their portfolios, they speak for the government and as part of the government. When they speak about matters outside their portfolios, however, they may speak as political party leaders or members of Parliament rather than as Ministers, and do not necessarily represent the government position.

255   P. Riddell & C. Haddon, *Transitions* (London: Institute for Government, November 2009), p. 30.

6.2.5 Be prepared to serve a minority government

As chapter 3 illustrates, minority government can be debilitating, for officials as well as ministers. In Canada the Harper government conducts all its business with an eye to the next election, which might be any time soon. The government has been anxious to deliver on its commitments as soon as possible. There is less scope for the civil service to advise, adjust and improve on the government's policy proposals because of the imperative for speedy delivery. Parliament has become intensely partisan, bad tempered and badly behaved, with constant skirmishing and ambushes by the opposition parties. This increases the risk of surprise and uncertainty, and the need for contingency planning. It presents a challenge to civil servants, who need to act flexibly, think creatively, and be ready to adjust legislation as it goes through.

But minority government need not necessarily be unstable, short term and opportunistic. In New Zealand all but one of the five governments formed since MMP have served their full term, although four out of the five were minority governments. They have developed clear strategies through the programme for government agreed with their coalition partners or support parties. Likewise in Scotland, where the SNP government has planned and is implementing a four year strategy, with clear goals and priorities and overall targets, published on the Scotland Performs website. Officials report that the SNP single party government has had a clearer purpose and set of overall objectives than the previous coalition government. It has been quicker to take decisions, because there is no need to broker those decisions with a coalition partner.

One common theme reported by the civil service in all three countries is the need for officials to become more 'politically attuned'. A minority government has to negotiate item by item to gain support for its policies and legislation, with its support parties or the opposition parties. Civil servants need to be aware of the policy and constituency interests of MPs with swing votes who may need to be accommodated. They must also know the views of expert commentators, and stakeholders. In Scotland, this has involved the assignation of an official and a backbench SNP member to each parliamentary committee to keep closely in touch with the work of the Parliament.

A final theme is greater centralisation. In Scotland the Constitution and Parliamentary Secretariat has established a Legislation Service, to gather and share intelligence about the prospects for every item of legislation. This has centralised the planning of parliamentary business. Although similar activities were undertaken under the previous government, this has become far more important in the absence of a majority. The Cabinet's Legislation Committee in Whitehall could perform the same role, by more actively discussing the prospects of each bill's passage before allowing it to be introduced. Because the budget is a matter of confidence, budgeting under minority government is more centralised and controlled, decided between the Finance Minister and PM. The political pressure for error free government becomes even stronger. In Canada more decisions are referred up to ministers, and to the Prime Minister, which can lead to slower decision making. (This last may reflect Harper's own leadership style, rather than being a necessary concomitant of minority government. Alex Salmond is also a strong party leader, but more collegiate with his Cabinet Ministers).

6.2.6 Be prepared to serve a coalition government

Centralisation is also a feature of coalition management, centred on the key brokerage roles of the Prime Minister and Deputy PM (usually the leader of the junior coalition partner). Formal consultative processes and dispute resolution committees may be bypassed in favour of more informal interaction between the party leaders, especially if they have close mutual trust. This was what happened in Scotland, where the Liberal Democrat leader Jim Wallace played a crucial role in ensuring good relations with the Labour First Minister. On the formal side, the Executive Secretariat ensured that all papers were copied to Wallace as Deputy First Minister, and that inter-party consultation arrangements were adhered to. Within the executive, relations between the coalition partners during the first term (1999-2003) were generally good, but had deteriorated by the end of the second term (2003-07). More difficulties were experienced with the coalition parties in the parliament, and specific arrangements were introduced to facilitate better links. In a coalition with only a slim majority, the legislature can become a significant forum for intra-coalition tension.

New Zealand began with very formal consultation and dispute resolution procedures, which have gradually been relaxed in successive coalition governments. Each senior portfolio minister was twinned with an Associate [junior] minister from the coalition partner. The

portfolio minister would brief his Associate minister on significant policy developments and appointments (often done by his political adviser), and any submission to cabinet or cabinet committee would record that consultation with the appropriate minister had taken place. If the Associate minister was unhappy, they could bring the matter to the Prime Minister's or Deputy PM's chiefs of staff. In the three governments headed by Labour Prime Minister Helen Clark (1999-2008) the heart of the coalition was the relationship between the PM, her chief of staff, the Deputy PM and his chief of staff, and the Finance Minister. It was a centralised system of government, which tended to release information to Associate Ministers of the junior coalition party only when it was strictly necessary.

Under the new National Party Prime Minister John Key information is shared more widely and collective Cabinet responsibility has been relaxed further. Now there are ministers from support parties who are members of cabinet committees and can receive all Cabinet material relating to that committee, rather than a selected range of materials. If necessary, support ministers can agree to disagree, but they must abide by confidentiality. As the rules have been relaxed, the basic principles of coalition management have been distilled into two core principles: good faith and no surprises. Officials observe that the relaxation of collective Cabinet responsibility by specifying exceptions has facilitated effective government.

6.2.7 Develop a stronger set of rules

The final lesson from all our case studies is the importance of having a clear set of rules to guide the behaviour of ministers and officials. It may be easier to develop such rules in countries like New Zealand or Scotland where people now expect minority or coalition government to be the norm. Canada illustrates the difficulties which can arise when the rules are not clear, especially the rules governing the key constitutional conventions around government formation and dissolution. New Zealand shows how a set of rules can gradually be developed, and refined and strengthened in the light of experience. In some cases they have been tightened (e.g. the rules on dissolution), in others relaxed (the rules on collective responsibility). The Cabinet Manual is drafted and periodically revised by officials, but the rules are approved and authorised by Ministers.[256] Changes are also discussed with constitutional experts (e.g. the recent tightening of the rules on dissolution) to ensure consensus and stability. As a senior official remarked, it matters less precisely what the rules are, but it is very important to have the rules written down, and clearly understood by all the key players. What is impressive about the New Zealand Cabinet Manual is how the civil service revise and update it, and how the Cabinet Secretary involves all the key stakeholders (Governor General, law officers, politicians, constitutional experts) in the process. The Cabinet Secretary holds the ring, but it is a set of rules with no single constitutional guardian. Through their involvement in helping to articulate the rules, and revising them under changing conditions, all the key actors are keepers of the flame. All are more likely to feel bound by and observe the rules in practice.

6.3   Lessons for the Crown

6.3.1 There need to be clearer rules about government formation and dissolution

Two of the most important prerogative powers are the power to appoint a Prime Minister, and to grant a dissolution of Parliament. The rules governing these powers are not codified, but are subject to constitutional conventions. For some, this means that the rules remain shrouded in mystery. This is not helpful. There is a risk of the politicians and the media not understanding the rules; or wilfully misunderstanding them in times of political crisis. It is to the advantage of everyone for the rules to be clear, and widely understood.

Formal powers to appoint a Prime Minister and to dissolve Parliament are vested in the Monarch, but the conventions of responsible government require that the Queen exercise these powers only on the advice of Ministers who command the confidence of Parliament. It is when the government of the day has lost the confidence of the House of Commons, or when it is unclear which political leaders command the confidence of the House, that difficulties may arise.

Canada provides a vivid recent example. Two months after the September 2008 elections the Conservative Prime Minister Stephen Harper, fearful that his government might be defeated on a no confidence motion, asked the Governor General to prorogue Parliament. The request was granted, and the prorogation lasted almost two months. During that time the opposition

---

256   McLeay E, 'What is the Constitutional Status of the Cabinet Office Manual?' *Public Law Review*, (March 1999), comments at pp. 9-17. Kitteridge R, 'The Cabinet Manual: Evolution with Time' paper to 8th Annual Public Law Forum, 20-21 March 2006.

parties tried, but failed, to form an alternative coalition. The Governor General's decision to grant what amounted to a cooling off period was understandably controversial.[257] But the situation was not helped by the Prime Minister claiming that the opposition parties did not have the right to try to form an alternative government without a fresh election: a misunderstanding of Parliament's fundamental role in making and breaking governments. In Canada as in the UK the conventions are not written down, leaving scope for such misunderstandings. The conventions were further broken when the Conservatives gave out the emails of senior officials in the Governor General's office, and urged their supporters to write to express their opposition to the alternative coalition.

6.3.2 The more mystique about the process of government formation, the greater the risk of controversy about the Crown's role

The more mystique there is surrounding the process of government formation, and the more people foster the belief that the Queen retains important discretionary powers, the greater the scope for misunderstandings and controversy. In reality there is little need for discretion in the reserve powers, and considerable dangers in talking them up.[258] The basic principles are as follows:

- The Monarch must never be without responsible advisers who enjoy the confidence of Parliament

- The previous government remains in office, until it resigns or is defeated in Parliament. It has the right to face the new Parliament to see if it commands confidence (as Baldwin did in December 1923, and Heath considered doing in February 1974)

- Government formation is a political process. The Monarch must stand back until the parties have concluded their negotiations.

- Where a prospective government intends to rely on other parties for support, the Monarch may need to ask for public proof of their support from the other party leaders, to ensure that the prospective PM will command the confidence of the House.

This last is the lesson of the King/Byng affair in Canada in 1926 (see chapter 3). Brazier makes a similar point: 'proof would have to be made public that a coalition government would be viable'.[259]

6.3.3 The New Zealand Cabinet Manual shows how the rules on government formation and dissolution can be written down

Since the introduction of MMP in 1996, New Zealand has thought through the application of these principles and recorded them in growing detail in the Cabinet Manual.[260] They have written down the constitutional conventions, and the Manual sets out the rules on government formation after an election; government formation mid-term; and early dissolution of parliament. The key sections of the Manual on government formation and dissolution are in Appendix A, with the essentials summarised below.

Government formation

- The process of forming a government is political, and the decision to form a government must be arrived at by politicians.

- Once the political parties have reached an accommodation, and a government is able to be formed, the parties will make public statements of their intentions.

- It is not the Governor-General's role to form the government or to participate in any negotiations.

- The Governor-General will abide by the outcome of the political parties' negotiations, and accept the political decision as to who can command the confidence of parliament.

257   P. Russell and L. Sossin (eds.), *Parliamentary Democracy in Crisis* (Toronto: University of Toronto Press).

258   Blackburn R, 'Monarchy and the personal prerogatives' 2004 *Public Law*, (2004), pp. 546-563.
       Brazier R, 'Monarchy and the personal prerogatives: a personal response to Professor Blackburn' 2005 *Public Law*, (2005), pp. 45-47.

259   R. Brazier, *Constitutional Reform: Reshaping the British political system* (London: Oxford University Press, 2008), p. 101.

260   For the evolution of the Manual, see E. McLeay, 'What is the Constitutional Status of the Cabinet Office Manual?' *Public Law Review*, (March 1999), pp. 9-17; and R. Kitteridge, 'The Cabinet Manual: Evolution with Time', paper to 8th Annual Public Law Forum, 20 – 21 March 2006.

Mid-term transitions

If the government loses the confidence of the House during its parliamentary term:

- the Prime Minister will advise that the administration will resign

- a new administration may be appointed from the existing Parliament (if an

- administration that has the confidence of the House is available)

- or an election may be called

- in the interim, the incumbent government continues in office, governing in accordance with the caretaker convention.

Early election

- The Governor General will grant a request for an early election, as long as the government appears to have the confidence of the House and the Prime Minister maintains support as the leader of that government.

- A Prime Minister whose government does not have the confidence of the House would be bound by the caretaker convention. A caretaker Prime Minister must consult other parties on an early election.

6.3.4 It is not the Queen's role to form a government, or to facilitate negotiations. The decision to form a government must be arrived at by politicians

Not all the detail of the New Zealand rules is necessarily transferable to the UK, but the underlying principles are the same. The key points are that the process of forming a government is political, and the decision to form a government must be arrived at by politicians. It is not the Monarch's role to form a government, or to facilitate negotiations. The Monarch may occasionally wish to seek advice from experts, but her prime source of advice must be her responsible Ministers, who will inform her who can command the confidence of Parliament.

New Zealand has developed the rules in one respect, where the UK might wish to follow. This is to provide that the caretaker convention should apply not just during and after an election, but also mid term, when the government has lost the confidence of the House. The Prime Minister continues to be the Queen's principal constitutional adviser, but the caretaker convention would help to ensure that he is doubly careful that his advice will command support across the House. Significant decisions will require consultation with other political parties, to establish whether the proposed action has the support of the majority of the House.

The New Zealand rules restricting the Prime Minister's capacity to seek an early dissolution (paras 6.57-58 in Appendix A) come close to Gordon Brown's proposal that a Prime Minister seeking a dissolution should first obtain the approval of Parliament, discussed further at para 6.4.5 below.[261] It will not make much difference when the Prime Minister is the confident leader of a party with a majority in Parliament, who can be relied on to support his request for a dissolution. But if his position as leader is not secure, or if his party does not have a majority, then Brown's proposal would impose a significant constraint on the PM's right to request a dissolution. It would go a little further than the New Zealand rules, where they provide that 'a caretaker Prime Minister [should] consult other parties on ... the calling of an early election'. It might also help to give them more concrete form. It avoids the need for the Governor General (or the Monarch) to form a view on whether the government has the confidence of the House, or the PM has the support of his party. By requiring the PM to submit a resolution seeking the approval of the House before asking the Monarch for a dissolution, those two things are automatically put to the test.

---

261   Brown's proposal is in the green paper *Governance of Britain*, July 2007, para 35.

*6.3.5 Buckingham Palace should have a public statement prepared, for use in the
event of a hung Parliament, putting the onus on forming a new government
where it belongs, with the politicians*

The key principles underlying these rules were enunciated by the New Zealand Governor General, in speeches intended to distance his office from the negotiations which would follow MMP elections, and protect it from charges of partiality. The same effect might be achieved here by an advance declaration issued by the Queen's private secretary and the Cabinet Secretary about the Crown's limited role. The need to clear away the mystique about the reserve powers remains, for the sake of the Monarchy as much as for anyone else. At the very least officials should have a public statement prepared, for use in the event of a hung Parliament. It should set out the basic principles of government formation, as in paras 6.36 to 6.40 of the New Zealand Manual (see Appendix A), and shift the focus of attention onto the political parties and their need to negotiate, and away from the Monarch. It would be wise for the public statement to be cleared in advance with the Cabinet Secretary, the Prime Minister and the leaders of the other main parties.

6.4   Executive power available to minority governments

In a minority government, the executive would have less power in two basic ways: in its ability to get business through parliament unchallenged, and in its vulnerability to no confidence motions. However, as shown in the previous chapters, governments without a parliamentary majority have made a success of their apparently weak hand. This is because parliamentary support is only one facet of a government's power.

Governments have very significant resources at their disposal, which effective administrations learn how to maximise. The final sections of this chapter offer a reminder of all the resources available to government, under three broad headings: constitutional, administrative and political.

6.5   Constitutional Resources

6.5.1 A minority government would retain dominance of the parliamentary agenda

All the other actors look to the government to plan the legislative programme and the rest of the parliamentary agenda in the Westminster system. Even if the government does not command a majority in the House of Commons, the formal rules and informal culture at Westminster give priority to the government, and government business. The main rule is Standing Order 14, which provides that 'government business shall have precedence at every sitting'. Minority governments might have to concede more time to the opposition for issues which concern them, as has been the case in Scotland; but the government remains the prime mover, and the underlying culture at Westminster remains that the government's business must move forward. Even in Canada, where minority government has been most dysfunctional, the government manages to get most of its parliamentary business through.

In the House of Lords, priority is currently given to government business by convention, even though Standing Orders do not require this. A minority government will be at no greater disadvantage than the current government, which itself has no majority in the Lords. Since the removal of most of the hereditary peers in 1999 no party has had an overall majority, and the Liberal Democrats and cross benchers hold the balance of power.

The Lords have become increasingly assertive in the last 10 years, and have defeated the Labour government over 500 times, compared with five defeats in the House of Commons.[262] Whether the Lords would be even more assertive under a minority Labour government, or less assertive under a minority Conservative government, is hard to tell. However, given that cross-party agreement would already have been required to pass legislation through a hung House of Commons, the same parties may be expected to coalesce in order to pass it through the Lords. If the Lords were to take a different position from the Commons, it would be harder for a minority government to reverse this in the lower chamber, so more Lords amendments would stick.[263]

262   M. Russell and M. Sciara, 'Why does the government get defeated in the House of Lords?', *British Politics*, (2007) Vol. 2, pp. 299-322.

263   About 4 out of 10 Lords amendments ultimately survive. See M. Russell and M. Sciara, 'The policy impact of defeats in the House of Lords', *British Journal of Politics and International Relations*, (October 2008).

6.5.2 A minority government will suffer more parliamentary defeats

A minority government will expect to initiate the bulk of legislation, but can expect to be defeated more frequently in Parliament. Westminster's legislative output might decline but would be unlikely to collapse completely. Minority governments in Canada have managed to pass roughly the same amount of legislation as their majority counterparts. In New Zealand the number of bills has fallen by about one third under minority governments. In Scotland the SNP minority government passed half as many bills in its first two years as its Labour/Lib Dem predecessors.

One legislative rule which will help a minority government is the convention that only the Crown (i.e. the government) can propose additional expenditure. So private member's bills which involve expenditure cannot make progress unless the government tables a money resolution. And opposition amendments to bills with financial implications will be ruled inadmissible if they do not fall within the terms of the bill's money resolution. But the rule only applies to increasing expenditure. It does not apply to reducing it. That allows the opposition scope for proposing reductions. It also gives third parties opportunities for negotiation, since they will be able to vote with the main opposition for a cut, but offer to vote with the government on proposing an alternative increase.

The government also has the sole right of initiative in relation to secondary legislation, orders and regulations made by Ministers. In 2008 the government made 3,400 statutory instruments (SIs). The House of Commons has limited powers and capacity to scrutinise all this secondary legislation. In the 2007-08 session, fewer than 200 SIs were considered in delegated legislation committees, and only 17 debated in the House.[264] But this might change under minority government. Opposition members might attend delegated legislation committees more regularly if there was a chance of defeating the government. And if there is a Business Committee (see section 7.1.3), more frequent votes could be scheduled on the floor of the House on contested SIs. The government would be more reluctant to put forward controversial SIs, especially those subject to affirmative resolution.

6.5.3 Prerogative powers are unchanged by parliamentary arithmetic

In most areas of public policy legislation is generally required to support any significant new policy departure. But in some policy fields, notably foreign affairs and defence, there is still wide scope to operate under prerogative powers meaning that significant policy changes can be made without any need to bring forward legislation.

Prerogative powers may also be used to create certain advisory and regulatory bodies, to change the machinery of government, and to make public appointments (see 6.6.2).

6.5.4 Control of the Budget will also remain principally a matter for government

The new government in 2010 will need to undertake a swift and radical review of public expenditure. Recent estimates point to the need to squeeze £90bn of savings from government spending (equivalent to 13% of total spending) by 2018.[265] The changes in the government's spending plans will be subject to parliamentary debate, but are unlikely to receive close scrutiny. Despite proposed improvements, the House of Commons still has poorly developed procedures for scrutinising the government's spending plans.[266]

In practice there may need to be cross-party negotiation before the new public spending plans are approved, as in Scotland and Wales. In Wales the initial budget proposals of minority governments were usually defeated, but subsequently passed with minor changes to satisfy the opposition parties. The Scottish 2009 budget process illustrates that defeat on the budget bill need not be considered a matter of confidence, and that there too opposition pressure may lead to no more than marginal changes.

---

264   Source: House of Commons Sessional Returns, 2007-08 session, section 6C, at: http://www.publications.parliament.uk/pa/cm200809/csession/1/108.htm

265   Forecasts of Institute for Fiscal Studies, reported in the *Guardian* 25 July 2009.

266   Hansard Society *The Fiscal Maze* 2006; House of Commons Liaison Committee, *Financial Scrutiny: Parliamentary Control over Government Budgets* 09.

6.5.5 Power of dissolution/calling an election

The power to seek a dissolution is a very important weapon for the Prime Minister, especially if the opposition parties are trailing in the polls (as in Scotland in 2009). Canada currently illustrates the reverse case, where the opposition parties would like to precipitate an early election, and Stephen Harper's minority government is anxious to avoid one.

The constitutional power to seek a dissolution rests with the Prime Minister. There is academic debate about the circumstances in which the monarch might refuse a dissolution.[267] But in most conceivable circumstances it is the constitutional right of the Prime Minister alone to determine the timing of a dissolution and general election, and to advise the monarch accordingly.[268]

The Prime Minister's power would be significantly altered if Gordon Brown's proposal for a parliamentary vote before dissolution were adopted. This was first proposed in the 2007 *Governance of Britain* Green Paper,[269] and then referred by the government to the Commons Modernisation Committee. The committee initiated an inquiry but showed little interest, and has not met since summer 2008.[270] Unless Brown seeks to create a precedent by gaining the approval of the Commons before asking for a dissolution before the next election, his proposal seems to be dead.

The Brown proposal would significantly hamper the leader of a minority government. For example in the Canadian case in September 2008 the Prime Minister could not simply have asked the Governor General for a dissolution. Under the Brown doctrine, he would have had to ask the House of Commons first; and the opposition parties would not necessarily have agreed. But if the Brown proposal is dead, future Prime Ministers will remain unfettered. It will be the constitutional right of the PM alone to determine the timing of a dissolution and general election. And the threat of a dissolution can be used to bring either his own supporters or opposition parties to heel.

6.6   Administrative Resources

6.6.1 Control of Whitehall and the Civil Service

A minority government will have command of the whole machinery of government in Whitehall, and can reshape the Whitehall machine to suit its priorities and serve its purposes. It can create, abolish or merge departments, with no need for prior approval from Parliament. It can transfer functions from one department to another by Order in Council. Mrs Thatcher and John Major hugely reshaped Whitehall by delegating functions to Next Steps Agencies without the need for any legislation. Gordon Brown created first the Department for Innovation, Universities and Skills, then abolished this less than two years later, merging it into the new Department for Business, Innovation and Skills. It may not be wise to reorganise Whitehall departments, because it is hugely disruptive; but there is no doubt of the government's ability to do so.

The government will also have command of all the civil servants in Whitehall and beyond, half a million of them. If it wishes it can take a close interest in senior civil service appointments, as Mrs Thatcher did. There is no evidence that she favoured people who were Conservative supporters, but she certainly favoured people who got things done. The government can remove people whom it considers ineffective. Sir Peter Kemp was removed as Permanent Secretary in the Cabinet Office by William Waldegrave; David Blunkett removed 27 senior civil servants from the Home Office in his first year there as Home Secretary. Those who remained were left in no doubt who was in charge, and what his priorities were.

Alastair Campbell effected a similar clear out of senior press officers in Whitehall departments. He considered the Whitehall media machine to be sluggish and amateur, and within a short time many chief press officers resigned, retired or moved on. Special Advisers

267   R. Brazier, *Constitutional Practice*, 3rd Ed. (Oxford: Oxford University Press, 2001), p. 46; R. Brazier, 'Monarchy and the personal prerogatives: A personal response to Professor Blackburn', *Public Law*, (2005), p. 4.

268   R. Blackburn, 'Monarchy and the Personal Prerogatives', *Public Law*, (2004), pp. 554-555. See also G. Marshall, *Constitutional Conventions* (Oxford: Oxford University Press, 1984), ch 3.

269   Cm 7170, July 2007, para 36.

270   R. Blackburn, 'The Prerogative Power of Dissolution of Parliament', *Public Law* (2009), pp. 778-780.

can also play an important role in feeding the press and guiding departments on ministers' preferences and priorities. Despite recommendations for a cap there is no formal limit on their numbers.[271] In July 2009 the Brown government had 71 special advisers: 25 in Number 10, and 46 working for other ministers.[272] The Blair and Brown governments have also imported additional advisers into Whitehall under other guises.

If the government feels or fears that it will be blocked by Whitehall, it can side step the civil service by outsourcing development of the policy. To take two Home Office examples, in the 1980s an early feasibility study on the privatisation of prisons was outsourced to Deloitte; while more recently a lot of the policy work on identity cards has been done by external consultants.

6.6.2 Control of public bodies, and public appointments

Much of the work of central government is done not by Whitehall departments but by public bodies – the 'quango state'.[273] Despite the mythology, the quango state operates under the direction of ministers, if they wish to exercise influence or control. David Cameron has pledged to cut the number of unelected public bodies.[274] If a new government does not want to go this far, but does want to set quangos off strongly on a different tack, it can remove board members or ask for their resignation (with pay offs if necessary); it can generally give them directions (where statute allows); it can require a new strategy or forward plan; it can reduce the budget. A minister who is determined on a new policy direction need not allow a quango to stand in his way.

The other way in which ministers can ensure that quangos fulfil government policy is by appointing people to them who are sympathetic to government policy. Ministers make huge numbers of public appointments, some 4000 a year to executive public bodies.[275] The more important appointments are regulated by the Office of the Commissioner for Public Appointments (OCPA), whose assessors ensure that fair competition and due process is followed. But ministerial discretion is not significantly fettered. Ministers are consulted at the start of the process, about the skills and experience and qualities they are seeking. An astute minister can set the criteria to select the kind of person they want, and then choose that person from the short list.

6.7 Political Resources

6.7.1 Control of the political agenda

The government has control of the political, parliamentary and legislative agenda. The Prime Minister can set out the government's overall strategy in a series of speeches, explaining how the government's legislative and spending decisions will fulfil the government's main priorities. The legislative programme is published in the Queen's Speech, with a draft published in the summer. Similarly with the budget: a pre-budget statement is published in the autumn, followed by the budget in the spring.

These are the major events in the annual political cycle. Taken together with departmental spending announcements, policy statements, ministerial and public appointments, they should ensure that the government dominates the political agenda throughout the year.

6.7.2 Control of the media agenda, and the terms of public debate

The regular political cycle will also help to ensure that the government dominates the news agenda. Whitehall departments put out dozens of press releases every day to publicise new policy initiatives and ministerial speeches. The cycle of international meetings, at the EU, G20, UN etc help to ensure the dominance of the Prime Minister on the news bulletins. The government gets much more exposure than the opposition parties, simply by virtue of being the government.

---

271   The Committee on Standards in Public Life first recommended a cap in 2000, Cm 4557 January 2000. The government initially accepted the recommendation, Cm 4817 July 2000 Response to Recommendation 21; but later changed its mind Cm 5964 September 2003 Response to Recommendation 22.

272   House of Commons Hansard, 16 July 2009 : Column 74WS

273   PASC *Mapping the Quango State* HC 367, 2001.

274   Speech to Reform, 6 July 2009.

275   PASC *Mapping the Quango State,* HC 367, 2001. *Government by Appointment: Opening up the Patronage State.* HC 165, July 2003.

The final aspect of a government's political resources is its capacity to set the terms of political and public debate. This can have varied success, depending on the topic chosen, and the extent to which it chimes with the electorate. Gordon Brown's attempts in 2007 and 2009 to start a national debate on a British bill of rights and a written constitution have signally failed.[276] Alex Salmond's attempt to start a national conversation on Scotland's constitutional future has not fared much better, although that may change when the SNP introduce their independence referendum bill.[277] The ability to set the agenda also depends on popularity and momentum. The Brown government has repeatedly tried to start a public debate on its core priorities, but has found that at this stage in the political cycle an active opposition can set the agenda as much as the government.

276   G. Brown, 'Statement to House of Commons on constitutional reform', 10 June 2009; Ministry of Justice, *The Governance of Britain*, July 2007.
       Ministry of Justice, 'Rights and Responsibilities: Developing our Constitutional Framework', Consultation Paper, March 2009.

277   A. Salmond, 'The launch of a public debate on Scotland's constitutional future', 14 August 2007, at: http://www.scotland.gov.uk/News/This-Week/Speeches/a-national-conversation

7. Lessons for Parliament and the People

Robert Hazell, The Constitution Unit, UCL

This final chapter considers the lessons for the Westminster Parliament, and for the political parties, the press and the public. As in the previous chapter, the focus is on making minority government work. Half the chapter is about Parliament, as the key political institution which will determine the shape and fate of a minority government, how much it can achieve in legislative terms, and ultimately whether it survives. This is followed by a section on the political parties, the strategies they might adopt, and how they can influence policy in a minority parliament.

The final section on the media is much shorter than the topic deserves. But there is not much to be said, beyond the central point that whether the public perceive minority government and a minority parliament as stable and effective, or precarious and dysfunctional, depends critically on how they are depicted by the mass media.

7.1   Lessons for Parliament

Whereas coalition rule poses a set of *internal* challenges for the government, the difficulties faced by minority administrations are principally of an *external* nature. In particular, minority governments face difficulties in doing anything for which they require parliamentary support (or at least the absence of active opposition). This section looks at this issue from the other end of the telescope, asking how the workings of the British Parliament might be affected by the absence of a single-party majority.

7.1.1 *Parliament provides the first test for the new government in the debate on the Queen's Speech*

A previous study of the impact of 'no overall control' on Westminster concluded that Parliament could absorb minority or coalition government without any significant procedural changes.[278] The first task in the new House of Commons is to select its Speaker. This process would be unlikely to be affected by the absence of a single-party majority. It is common for the Speaker from the previous parliament to be reappointed without opposition, providing a further reason to suppose that this process could progress as normal.

Following the election of Speaker, the House proceeds with the swearing-in of members, which can take a few days. The real business of politics then commences, with the Queen's Speech setting out the legislative and policy agenda of the new government. After the past three elections, the Queen's Speech has been delivered 12 or 13 days after the election. It is possible that in a hung parliament this might need to be delayed while it is determined which party or parties are to form the new administration. There is no set timetable for this process, so a longer wait would be no procedural or constitutional cause for concern. In 1992 there was an interval of four weeks between election and Queen's Speech.[279]

Debate on the Queen's Speech draws to a close by a vote approving the new government's programme. This vote acts in practice as the first confidence test for the government. It might be a pre-election incumbent administration seeking to demonstrate its continued fitness to govern, or a new administration that had taken power. If the previous government is defeated, there would be an expectation that the main opposition party be given a chance to form a government (as in 1924). But if a new government suffers early defeat on the Queen's Speech, there may need to be further negotiation to see which party or

---

278   A. Brazier and S. Kalitowski eds, *No Overall Control: The impact of a hung Parliament on British Politics* (London: Hansard Society, 2008).

279   For wider justification for taking more time to deliberate before the Queen's Speech see P. Riddell and C. Haddon, *Transitions: Preparing for Changes of Government* (London: Institute for Government, November 2009), ch. 2.3.

combination of parties (or of policies) might be able to command the confidence of the House. Only if there is complete deadlock might the Prime Minister need to ask for a dissolution leading to a second election.

7.1.2 A more direct test of confidence, more easily understood by the public, would be an investiture vote in which the House of Commons elected the new Prime Minister

This conventional mechanism for testing confidence suffers from its obscure nature, which does not facilitate understanding of the process by which the government is formed amongst the general public. It might therefore be preferable for the House of Commons to hold an 'investiture vote' as in Scotland and many other countries, which would require MPs to vote on who should lead the new government. This change would not require any legal or constitutional change, as it could be on a motion that simply made a recommendation to the monarch as to whom to appoint as PM.

If the election result were very close indeed, such that two party leaders both had plausible grounds to claim the ability to form a government, the debate on the investiture motion would offer an opportunity for the two aspiring PMs to make their cases, and for the parties holding the balance of power to explain their reasons for backing one or other of the candidates. It would therefore also have benefits in terms of accountability and transparency, helping to meet critics' concerns that government formation following an inconclusive election takes place largely behind closed doors, especially if it involves negotiations with minor or third parties.

7.1.3 The House of Commons might require the government to relax its tight control of parliamentary time

Once the government formation process had been completed, Parliament would begin operating in earnest under the unfamiliar conditions of minority or coalition rule. Our emphasis is principally on the House of Commons, and on minority government. The Lords is already a minority chamber, where no single party has overall control, leading to the much higher frequency of government defeats there.

The bulk of the parliamentary agenda is currently determined by the government alone (and announced to the Commons by the Leader of House every Thursday), without the possibility of amendment. That is being reviewed by the Wright Committee on Reform of the House of Commons, whose report is likely to recommend a Business Committee (as in New Zealand and Scotland) with cross-party representation to determine and present the agenda to the House. Another reform would be for the weekly business statement to be presented as an amendable motion, allowing opposition parties or cross-party alliances to change the agenda.[280]

A Business Committee is likely to rebalance the distribution of time between government and other business. At present, standing orders set aside 20 days for opposition business, 3 for committee business and 13 for private members' bills per parliamentary year. These three protected activities collectively represent only around 14% of total parliamentary time, with government business formally 'taking precedence' the rest of the time.[281] A minority Parliament might shift the balance, whether by formal procedural change or informal agreement among the parties. In the Scottish Parliament the SNP minority government agreed to increase the time allocated to the opposition parties from 16 to 20 days.

7.1.4 The volume of government legislation is unlikely to diminish significantly, but Parliament may take longer to pass bills, and amend them more heavily

Previous governments at Westminster with very small or no majorities have continued to introduce large numbers of bills. Harold Wilson's first Labour government managed to pass 83 Acts when it had a tiny majority in 1965. And under Callaghan, in the two full years without a majority (1977 and 1978), 112 bills reached the statute book. But a minority government must be prepared for slower passage of its legislation, and expect it to be more heavily amended. The 1974 Wilson minority administration lost 17 Commons votes in its

---

280   M. Russell and A. Paun, *The House Rules? Enhancing the Autonomy of the House of Commons* (London: The Constitution Unit, 2007).

281   M. Russell and A. Paun, *The House Rules? Enhancing the autonomy of the House of Commons* (London: Constitution Unit, 2007), pp. 90-92. In practice government controls significantly less than the 86% of time this would suggest, as adjournment debates, question time and other activities take up much of the timetable. Russell and Paun estimated that true government business occupied 50-60% of the timetable (op cit p 16).

brief period in office, while the Wilson/Callaghan narrow majority and minority governments lost 42 votes in the Commons (and 347 in the Lords) between 1974 and 1979.[282] As in Scotland since 2007, most defeats were on amendments to government bills rather than on votes on bills as a whole.

There is no strong tradition at Westminster of non-government legislation. Private Member's Bills are regularly introduced, but with limited time available for their consideration, those that succeed are generally short bills on relatively uncontroversial matters. This is unlikely to change under minority government. Even in the Scottish Parliament, where the subject committees were given the power to initiate legislation as part of the attempt to build a more powerful Parliament, they have not filled the legislative gap left by the SNP minority government. It has proved difficult for the opposition parties to agree on legislative measures; and even if they could agree, they lack the capacity and expertise to turn policy ideas into legislative form. The imbalance is even greater at Westminster, which has no equivalent to Scotland's Non Executive Bills Unit, providing drafting assistance to committees and members, while the UK government has 60 drafters in the Parliamentary Counsel's Office.

Minority governments in Canada and New Zealand have also managed to pass significant quantities of legislation. Only in Scotland has there been a significant reduction in legislation, with half the previous number of bills being introduced by the SNP in their first two years. But, as noted, committees and opposition parties in the Scottish Parliament have not filled this gap. A similar scenario could be expected at Westminster, where the political culture expects the executive to propose legislation, while there is no expectation that committees will introduce bills, nor any support machinery to enable them to do so.

Under current Standing Orders, the government generally has a veto over private members' bills via its control of the timetable. For any significant increase in private members' legislation, it would be necessary to amend the procedures around agenda-setting as discussed above. Additional resources would also need to be provided to members for drafting assistance.

Programming – that is to say, the curtailing of debate on bills by the passage of timetabling motions – would become more difficult under a minority administration. Timetabling would only be accepted for non-controversial bills. But in New Zealand the use of the 'urgency' procedure to expedite legislation has continued, reflecting tacit recognition by the major parties that tight control of legislative procedure was necessary to enable the government to get its legislation passed.

Another obvious effect of minority government is the increased chances of government defeats on its legislative programme. A minority government at Westminster might also find it more difficult than its counterparts in New Zealand and Scotland to construct supportive majorities for its proposals due to the smaller number of parties of significant size. This will partly depend on whether opposition parties opt to oppose outright many government bills, or to use their bargaining power to negotiate amendments that secure policy 'wins' without derailing the government programme entirely. If the latter, more 'consensual', strategy predominated, then committee and report stages might become particularly important. There might therefore be a need to allocate more time for these stages, and to allocate additional resources to Public Bill Committees.

In addition to defeats, there would also be more close-run votes than at present. Changes that could be considered to reduce the disruption of this would be a resumption of 'pairing' arrangements between members of the major parties; or making provision for voting by proxy as in New Zealand, which enables the parties to cast their votes *en bloc* (the latter would be a much bigger and more controversial change, unlikely to be acceptable at Westminster).

A further set of questions concerns how the Lords stages of bills might operate in a hung parliament. Since the government would already have to strike compromises with the opposition to pass its legislation in the Commons, the scope for open disagreement between the two chambers might diminish. But if the Lords did choose to oppose the will of the Commons, it might be more difficult for the government to reverse Lords amendments, let alone force through the legislation under the Parliament Acts.

---

282   P. Norton, 'Behavioural Changes', in P. Norton (ed.), *Parliament in the 1980s* (Oxford: Basil Blackwell, 1985), p. 27.

7.1.5 The budget will continue to be dominated by the government, but opposition parties may negotiate policy concessions

The process of setting the budget would remain dominated by government, as has been the case in New Zealand and Canada. However, the recent experience of Scotland shows there might be horse-trading around the margins of government spending, with opposition parties able to negotiate concessions in return for backing the Finance Bill as a whole. In the Callaghan era, the Opposition forced through changes to income tax rates and thresholds via amendments to the 1978 Finance Bill without derailing the bill or government.[283] This can happen even to majority governments if there is backbench dissent, as was the case for the 2008 rebellion over the abolition of the 10p tax rate. More such challenges to the government's control of fiscal policy would be expected in a hung parliament. Under current constitutional rules, the government would hold the trump card of being able to threaten early dissolution if opposition members forced it too far, though as noted above, there are strong grounds for giving Parliament control of its own dissolution.

What is certain is that the Supply process would almost certainly become more interesting than at present, and Parliament might wish to set up additional scrutiny resource (perhaps in the Scrutiny Unit) to provide expert financial assistance to backbench and opposition members as the Scottish Parliament has recently done. This is likely to be particularly important in the new Parliament in 2010, which can expect a major programme of budget cuts. If those cuts cannot be approved without the support of one or more opposition parties, their capacity to understand the proposed cuts and their implications could be greatly enhanced with the support of experts in economics and government budgeting. But the presumption must be that such support would be available to all, just as House of Library papers are made available to all members.

7.1.6 The government may want to negotiate the number and composition of Select Committees, which will require a lot of horse trading

Every Parliament holds a debate and vote early in its life to agree the composition of all Select Committees. In Scotland the SNP negotiated a reduction in the size and number of committees in the new Parliament in 2007, because of the limited number of MSPs they had available for committee work (the SNP had only 47 members in total, including ministers, who are not eligible for committee work). This should be less of an issue at Westminster, because of the much larger size of the House of Commons; but some backbench MPs on the government side might find themselves serving on two select committees if committee sizes are not reduced.

Without a clear majority, the best the government can hope for is parity on the committees. The composition of committees became an acute issue in 1976 when the Labour government's majority disappeared. In practice this will be much more important in Public Bill Committees than in Select Committees. Public Bill Committees consider and can amend legislation, and are tightly whipped, because the outcome matters to government. Select Committees conduct inquiries and scrutinise the government's policies and actions: but governments can (and frequently do) ignore critical Select Committee reports.

The governing party might seek to offer additional committee places to smaller parties in exchange for their support on confidence matters in the House. The selection of committee chairs would also become more unpredictable, since these appointments are formally made by the committees themselves. This is also subject to recommendations from the Wright Committee. If the whips are not removed altogether from the process, they might continue to seek informal agreement on how committee chairs are allocated between parties.

The expectation might be that Select Committees would become more assertive under minority government. This has not proved the case in Scotland, however, in part because of SNP members' reluctance to criticise the executive. At Westminster there is also the possibility that government backbenchers might become more loyal to the government, if its position is very vulnerable, but Cowley's work suggests increasing rebelliousness in the Commons, regardless of the government's majority.[284] If government backbenchers on select committees did redefine their role as defenders rather than scrutineers of government, there might be a risk of growing partisanship and decreasing effectiveness of Select Committees.

283   P. Norton, 'Parliament', in K. Hickson (ed.), *New Labour, Old Labour: The Wilson and Callaghan Governments, 1974-1979* (London: Routledge, 2004), p. 193.

284   P. Cowley, *The Rebels: How Blair mislaid his Majority* (London: Politico's 2005). See also: www.revolts.co.uk.

Committee chairs might also have to exercise their casting votes more often. In Scotland committee conveners have felt bound by no conventions on how they exercise casting votes. On the Education (Additional Support for Learning) Bill 2008 the Labour committee convener used this power to push through several amendments against the government. At Westminster this would not happen. The chair of a Public Bill Committee follows the same principles as the Speaker in the chamber when votes are tied (see below), so if there were a tied vote on an amendment, the chair would vote to leave the bill in its original form. In Select Committees the chair has a vote only when there is a tie, and can use their discretion in how it is exercised.

7.1.7 The Speaker will come under pressure to give more procedural rulings, and may have to exercise his casting vote

A hung Parliament makes it more likely that the Speaker will have to exercise his casting vote. The basic principles are reasonably well established, that the Speaker's casting vote should (a) allow further debate if that is possible; (b) where no further discussion is possible, decisions require a majority; so that (c) on tied amendments to a bill, the bill is left in its original form. But new situations will arise, as they have in Scotland and Wales, where it is not immediately clear what precedent requires. Applying these principles to the passage of a bill, the Speaker will exercise his casting vote (a) to allow the second reading of a bill; (b) to vote against at third reading; (c) on an amendment to a clause, to leave the bill in its original form.

Because on the whole the conventions support the status quo, they would help a minority government in most respects. Hostile amendments to their legislation would be negatived. Tied votes on no confidence motions and Opposition day motions would also fail. But the government would not be able to gain approval on a tied vote for its own substantive motions. Nor for statutory instruments requiring affirmative resolution, or for procedural motions on parliamentary business, such as timetabling a bill.

In Scotland the Presiding Officer has developed the habit of announcing in advance of a close vote how he will exercise his casting vote. That helps to defuse tension and avoid procedural arguments at the time of the vote.

The Scottish Presiding Officer has had to give more procedural rulings in the 2007 minority parliament. One difficulty has arisen from the rule that only government can introduce a Financial Resolution for a bill. In the case of the Education (Additional Support for Learning) Bill, opposition amendments were ruled to incur significant expenditure. But no Financial Resolution from government had been produced, so the Presiding Officer ruled the amendments invalid. The same principle applies at Westminster, where only the government can propose additional expenditure. Amendments which go beyond the original Money Resolution to a bill will be ruled inadmissible.

At Westminster the Speaker will also have to give more procedural rulings, and they are more likely to be challenged. In 1976 the Speaker George Thomas declared that the Aircraft and Shipbuilding Industries nationalisation bill was hybrid (meaning it was both public and private legislation), which would have greatly delayed its passage. The government had pressed hard to avoid this, and succeeded in passing a motion to disregard the ruling and proceed with the bill in the normal way. In 1993 there was endless procedural wrangling over the Maastricht bill, when Conservative rebels left the government's majority precarious if not non-existent. A procedural ruling by the Deputy Speaker on whether to have a vote on the social chapter led to a motion of no confidence in him – but its defeat by 450 to 81 showed cross-party support for upholding the authority of the chair.

7.1.8 Parliament can become stronger under minority government; but cannot make policy or force the government to do anything against its will

The lessons from our case study countries are that Parliament can become stronger under minority government. In Scotland the minority Parliament since 2007 has been more effective in scrutinising the government, and holding it to account, than its majority predecessors. By passing opposition motions the Parliament can censure the government (as it did in September 2009 over the release of Al-Megrahi). It can require the government to explain itself, to look at something, to bring forward proposals.

But the Parliament cannot force the government to *do* anything. The Clerk has ruled that parliamentary motions can only be advisory. The government retains the discretion of how to respond, or not to respond. Ultimately the Scottish Parliament's only weapon in the face of government intransigence is a no confidence motion.

It is sometimes supposed that a minority parliament will see an upsurge of parliamentary reform, because the government can no longer prevent it. This is not necessarily so. The Canadian minority parliaments of 2004, 2006 and 2008 have seen no great reform agenda. In Scotland there have been no significant parliamentary reforms since 2007. It needs a champion to promote parliamentary reform and make it happen. At Westminster this has typically been the Leader of the House (think of Robin Cook's Select Committee reforms, and Jack Straw's introduction of Public Bill Committees). If the Leader of the House is not reform-minded, reforms are most unlikely to happen. They could be promoted by the shadow Leaders from the opposition parties; but they would need to have a clear agenda, and to work in concert together. At present there is also no clear mechanism by which backbenchers or opposition parties can propose amendments to parliamentary procedures, this being effectively an additional government prerogative.[285]

7.2   Lessons for the political parties

7.2.1 Prepare before the election for negotiations immediately afterwards

If the election is inconclusive, the largest single party may immediately want to open negotiations with one or more possible support parties. The negotiations will be intensive, with the teams working day and night because of the pressure to form a new government. All the main players will be exhausted after the election campaign, but they must immediately embark on a negotiating process which will be equally exhausting. So party leaders and their chiefs of staff may want to decide well before the election on who will comprise their negotiating team, what will be their respective roles; who will act as support staff for the negotiators, including policy advisers, press and PR; and what will be the consultation arrangements with the party's executive, MPs and wider party membership.

Parties should also consider what lines they will take on key policy issues, what potential fallback options might be, and what are the key policies of the parties they are likely to be negotiating with. It is also important to recognise that it is possible to find points of common interest to negotiate upon even if the two parties' overall ideological standpoints clash, as for the National-Green 'understanding' in New Zealand, and perhaps the Labour-Plaid coalition in Wales.

Parties should also be prepared to be involved in parallel negotiations with more than one party. A party holding the balance of power possesses significant bargaining power, though looking simultaneously in two directions in pursuit of the best offer may be seen as opportunistic or unprincipled by the public. This is a reminder of the importance of public perceptions. In Canada, the proposed Liberal-NDP coalition of December 2008 was perceived as illegitimate by the majority of Canadians, which helped ensure it did not come to fruition.

7.2.2 Consider the full range of possible relationships with the government

The pros and cons of different relationships with the government are as follows:

Coalition is risky unless the smaller party's numbers are high, and it has a strong identity which can survive association with the larger party. Moreover, collective cabinet responsibility places high demands upon the smaller party, increasing intra-party tensions. However, the benefits are that one has greater access to state resources; and participation in whole of government decision-making. Moreover, success as a coalition partner increases the possibility of being asked again in future.

Enhanced confidence and supply agreement: In New Zealand this includes ministerial posts for the smaller party in areas of interest to them, but falls short of full coalition. It allows a smaller party to concentrate its resources on specific areas connected to its 'brand' rather than right across government, as well as in theory making it easier for the public to identify the small party's influence and achievement. It is still unclear in New Zealand whether or not this has been successful: the small party's influence may not be visible to the public.

Simple confidence and supply agreement: The main problem with this arrangement is that most of the benefits accrue to the larger party – stability plus support on confidence and supply, usually in return for very modest policy concessions. However, it may be useful to smaller parties who lack experience in executive government, and fear too close an association with the larger party. The SNP-Green accord of 2007 might be classified as a weak form of confidence and supply agreement.

285   M. Russell and A. Paun, *The House Rules?* (London: The Constitution Unit, 2007).

Ad hoc support has been the preferred arrangement in Canada. It enables the government to operate with fewer constraints than under more formalised arrangements, while giving smaller parties the opportunity to influence specific policies. The primary problem is that relying on *ad hoc* support produces a less stable and predictable parliament.

Opposition allows parties to maintain their ideological purity. The New Zealand experience is that, with the exception of the Greens, all smaller parties who entered into an arrangement with the government have lost votes at the second round. (But there are also specific reasons, such as splits, why each of the small parties did badly). The Liberal Democrats in Scotland are also not perceived to have benefitted electorally from their association with Labour. Thus parties who wish to influence government in a clear, identifiable way must weigh the benefits of being in government against the costs of being associated with government.

7.2.3 Think hard about resource issues

Smaller parties generally suffer from resource imbalances, whether as part of the government or in opposition. They lack the time and numbers to scrutinise all the proposals put forward by the larger party, and may become overwhelmed. There is also a resource cost in simply maintaining a relationship with the larger party. Parliamentary research services cannot supply the kind of regular staff support which is required.

Small parties should therefore seek additional resources as part of any support arrangements, in the form of seconded staff, increased Short money (and Cranborne money in the Lords), or even offices in Whitehall. It may also benefit the government: it can be better to have a well informed support party than the reverse.

Resource imbalance is one reason for the popularity in New Zealand of enhanced confidence and supply agreements, and ministerial positions outside government. They allow a smaller party to concentrate its resources on specific areas connected to its 'brand' rather than right across government.

7.2.4 It is very difficult to co-ordinate 'the opposition' against the government

A government minority does not necessarily imply an opposition majority. Because of their ideological differences and the fact that they are in competition with one another as well as with the government, opposition parties find it difficult to combine against the government. In Canada the opposition parties tried to bring down the government in late 2008, but failed to reach agreement on an alternative government. In Scotland it has also proved difficult for the opposition parties to work together, because it works mainly to the electoral advantage of the largest opposition party.

In New Zealand a key tactic of the established governing party is to draw around it a broad church of smaller support parties through enhanced confidence and supply agreements, thus isolating the other major party. This is what Labour did in 2005-2008, and what the National party is doing now that they are in government. As a result, it has proved very difficult for 'the opposition' to act in a coordinated manner to oppose the government. Similarly in Scotland, the SNP has managed to divide the opposition parties by striking bilateral deals with different parties on specific issues.

It is in the interest of government to maintain good relations with the smaller parties, to maintain a pool of potential 'coalition' or support partners. The party in government can always offer resources, policy influence and publicity. And it sets the policy agenda. By contrast the main opposition party has little to offer the smaller opposition parties.

7.2.5 But opposition parties can influence government policy ...

Under 'normal' majoritarian conditions, opposition parties rarely have the opportunity to directly influence government policy. To the extent that government does have to accept defeat or amendments on its proposals, this is typically the result of discontent on its own backbenches, and therefore largely outwith the control of opposition leaders. The opposition role is different under minority government, because the government needs the support of the opposition parties. This gives the opposition parties more scope to influence policy, but they rarely do it in concert with one another. In Scotland the Conservatives have been quicker to learn this and strike their own deals, gaining three concessions in the Scottish budget in 2008, and also gaining concessions in 2009. Labour and the Liberal Democrats were slower to adapt to the realities of life in opposition. In Canada the opposition parties have used their superior numbers on committees to create legislative deadlock and to commission reports designed to embarrass the government. Opposition parties may also

want to use their combined strength to change parliamentary procedure, for example by increasing the number of opposition days in parliament, or strengthening the role and resources of Select Committees.

7.2.6 ...without going so far as bringing down the government

Minority government is not just a challenge for the government: it is also a challenge for the opposition. It requires the opposition parties to behave responsibly, not simply to oppose for opposition's sake, and to think very hard before bringing down the government. This was clearly in evidence during the 2009 budget difficulties in Scotland. The opposition parties had not intended to defeat the budget. When Alex Salmond threatened to resign, they quickly fell into line, and the budget was passed with only minimal concessions.

All opposition parties should generally be fearful of bringing down the government. Voters tend to punish governments or actors who 'unnecessarily' subject them to an early election. This consideration applies to large and small party alike; it is one reason why small parties are so hesitant to vote against an incumbent government, and one reason why minority government is not so precarious as often assumed. In New Zealand no party, large or small, has made a concerted effort to bring down the government. In Canada the opposition parties are learning that when they threaten to bring down the government, their poll ratings dip. But an additional reason for their failure to do so is the difficulty for opposition parties to act in concert.

7.3   Lessons for the media and the public

7.3.1 The media play a key role in public education about the British parliamentary system

The media has a vital role to play in educating the public about how their institutions of government work, especially in countries with little recent experience with minority government. Government formation and dissolution can be complex in minority parliaments, and the media is best placed to aid the public in understanding how parliamentary government works. The pervasive media coverage of American politics means that many people better understand how a presidential system works compared to a parliamentary system. (A recent poll found that 51% of Canadians incorrectly thought that the Prime Minister is directly elected).[286]

It may take weeks not days for a new government to be formed. The media may find it difficult to adjust to such a prolonged period of government formation; and frustrating that party negotiations take place in secret. But it is not a failure of a parliamentary system if no single party has a majority; in most parliamentary systems it is the norm. It will be difficult when Britain is used to quick election results, and the financial markets and business community are clamouring for certainty. But rather than join in the clamour, adding to the pressure on the parties, the media could point out that in other countries it can take a week, a fortnight or even a month for the new government to be formed, and the heavens do not fall (see 6.2.2).

The largest single party is likely to form the next government, but will not necessarily do so. In Scotland the media announced the SNP had won the 2007 election, when they had gained 47 seats to Labour's 46, in a parliament of 129. The media may need to be careful before declaring the largest single party the 'winner'. If the Conservative party are the largest single party in the next Parliament, it is likely that they will form the next government, but not inevitable. In the 1924 parliament the Conservatives were the largest single party, but what emerged was a minority Labour government (see chapter 1).

The media can help to explain that the incumbent government stays in office until the new government is formed, subject to the caretaker convention; and that the Queen has a strictly limited role, waiting until the political negotiations have established which party leader will command the confidence of Parliament. Given the media's own ignorance about how the parliamentary system works, it might be helpful for the Cabinet Office or Parliament to issue a press release or briefing when the election is called, reminding press commentators about the fundamentals. The New Zealand Cabinet Office does this at every election, to prepare the media for a prolonged process of government formation, and to explain the formal and limited role of the Governor General in giving effect to the conclusion of the political negotiations.

---

286   'In Wake of Constitutional Crisis, New Survey Demonstrates that Canadians Lack Basic Understanding of our Country's Parliamentary System', Ipsos Reid Press Release, 15 December 2008, at: http://www.ipsos-na.com/news/pressrelease.cfm?id=4208.

7.3.2 The media shape public perceptions of minority government, and may distort them

The media play a significant role in shaping how the public perceives minority governments. In Canada, the media are constantly anticipating when the next election will occur. Every budget or confidence motion is presented as a cliffhanger. The atmosphere is one in which the government could be defeated at any moment. For the public, this type of reporting contributes to the perception that minority governments are inherently unstable. It also adds to a sense of election fatigue.

Our Canadian interviewees suggested that the media's depiction of the current minority government as unstable and ineffective is accurate at a superficial level. However, they note that it has had a number of achievements which often receive little coverage (e.g. legislative output has been largely unaffected). The result is that the public receives a distorted picture of the way minority government functions.

The way in which the Canadian media cover politics also shapes public perceptions. Focusing on the worst aspects of parliamentary behaviour is good for ratings but can simply encourage that type of behaviour to continue. Over time, the public begins to associate this type of behaviour with minority parliaments. This can produce a public backlash against minority government both conceptually and as a political reality.

In Scotland and New Zealand media reporting is more balanced, and minority government is not presented as unstable or ineffective. In Scotland the media in 2007 thought the Salmond government would not last more than six months; they have since come to learn more about the durability of minority government.

The UK media will hark back to the last experiences at Westminster of minority government: the Lib Lab pact and the final months of the Major government. They are also likely to portray it as short lived: a temporary difficulty which might be resolved if the government can call a second election and gain a majority. In so doing they may reflect the political reality and the wishes of the governing party. Calling a second election is what the Wilson government did in 1966 and again in October 1974; and what the Harper government did in Canada in 2008.

But there is an alternative possible narrative. Although minority governments in the UK have typically been short lived, that is not always the case elsewhere. New Zealand minority governments have generally run their full term. Alex Salmond's minority government seems set to do likewise. Whether the British media start to change their tune, as the media in Scotland did, will depend on how well the government and minority parliament perform, and whether what is initially seen as a temporary aberration becomes more durable and permanent.

7.3.3 The public tend simply to perceive 'the government', led by one major party

This last observation comes mainly from New Zealand, where there has been a succession of governments with one or more support parties. Media and other commentators observe that the public, who are not interested in the minutiae of politics, do not perceive the contribution of the support parties. So for most of the public, from 1999 to 2008 New Zealand had a Labour government, and now it has a National government. Come the next election, it is very difficult for minor parties to distinguish their contribution to the government.

A final point to make is about the accountability of minority government. Minority government can be more transparent and accountable than coalition government. Under single party minority government, one party is responsible for formulating and delivering government policy, and can be held accountable for its performance at the next election. And in a minority parliament, policy deals and concessions to the other parties are made more openly in the parliament, rather than behind closed doors within the executive, which is what tends to happen when coalition partners have an overall majority.

Appendix A: Extracts from New Zealand Cabinet Manual

Appendix A: Extracts from New Zealand Cabinet Manual

Collective Responsibility

5.22 The principle of collective responsibility underpins the system of Cabinet government. It reflects democratic principle: the House expresses its confidence in the collective whole of government, rather than in individual Ministers. Similarly, the Governor-General, in acting on ministerial advice, needs to be confident that individual Ministers represent official government policy. In all areas of their work, therefore, Ministers represent and implement government policy.

5.23 Acceptance of ministerial office means accepting collective responsibility. Issues are often debated vigorously within the confidential setting of Cabinet meetings, although consensus is usually reached and votes are rarely taken. Once Cabinet makes a decision, Ministers must support it (except as provided in paragraphs 5.25 – 5.27), regardless of their personal views and whether or not they were at the meeting concerned.

5.24 In a coalition government, Ministers are expected to show careful judgement when referring to party policy that differs from government policy. Subject to paragraphs 5.25 – 5.27, a Minister's support and responsibility for the collective government position must always be clear.

5.25 Coalition governments may also decide to establish "agree to disagree" processes, which may allow Ministers within the coalition to maintain, in public, different party positions on particular issues or policies. Once the final outcome of any "agree to disagree" issue or policy has been determined (either at the Cabinet level or through some other agreed process), Ministers must implement the resulting decision or legislation, regardless of their position throughout the decision-making process.

5.26 "Agree to disagree" processes may only be used in relation to different party positions within a coalition. Any public dissociation from Cabinet decisions by individual Ministers outside the agreed processes is unacceptable.

5.27 Ministers outside Cabinet from parliamentary parties supporting the government may be bound by collective responsibility only in relation to their particular portfolios. Under these arrangements, when such Ministers speak about issues within their portfolios, they speak for the government and as part of the government. When they speak about matters outside their portfolios, however, they may speak as political party leaders or members of Parliament rather than as Ministers, and do not necessarily represent the government position. When such Ministers represent the government internationally, they speak for the government on all issues that foreign governments may raise with them in their capacity as Ministers.

Mid-term Transitions

General

6.49 Some transitions between administrations may occur during the electoral term. There may be a transition to a new Prime Minister, or to a new governing party or coalition.

Mid-term change of Prime Minister with no change of government

6.50 A change of Prime Minister may occur because the incumbent Prime Minister resigns, or as a result of the retirement, incapacity, or death of the incumbent Prime Minister.

6.51 In appointing a new Prime Minister, by convention the Governor-General accepts the outcome of the political process by which an individual is identified as the leader of the government.

6.52 In some cases (for example, in the event of the sudden death or incapacity of a Prime Minister), the Deputy Prime Minister acts as Prime Minister in a temporary capacity until the leadership of the government is determined.

Mid-term change of government

6.53 A basic principle of New Zealand's system of responsible government is that the government must have the confidence of the House of Representatives to stay in office. A government may lose the confidence of the House during its parliamentary term.

6.54 Where loss of confidence is clear (for example, where the government has lost a vote of confidence in the House), the Prime Minister will, in accordance with convention, advise that the administration will resign. In this situation:

(a)   a new administration may be appointed from the existing Parliament (if an administration that has the confidence of the House is available – see the information about government formation in paragraphs 6.36 – 6.42); or

(b)   an election may be called (see paragraphs 6.56 – 6.58). Until a new administration is appointed, the incumbent government continues in office, governing in accordance with the caretaker convention.

6.55 In some cases, the confidence of the House may be unclear, for example, in the case of a change in coalition arrangements. The incumbent government will need to clarify where the confidence of the House lies, within a short time frame (allowing a reasonable period for negotiation and reorganisation). The caretaker convention applies in the mid-term context only when it becomes clear that the government has lost the confidence of the House.

Early election

6.56 As the Governor-General's principal adviser, the Prime Minister may advise the Governor-General to dissolve Parliament and call an election. Usually that advice will be timed in accordance with the electoral cycle.

6.57 In some circumstances, a Prime Minister may decide that it is desirable to advise the Governor-General to call an early election. In accordance with convention, the Governor-General will act on the advice as long as the government appears to have the confidence of the House and the Prime Minister maintains support as the leader of that government.

6.58 A Prime Minister whose government does not have the confidence of the House would be bound by the caretaker convention. The Governor-General would expect a caretaker Prime Minister to consult other parties on a decision to advise the calling of an early election, as the decision is a significant one. It is the responsibility of the members of Parliament to resolve matters so that the Governor-General is not required to consider dissolving Parliament and calling an election without ministerial advice.

Bibliography

Bibliography

Canada:

An Accord on a Cooperative Government to Address the Present Economic Crisis. (2008). http://www.cbc.ca/news/pdf/081201_Accord_en.pdf

Blondel, J. (1968). 'Party Systems and Patterns of Government in Western Democracies', *Canadian Journal of Political Science*, Vol.1, No.2.

Canwest News Service. (2008). 'Harper should curb "control freak" tendencies: Kim Campbell', 27 April 2008. http://www.canada.com/topics/news/politics/story. html?id=7c7aa6af-2900-46b2-b79c-113deac3eda1

CBC News. (2008), 'Wallin, Duffy among 18 named to fill senate seats', 22 December. http://www.cbc.ca/canada/story/2008/12/22/senate-harper.html

CBC News. (2009). 'Liberals push for fall election', 1 September. http://cbc.ca/canada/story/2009/09/01/ignatieff-liberals090109.html

Clark, C., and Curry, B. (2006). '"Message discipline" often springs leaks, experts caution PM', *The Globe and Mail*, 18 March.

Clarkson, A. (2006). *Heart Matters*. Toronto: Viking Canada.

Cody, H. (2008). 'Minority Government in Canada: The Stephen Harper Expereince'. American Review of Canadian Studies.

Cohen, A. (1988). 'Business the big loser in minority government', *Financial Post* (7 November) 82(45): 1-8.

Darling, G. (2006). 'Freedom of the Press and Prime Minister Harper's Media Policy', *Centre for Constitutional Studies*. http://www.law.ualberta.ca/centres/ccs/issues/ freedomofthepressandprimeministerharpersmediapolicy.php.

Dobell, P. (2000). 'What Could Canadian Expect from a Minority Government?', *Policy Matters*, 1(6): http://irpp.org/pm/archive/pmvollno6.pdf

Esberey, J. (1973). 'Personality and politics: a new look at the King-Byng dispute', *Canadian Journal of Political Science*, 6(March): 37-55.

Forsey, E. (1964). 'The problem of 'minority' government in Canada', *Canadian Journal of Economics and Political Science*, 30(February): 1-11.

Forsey, E. (2003). *How Canadians Govern Themselves*, 5th Edition. http://lpintrabp.parl.gc.ca/ lopimages2/bibparlcat/300/Ba373601.pdf

Franks, C.E.S. (1987). *The Parliament of Canada*. Toronto: University of Toronto Press.

Flanagan, T. (2009). 'Coming to terms with minority government', *The Globe and Mail*, 23 June.

Good, D. (2008). 'Minority Government and the Public Service', Notes for a panel presentation at the Conference 'Minority Report: The Effect of Minority Government in Canada since 2004', at Wilfred Laurier University 8/02/2008. http://publicadmin.uvic.ca/faculty/good/minority_govt.pdf

Heard, A. (1991). *Canadian Constitutional Conventions: The Marriage of Law and Politics*. Toronto: Oxford University Press.

Heard, A. (2005). 'Constitutional Conventions and Parliament', Canadian Parliamentary Review (Summer 2005): 21 –

Heard, A. 'Just What is a Vote of Confidence? The Curious Case of May 10, 2005,' *Canadian Journal of Political Science*, 40(2): 395-416.

Hodgson, J. (1976). 'Impact of minority government on the senior civil servant', *Canadian Public Administration,* 19(Summer): 227-237.

Hogg, P. (1997). *Constitutional Law of Canada 4th Ed*. Toronto: Carswell.

LeDuc, L. (2009). 'Coalition Government: When It Happens, How It Works', in P. Russel and L. Sossin (eds.), *Parliamentary Democracy in Crisis*. Toronto: University of Toronto Press.

Library of Parliament. (2005). *Government and Canada's 39th Parliament: Questions And Answers*. Ottawa: Library of Parliament. http://www.parl.gc.ca/information/library/PRBpubs/prb0542-e.htm

Lijphart, A. (1999). *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*. New Haven: Yale University Press.

MacIvor, H. (2010). *Parameters of Power: Canada's Political Institutions 5th Ed*. Toronto: Nelson Education Ltd.

Mallory, J.R. (1984). *The Structure of Canadian Government*. Toronto: Gage Publishing.

McWhinney, E. (2008). 'Fixed Election Dates and the Governor General's Power to Grant Dissolution', *Canadian Parliamentary Review* (Spring 2008): 15-16.

Münster, C. (2008). 'Last Parliament bitter, acrimonious, and longest minority government in history', *The Hill Times,* 8 September. http://www.thehilltimes.ca/html/index. php?display=story&full_path=2008/september/8/longest_minority/&c=2

Russell, P. (2008). *Two Cheers for Minority Government: The Evolution of Canadian Parliamentary Democracy*. Toronto: Emond Montgomery Publication Ltd.

Russell, P. (2009). 'Our Parliamentary Fundamentals are unsound', Templeton Lecture, Winnipeg.

Russell, P. (2009). 'The Need for Agreement on Fundamental Conventions of Parliamentary Democracy', unpublished paper.

Russell, P. and Sossin, L. (eds.). (2009). *Parliamentary Democracy in Crisis*. Toronto: University of Toronto Press.

Savoie, D. (2008). *Court Government and the Collapse of Accountability in Canada and the United Kingdom*. Toronto: University of Toronto Press.

Simpson, J. (2009). 'Until something changes the road to majority is blocked', *Globe and Mail,* 28 July.

Travery, J. (2007). 'Quebec tax breaks could blow up in Harper's face', *Toronto Star*.

Walker, J. (2009). 'Canadians say its Time for a Majority Government', *Harris/Decima Press Release*, 12 July. http:www.harrisdecima.ca/sites/default/files/releases/071309E.pdf

Wilson, J. (1995). 'Constitutional Conventions and Election Campaigns: The Status of the Caretaker Convention in Canada', *Canadian Parliamentary Review*.

(2008). 'In Wake of Constitutional Crisis, New Survey Demonstrates that Canadians Lack Basic Understanding of our Country's Parliamentary System', *Ipsos Reid Press Release*, 15 December. http://www.ipsos-na.com/news/pressrelease.cfm?id=4208.

(2008). 'Tories seen as secretive, arrogant', *The Star*, 30 May. http:www.thestar.com/News/Canada/article/433910

New Zealand:

Bale, T. and Bergman, T. (2006). 'A Taste of Honey Is Worse than None at All? Coping with the Generic Challenges of Support Party Status in Sweden and New Zealand', *Party Politics*, Vol. 12: 189-209.

Bale, T. and Bergaman, T. (2006). 'Captives No Longer, but Servants Still? Contract Parliamentarism and the New Minority Governance in Sweden and New Zealand', *Government and Opposition*, Vol. 41, No. 3, 422–449.

Bale, T. and Dann, C. (2002). 'Is the grass really greener? The Rationale and Reality of Support Party Status: A New Zealand Case Study', *Party Politics,* Vol 8. No.3, 349–365.

Boston, J. (ed.). (1999). *Electoral and Constitutional Change in New Zealand: An MMP Source Book*. New Zealand: Dunmore, Palmerston North, NZ.

Boston, J. (2005). 'Innovative Political Management: Multi-party Governance in New Zealand', *Policy Quarterly* (NZ), 5: 52-59.

Boston, J. (2008). 'Government Formation in New Zealand under MMP: Theory and Practice', unpublished paper.

Boston, J. and Church, S. (2003). 'The Budget Process in New Zealand: Has Proportional Representation Made a Difference?' *Political Science*, 54: 21.

Boston, J., Church, S. and Bale, T. (2003). 'The Impact of Proportional Representation on Government Effectiveness: The New Zealand Experience', *Australian Journal of Public Administration,* 62: 7-22.

Boston, J. and Bullock, D. (2008). 'Experiments in Executive Government under MMP in New Zealand: Contrasting Approaches to Multi-Party Governance', paper delivered at the MMP and the Constitution: 15 Years Past, 15 Years Forward Symposium. http://www.victoria.ac.nz/NZCPL/files/MMP/Session%201%20Boston.pdf

Boston, J. and Ladley, A. (2006). 'Efficient Secrets: The Craft of Coalition Management', *New Zealand Journal of Public and International Law*, 4: 55-90.

Boston, J., Levine S., McLeay, E., Roberts N. and Schmidt, H. (1998). 'Caretaker Government and the Evolution of Caretaker Conventions in New Zealand', *Victoria University of Wellington Law Review,* 30. http://www.austlii.edu.au/nz/journals/VUWLRev/1998/30.html

Boston, J., Levine, S., McLeay, E., Roberts, N. and Schmidt, H. (1998). 'The Impact of Electoral Reform on the Public Service: The New Zealand Case', *Public Administration*, 57: 64-78.

Boston, J., Levine, S., McLeay, E., Roberts, N. and Schmidt, H. (1997). **'**Experimenting with Coalition Government: Preparing to Manage Under Proportional Representation in New Zealand'. http://pdfserve.informaworld.com/953904_751306972_791694185.pdf

Boston, J. (2007). 'An Unusual Government: Coalition Politics and Inter-Party Arrangements Following the 2005 General Election', in S. Levine and N. Roberts (eds.), *The Baubles of Office : The New Zealand General Election of 2005*. Victoria University Press, Wellington.

Boys, M.H. (1997). 'Change and Continuity', http://www.gov-gen.govt.nz/node/471

Boys, M.H. (1998). 'Governing under MMP: the Constitutional and Policy Challenges', http://www.gov-gen.govt.nz/node/403

Bradbury, J. (2008). 'MMP, Party Politics and Constitutional Change in the UK: the Experience of Scotland and Wales and Implications for UK Electoral Reform'

Cabinet Office. (2002). Cabinet Office Circular, 'Coalition, Support and Co-operation Agreements: Administrative Arrangements', CO (02) 11, at: http://www.dpmc.govt.nz/Cabinet/circulars/co02/COC_02_11.pdf

Cabinet Office. (2006). Cabinet Office Circular, 'Coalition, Confidence and Supply and Support and Co-Operation Agreements- Administrative Arrangements', CO (06) 04.

Cabinet Office. (2008). Cabinet Office Circular, 'Management of parliamentary business after the dissolution of parliament', CO (08) 06.

Cabinet Office. (2008). Cabinet Office Circular, 'Constitutional Procedures after the general election', CO (08) 07.

Cabinet Office. (2008). Cabinet Office Circular, 'Government decision making during the period of caretaker government', CO (08) 08.

Cabinet Office. (2008). Cabinet decision making during the period of caretaker government, Cabinet Office (NZ) circular. http://www.dpmc.govt.nz/cabinet/circulars/co08/8.html

Cabinet Office. (2008). Consultation on Cabinet and Cabinet Committee Submissions, CAB 100/2008/1.http://dpmc.govt.nz/cabinet/forms/cab100-2008-1.pdf

Caroll, R. (2005). 'Legislative and electoral coalition politics in MMP New Zealand: 1996-2003' http://dss.ucsd.edu/~mshugart/Coalition_Politics_MMP_NZ.pdf

Cartwright, S. (2001). 'The Role of the Governor General'. http://www.gov-gen.govt.nz/node/538

Chen, M. (2009). 'Is the MMP referendum Likely to Result in Electoral Reform?', New Zealand Lawyer, May. http://www.nzlawyermagazine.co.nz/Archives/Issue111/111F1/tabid/1720/Default.aspx

Coalition Agreement: Labour and Progressive Parties in Parliament. (2005). http://www.beehive.govt.nz/Documents/Files/Progressives.pdf

Confidence and Supply Agreement: Labour/Progressive Government and the United Future Parliamentary Caucus. (2002). http://www.beehive.govt.nz/sites/all/files/conf%20and%20supply%20govt%20and%20UF.pdf

Confidence and Supply Agreement: National Party and ACT Party. (2008). http://www.national.org.nz/files/agreements/NationalAct_Agreement.pdf

Confidence and Supply Agreement: National Party and Maori Party. (2008). http://www.national.org.nz/files/agreements/National-Maori_Party_agreement.pdf

Confidence and Supply Agreement: New Zealand First. (2005). http://www.beehive.govt.nz/sites/all/files/NZFirst.pdf

Confidence and Supply Agreement: United Future. (2005). http://www.beehive.govt.nz/sites/all/files/United.pdf

Confidence and Supply Agreement: United Future. (2008). http://www.national.org.nz/files/agreements/National-UF_agreement.pdf

Cooperation Agreement: Labour/Progressive Government and the Green Parliamentary Caucus. (2002). http://www.beehive.govt.nz/sites/all/files/greens-agreement-26-Aug.pdf

Cooperation Agreement: Labour led Government and the Green Party. (2005). http://www.beehive.govt.nz/sites/all/files/Green.pdf

Dale, T. and Bergman, T. (2006). 'Captives No Longer, but Servants Still? Contract Parliamentarianism and the New Zealand Minority Governance in Sweden and New Zealand,' *Government and Opposition* 41: 422-449.

Eichbaum, C. and Shaw, R. (2006). 'Enemy or Ally? Senior Officials' Perceptions of Ministerial Advisers before and after MMP', *Political Science* 58: 3-23.

Eichbaum, C. and Shaw, R. (2007). 'Minding the Minister? Ministerial Advisers in New Zealand Government', *New Zealand Journal of Social Sciences Online* 2: 95.

Eichbaum, C. and Shaw, R. (2007). 'Research and Evaluation: Ministerial Advisers and the Politics of Policy-Making: Bureaucratic Permanence and Popular Control', *The Australian Journal of Public Administration*, vol. 66, no. 4, 453–46.

Eichbaum, C. and Shaw, R. (2007). 'Ministerial Advisers, Politicization And The Retreat From Westminster: The Case of New Zealand', *Public Administration,* Vol. 85, No. 3, 609–640.

Eichbaum, C. and Shaw, R. (2009). 'Purchase Advisers and the Public Service: Who pays the bill?', unpublished paper.

Eichbaum, C. and Shaw, R. (2008). 'Revisiting Politicization: Political Advisers and Public Servants in Westminster Systems' *Governance: An International Journal of Policy, Administration, and Institutions,* Vol. 21, No. 3, 337–363.

Field, M. (2009). 'Supercity to exclude Maori representation', Published by stuff.co.nz. http://www.stuff.co.nz/national/2321006/Supercity-to-exclude-Maori-representation

Ganley, M. (2001) 'Select Committees and Their Role In Keeping Parliament Relevant: Do New Zealand Select Committees Make a Difference?' http://www.parliament.qld.gov.au/aspg/documents/aspg_09.pdf

Geddis, A. (2009). 'Decisions, dissent and the myths of collective cabinet responsibility', Published by pundit.co.nz. http://pundit.co.nz/content/decisions-dissent-and-the-myths-of-collective-cabinet-responsibility

Geddis, A. (2009) 'Decisions, dissent and the myths of collective cabinet responsibility'. http://pundit.co.nz/content/decisions-dissent-and-the-myths-of-collective-cabinet-responsibility

Gillon, G. (2007). 'Formation, Durability and Susceptibility: Coalition Traits that Affected New Zealand's MMP Governments of 1996-2002', PhD Thesis, Massey University (NZ).

Harris, M. (2006). Legislation Advisory Committee Submission, by the Deputy Clerk of the House of Representatives.

Kitteridge, R. (2006). 'The Cabinet Manual: Evolution with Time', Paper presented at the 8th Annual Public Law Forum 20-21 March. http://www.dpmc.govt.nz/Cabinet/reports-and-speeches/pdf/the-cabinet-manual-evolution-with-time.pdf

Knight, D. (2009). 'Dissenting views of the Minister of Māori Affairs on greater Auckland Council Māori seats - a breach of Cabinet collective responsibility?', Published by laws179.co.nz at: http://www.laws179.co.nz/2009/04/dissenting-views-of-minister-of-maori.html

Knight, D. (2009) 'The Dissenting views of the Minister of Maori Affairs on greater Auckland Council Maori Seats – a breach of cabinet collective responsibility?' at: http://www.laws179.co.nz/2009/04/dissenting-views-of-minister-of-maori.html

Levine, S., Roberts, N. and Salmond, R. (2007). 'A Wider View: MMP Ten Years On', in S. Levine and N. Roberts (eds.) *The Baubles of Office: The New Zealand General Election of 2005.* Wellington: Victoria University Press.

Levine, S. and Roberts, N. (2008). 'MMP and the Constitution: Future Political Challenges', Paper presented at the MMP and the Constitution: 15 Years Past, 15 Years Forward Symposium. http://ips.ac.nz/events/downloads/2008/Levine%20and%20Roberts%20August%202008%20MMP%20symposium%20paper.pdf

Malone, R. (2008). *Rebalancing the Constitution: The Challenge of Government Law-Making under MMP.* Wellington: Institute of Policy Studies.

Malone, R and Miller, T. (2009). 'Regulations Review Committee Digest', *New* Zealand Center for Public Law, Third Edition. http://www.victoria.ac.nz/nzcpl/RegsRev/about.aspx

Malone, R. (2007). 'Who's the Boss? Executive-legislature relations in New Zealand under MMP'. http://www.victoria.ac.nz/nzcpl/files/MMP/Session%201%20Malone.pdf

McLeay, E. (1999). 'What is the Constitutional Status of the New Zealand Cabinet Manual?', *Public Law Review,* Vol.10, 11-17.

McLeay, E. (??). 'Parliamentary Committees in New Zealand: A House Continuously Reforming Itself?' *in ASPG Parliament 2000 – Towards a Modern Committee system 2001, 53-72.*

McGee, D. (2007). 'Concerning Legislative Process', *Otago Law Review,* 11: 417-?.

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

Memorandum of Understanding Between the New Zealand National Party and the Green Party of Aotearoa of New Zealand. (2009).http://media.nzherald.co.nz/webcontent/document/pdf/National%20and%20Green's%20agreement.pdf

Morris, C. and Malone, R. (2004). 'Regulations Review in the New Zealand Parliament', *Macquarie Law Journal,* 4: 7.

New Zealand House of Representatives (2008). Standing *Orders of the House of Representatives*. Wellington: House of Representatives.

New Zealand Constitution Act 1986, at http://www.legislation.govt.nz/act/public/1986/0114/latest/whole.html#dlm94204

Palmer, G. (2006). 'The Cabinet, the Prime Minister and the Constitution', *New Zealand Journal of Public and International Law* 4: 1-36.

Palmer, G. and Palmer, M. (2004), *Bridled Power: New Zealand's Constitution and Government,* 4 ed. (Auckland: Oxford University Press).

Shaw, R. (1999). 'Rules or Discretion? Officials and Government Formation under MMP', *Political Science* 51: 32-57.

Shroff, M. (2001). 'The Role of the Secretary of the Cabinet-The View from the Beehive,' Victoria University Centre for Public Law, Occasional Paper 5. http://www.victoria.ac.nz/nzcpl/Files/Occ%20papers/Shroff%20web%20paper.pdf

State Services Commission. (2008). State Servants, Political Parties and Elections: Guidance for the 2008 Election Period. http://www.ssc.govt.nz/display/document.asp?NavID=321

The Coalition Agreement: Labour and Alliance. (1999). http://www.executive.govt.nz/coalition/

The Coalition Agreement: Labour and Alliance. (2002). http://www.beehive.govt.nz/sites/all/files/ACF3F.pdf

The Coalition Agreement: National and New Zealand First. (1996). http://www.hinz.org.nz/journal-pdf/77

The Greens' 'memorandum of understanding'. at: http://media.nzherald.co.nz/webcontent/document/pdf/National%20and%20Green's%20agreement.pdf

The Treasury. (2005). 'A Guide to the Public Finance Act'. http://www.treasury.govt.nz/publications/guidance/publicfinance/pfaguide/guide-pfa.pdf

Tiernan, A. and Menzies, J. (2007). 'Caretaker Conventions in Australasia: Minding the Shop for government', *Centre for Governance and Public Policy, Griffith* University. http://epress.anu.edu.au/anzsog/caretaker/pdf/whole_book.pdf

Vandervorst, R. (2003). 'Parliamentarians' Perspectives on Proportional Representation: Electoral System Change in New Zealand', *Political Science* (NZ), Vol. 55, 19-38.

Vowles, J. (1998). 'Coalition Government: The People's Choice?' in Vowles J. (ed.) *Voters' victory?: New Zealand's First Election under Proportional Representation.* Auckland: Auckland University Press.

Vowles, J. (?). 'The 2008 General Election in New Zealand'. http://www.jackvowlesdomain.co.uk/The_2008_General_Election_in_New_Zealand.pdf

White, N. (2005). 'Deconstructing Cabinet Collective Responsibility', *Policy Quarterly* (NZ), 1: 4-11.

Young, A. and O'Sullivan, F. (2008). 'Winston's message: No to the FTA', New Zealand Herald (8 April). http://www.nzherald.co.nz/trade-deal-with-china/news/article.cfm?c_id=1501819&objectid=10502911

Scotland:

Allen, P. 'Who Sank the Boat?', http://www.lnc.k12.nd.us/Resources/LessonPlans/Terri/Who_Sank_The_Boat.pdf

Arter, D. (2004). 'The Scottish committees and the goal of a 'New Politics': a verdict on the first four years of the devolved Scottish parliament', *Journal of Contemporary European Studies,* Vol. 12 No. 1.

Bennie L. and Clark, A. (2008). 'The Transformation of Local Politics? STV and the 2007 Scottish Local Government Elections', *Representation,* Vol. 44, No.3.

Cairney, P. 'New Politics at Last?', in A. Paun (ed.), *Scotland Devolution Monitoring Report,* September 2007. London: Constitution Unit, 2007. http://www.ucl.ac.uk/constitutionunit/files/research/devolution/dmr/Scotland_Sept07.pdf

Cairney, P. (2008). Scotland Devolution Monitoring Report: January 2008. http://www.ucl.ac.uk/constitutionunit/files/research/devolution/dmr/Scotland_Jan08.pdf

Cairney, P. (2009). 'Political Parties and the Annual Budget', in Scotland Devolution Monitoring Report, May 2009. http://tinyurl.com/scotdevomay09

Cairney, P. (2009). 'Scottish Parliament Budget 2009', *The Press and Journal,* February. http://paulcairney.blogspot.com/2009/05/scottish-parliament-budget-2009.html

Cairney, P. (2009). 'The Scottish National Party and Minority Government in Scotland'. Unpublished paper.

Carrell, S. (2007). 'Opposition parties mock SNP as Salmond unveils reforms', *The Guardian,* 6 September. http://www.guardian.co.uk/politics/2007/sep/06/scotland.devolution

Cooperation Agreement: Scottish National Party and Scottish Green Party. (2007). http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/11_05_07_agreement.pdf

Crawford, B. (2009). At the 'Ten Years of the Scottish Parliament: Achievements and Futures', conference at Dynamic Earth, Edinburgh, 12 May.

Dinwoodie, R. (2009). 'Why Alex Salmond sheds no tears over trams debacle', *The Herald,* 21 February. http://tinyurl.com/ml78le

Laffin, M. (2005). 'The Politics of Coalition in a Devolved Britain: How the Liberal Democrats Have Shaped Scottish and Welsh Public Policy', Paper presented to PSA Conference 2005. http://www.psa.ac.uk/journals/pdf/5/2005/Laffin.pdf

Lester, P. and Gay, O. (2007). House of Commons Library Paper, 'The Scottish Parliamentary elections May 2007:The formation of the Scottish Executive and the election of a Presiding Officer'. Standard Note: SN/PC/04372.

Lynch, P. (2007). 'Political Parties', in Paun A. (ed.), Scotland Devolution Monitoring Report: September 2007. http://www.ucl.ac.uk/constitutionunit/files/research/devolution/dmr/Scotland_Sept07.pdf

MacWhirter, I. (2007). 'LibDems and Labour: the could-have-beens and the has-beens', *Sunday Herald* (12 May). http://www.sundayherald.com/misc/print.php?artid=1394818

Mitchell, J. (2000). 'New Parliament, New Politics in Scotland', *Parliamentary Affairs,* 53(3): 605-621.

Mitchell, J. (2008). 'Minority Governments, constitutional change and institutional cultures in Scotland' in '*No Overall Control? The impact of a 'hung parliament' on British politics',* edited by Alex Brazier and Susanna Kalitowski, Oxford University Press on behalf of the Hansard Society for Parliamentary Government.

Maddox, D. (2009). 'Tories call for 2-year minimum sentence to tackle knife crime', *The Scotsman,* 14 May. http://news.scotsman.com/scottishconservativeparty/Tories-call-for-2year-minimum.5265042.jp

Rawlings, C., Johnston, R. and Thrasher, M. (2008). 'Changing the Boundaries but Keeping the Disproportionality: The Electoral Impact of the Fifth Periodical Reviews by the Parliamentary Boundaries Commissions for England and Wales', *The Political Quarterly,* Vol. 79, No. 1.

Reid, G. (2008). 'Sentiments for Scotland', Lecture to the University of Glasgow in the Stevenson and Adam Smith Research Foundation Lecture Series 2008-9, on Citizenship and Scottish Civic Culture.

Reid, G. (2007). 'The Last Bang of the Gavel', Lecture to the University of Glasgow on the Role of the Presiding Officer of the Scottish Parliament.

Reid, G. (2006). 'The Fourth Principle', Lecture to the University of Glasgow on Citizenship.

Report of the Joint Consultative Committee on Constitutional Reform: The Cook-MacLennan Agreement. (1997). http://tinyurl.com/cook-maclennan

Rhodes, M. (2009). 'A very civil servant', *Holyrood Magazine*.

Salmond, A. (2007). *Principles and Priorities: The government's programme for Scotland*. Edinburgh: Scottish Government.

Salmond, A. (2007) 'The launch of a public debate on Scotland's constitutional future', 14 August. http://www.scotland.gov.uk/News/This-Week/Speeches/a-national-conversation

Scotland Act. (1998). http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980046_en_1

Scottish Government. (2009). 'Our Purpose'. www.scotland.gov.uk/about/scotperforms/purposes

Scottish National Party Election Manifesto. (2007). http://www.snp.org/node/13534

Scottish Parliament News Release. (2009). 'Parliament Creates Financial Scrutiny Unit', 24 September.

Scottish Parliament Official Report, 2 September 2009. http://www.scottish.parliament.uk/business/officialReports/meetingsparliament/or-09/sor0902-01.htm:

Scottish Parliament Official Report, 7 May 2009, Col 17310. http://www.scottish.parliament.uk/business/officialReports/meetingsparliament/or-09/sor0507-01.htm

Scottish Parliament Official Report, 4 February 2009, Cols 14649-14700, and 14704. http://www.scottish.parliament.uk/business/officialReports/meetingsparliament/or-09/sor0204-01.htm

Scottish Parliament Official Report, 31 May 2007. http://www.scottish.parliament.uk/business/officialReports/meetingsparliament/or-07/sor0531-01.htm

Scottish Parliament Official Report, 16 May 2007, Col. 34. http://www.scottish.parliament.uk/business/officialReports/meetingsparliament/or-07/sor0516-01.htm

Scottish Parliament Official Report, 12 May 1999, Col. 5.http://www.scottish.parliament.uk/business/officialReports/meetingsparliament/or-99/or010101.htm

Scottish Parliament Information Centre Factsheets on 'Parliamentary Business'. http://www.scottish.parliament.uk/business/research/factsheets/index.htm, accessed 1 Nov 2009.

Seyd, B. (2002). Coalition Government in Britain: Lessons from Overseas. London: The Constitution Unit. http://www.ucl.ac.uk/constitution-unit/files/publications/unit-publications/84.pdf

Wintour, P. (2009). 'SNP wins historic victory', The Guardian, 4 May. http://www.guardian.co.uk/uk/2007/may/04/scotland.devolution

(2009). 'SNP accused of using civil servants for party gain', *The Scotsman*, 10 August. http://www.scotsman.com/latestnews/SNP-accused-of-using-civil.5537629.jp

United Kingdom:

Barnett, J. (1982). Inside the Treasury (London: Andre Deutsch).

Blackburn, R. (2009). 'The Prerogative Power of Dissolution of Parliament', *Public Law,* 778-780.

Blackburn, R. (2004). 'Monarchy and the Personal Prerogatives', *Public Law,* 554-555.

Blackburn, R. (2004). 'Monarchy and the personal prerogatives', *Public Law,* 546-563.

Brazier, R. (2008). *Constitutional Reform: Reshaping the British political system.* London: Oxford University Press.

Brazier, R. (2005).'Monarchy and the personal prerogatives: a personal response to Professor Blackburn', *Public Law,* 45-47.

Brazier, R. (2005).'Monarchy and the personal prerogatives: A personal response to Professor Blackburn', *Public Law.*

Brazier, R. (2001).*Constitutional Practice,* 3rd Ed. Oxford: Oxford University Press.

Brazier, A. and Kalitowski, S. (eds.). (2008). *No Overall Control? The impact of a 'hung parliament' on British politics.* London: Hansard Society.

Brown, G. (2009). Statement to House of Commons on constitutional reform', 10 June.

Butler, D. (1983). *Governing Without a Majority.* Basingstoke: MacMillan.

Campbell, A. (2007). *The Blair Years: Extracts from the Alastair Campbell Diaries.* London: Hutchinson.

Cowley, P. (2005). *The Rebels: How Blair Mislaid His Majority.* London: Politico's.

De Winter, L., (1995). 'The role of parliament in government formation and resignation', in H. Doring (ed.), *Parliaments and Majority Rule in Western Europe.* New York: St. Martins Press. http://www.uni-potsdam.de/u/ls_vergleich/Publikationen/PMR.htm

Donoughue, B. entry for 21 March 1977, Downing Street Diary. With James Callaghan in No. 10. London: Jonathan Cape, 2008.

Governance of Britain Green paper (July 2007).http://www.official-documents.gov.uk/document/cm71/7170/7170.pdf

House of Commons Liaison Committee. (2009). *Financial Scrutiny: Parliamentary Control over Government Budgets* 09.

House of Commons Library. (2006). *General Election 2005*, Research Paper 05/33, at: http://tinyurl.com/yk2kqn8

House of Commons Sessional Returns, 2007-08 session at: http://www.publications.parliament.uk/pa/cm200809/csession/1/108.htm

Institute for Fiscal Studies. (2009). Forecasts of the Institute for Fiscal Studies reported in *The Guardian,* 25 July.

Jenkins, S. and Norton, P. in A. Brazier and S. Kalitowski (eds.). (2008). *No Overall Control? The impact of a 'hung parliament' on British politics.* London: Hansard Society, 2008.

Kalitowski,S.,(2008) 'Hung up over nothing? The impact of a hung parliament on British politics', *Parliamentary Affairs*, Vol.61, No.2.

LibDem Voice blog. http://tinyurl.com/ygvwg6u

Lightbown, S. (2008). *Electoral Swing*, House of Commons Library Standard Note: SN/SG/2608, September.
http://www.parliament.uk/commons/lib/research/briefings/snsg-02608.pdf

Marsh, I. (1990). 'Liberal Priorities, the Lib-Lab Pact and the Requirements for Policy Influence', *Parliamentary Affairs*, Vol. 43.

Marshall, G. (1984). *Constitutional Conventions*. Oxford: Oxford University Press.

Michie, A. and Hoggart, S., (1978) *The Pact: The Inside Story of the Lib-Lab Government, 1977-8*. London: Quartet Books.

Ministry of Justice. (2007). *The Governance of Britain,* July.

Ministry of Justice. (2009). 'Rights and Responsibilities: Developing our Constitutional Framework', Consultation Paper, March.

Osmond, J., (2007) *Crossing the Rubicon: Coalition Politics Welsh Style.* Cardiff: Institute of Welsh Affairs.

Public Administration Select Committee. (2001). *Mapping the Quango State*. Fifth Report of Public Administration Select Committee, HC 367, 2000-01.

Public Administration Select Committee. (2003). *Government by Appointment: Opening Up the Patronage State.* Fourth Report of Public Administration Select Committee, HC 165, July.

Riddell, P. and Haddon, C. (2009). *Transitions.* London: Institute for Government.

Russell, M. and Paun, A. (2007). *The House Rules? International Lessons for enhancing the Autonomy of the House of Commons.* London: The Constitution Unit.

Russell, M. and Sciara, M. (2008). 'The policy impact of defeats in the House of Lords', *British Journal of Politics and International Relations*.

Russell, M. and Sciara, M. (2007) 'Why does the government get defeated in the House of Lords?', *British Politics,* Vol. 2**.**

Steel, D. (1980) A *House Divided. The Lib-Lab Pact and the Future of British Politics.* London: Weidenfeld and Nicolson.

The National Archives (TNA) CAB128/53/33, Cabinet Conclusions, CM(74), 9th Meeting, 1 March 1974.

The National Archives (TNA), PREM16/1399, *Joint Statement by the Prime Minister and the Leader of the Liberal Party,* 23 March 1977. Reproduced at: http://www.liberalhistory.org.uk/item_single.php?item_id=77&item=history , accessed 8 September 2009

The National Archives (TNA), PREM16/1399, *The Prime Minister to All Members of the Cabinet,* 29 March 1977.

The National Archives (TNA), CAB197/94, Files of the Chancellor of the Duchy of Lancaster, 'Liberal Party (Lib/Lab Pact)', December 1977-April 1978.

The National Archives (TNA), PREM16/1227, Chequers Cabinet meeting on 26 June 1977 on government strategy: political and economic prospects and electoral implications, 27 June 1977.

The National Archives (TNA), PREM16/1399, 'Record of a Meeting between the Prime Minister and Mr David Steel', 31 March 1977.

The National Archives (TNA), CAB129/196/17, Cabinet Memorandum, CP(77)67, 'The Government's Strategy', 23 June 1977.

The Institute for Government
is here to act as a catalyst for
better government.

The Institute for Government is an
independent centre founded in 2008 to
help make government more effective.

- We carry out research, look into the
  big governance challenges of the day
  and find ways to help government
  improve, re-think and sometimes see
  things differently.

- We offer unique insights and advice
  from experienced people who know
  what it's like to be inside government
  both in the UK and overseas.

- We provide inspirational learning
  and development for very senior
  policy makers.

We do this through seminars,
workshops, talks or interesting
connections that invigorate and provide
fresh ideas.

We are a place where senior members
of all parties and the Civil Service
can discuss the challenges of making
government work, and where they can
seek and exchange practical insights
from leading thinkers, practitioners,
public servants, academics and
opinion formers.

Copies of this report are available
alongside other research work at:

www.instituteforgovernment.org.uk.

2 Carlton Gardens
London
SW1Y 5AA

Tel: +44 (0) 20 7747 0400
Fax: +44 (0) 20 7747 0470

Email: enquiries@instituteforgovernment.org.uk

The Institute is a company limited
by guarantee registered in
England No. 6480524
Registered Charity No. 1123926

About the Constitution Unit

Robert Hazell founded the Constitution
Unit in 1995 to do detailed research and
planning on constitutional reform in
the UK. The Unit is the leading research
body on constitutional change in the
UK, and part of the School of Public
Policy at University College London.
It has done advance work on almost
every aspect of the UK's constitutional
reform programme: devolution in
Scotland and Wales, the Human
Rights Act, reform of the House of
Lords, parliamentary reform, the new
Supreme Court, electoral reform and
the conduct of referendums, freedom
of information, and the constitutional
path to Scottish independence. All
those books and reports sought to learn
lessons from overseas, and from past
experience in the UK. This report is
compiled in the same spirit.

The Constitution Unit
School of Public Policy, UCL,
29–30 Tavistock Square
London
WC1H 9QU

Tel: +44 (0) 20 7679 4977
Fax: +44 (0) 20 7679 4978

Email: constitution@ucl.ac.uk
www.ucl.ac.uk/constitution-unit

INSTITUTE
FOR
GOVERNMENT

The Constitution Unit