

A BRIEF HISTORY OF CONSCIENCE VOTING IN NEW ZEALAND

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Introduction

The conscience vote¹ is a mechanism by which MPs are freed from the strictures of party discipline and permitted to vote as individuals during legislative debates. Under such circumstances, MPs are able to justify their voting decisions on the grounds of personal conscience, constituent preference, ideology, or for a host of other reasons. For the MP, this arrangement permits a semblance of independence and a rare opportunity to exercise private judgment, often resulting in the unusual sight of members of opposing parties voting in the same lobby.

In one sense, all votes are conscience votes in most parliamentary systems,² for standing orders and official parliamentary records are generally blind to parties.³ From the perspective of these parliaments, the fact of MPs agreeing to vote according to the collective interests of what has come to be called a party is a decision left entirely to the members. This is why in New Zealand, as in other countries, granting a conscience vote is a decision made by each party rather than by the government, parliament or the

¹ Conscience voting is the term most commonly used in Australasia. In Britain and Canada they are known as 'free votes.' Another, more descriptive, term used in all these countries is 'unwhipped votes.' The term 'personal vote' is also gaining meaning in New Zealand due to that country's standing orders now distinguishing a Party Vote from a Personal Vote. In a Party Vote, the whips vote on behalf of their parties and only the way the party corporately voted is recorded. A Personal Vote is held when one or more parties have agreed to treat the matter as a conscience vote (and in a few other very rare circumstances), thereby triggering a division. At the conclusion of the division the MP's names and how they voted are recorded individually as in the past. The key departure from previous practice is the recognition now given to parties as corporate entities that can vote in their own right. The corollary of this change is that it is now easier to determine when a conscience vote is being held, the term 'personal vote,' though technically a voting procedure, is thus becoming synonymous with conscience voting.

² This paper focuses solely on parliamentary systems of government in the Westminster mould, and makes no claim that its findings apply to other forms of government including the US congressional system.

³ Parliaments' blindness to parties is an historic feature of most parliaments dating from the era before modern parties developed. However, partial recognition of parties has begun to emerge in some countries. New Zealand, for example, implicitly recognises parties through its provision of party votes as opposed to personal votes (see footnote 1).

standing orders. Nevertheless, parties are an integral part of parliamentary systems and conscience voting a subject of such interest because it has not only developed as an informal convention within a formal institution but it has done so within a system that is dominated by parties.

This paper discusses the use of conscience voting, principally with reference to New Zealand. In Part 1, the nature of conscience voting is addressed, a discussion that is sufficiently generic to be applicable to a number of parliamentary systems. In Part 2, the focus turns to the history and use of conscience voting in New Zealand.

Conscience Voting

The issue of conscience voting can be said to operate on two levels. First, there is the actual procedure of debating a particular issue and determining whether it will be enacted in law or not. In this regard, the role of the individual MP is significant and, collectively, members' actions are determinative of the outcome of the legislation. Second, there is a more strategic level that involves the politics of conscience voting itself. This is a set of considerations surrounding the question of whether a legislative issue will be treated with a conscience vote or whether it should remain as a party vote. Once granted a conscience vote shifts the locus of decision-making from parties to members, but parties ultimately determine the institutional treatment of policies, and in this matter the shape of the political landscape after the conscience vote has finished will be the pre-eminent concern. At the level of political strategy conscience voting is about governing, and a conscience vote is unlikely to be granted if it compromises a party's ability to govern. Conversely, it may well be granted if the issue is contentious, outside the conventional gambit of party manifestos, risks member rebellion or is politically dangerous for any other reason. Hence, although the roles of both parties and MPs are important in conscience votes, in the wider political context the interests of MPs are systematically subordinated to that of their party. As such, it can be argued that conscience votes, like party votes, have little to do with the conscience of MPs but rather serve the interests of parties by ensuring that they do not become mired in controversial issues that may split its MPs and damage their public image of cohesion.⁴

⁴ See discussions of these ideas in Lucinda Flavelle and Philip Kaye, "Party Discipline and Legislative Voting," *Canadian Parliamentary Review* 9, no. 2 (1986), Michael Hobby, "The Crack of the Whip? : Party Cohesiveness and Institutional Consensus : The New Zealand House of Representatives, 1936-85 " (University of Canterbury, 1987), Jonathan Lemco, "The Fusion of Powers, Party Discipline, and the Canadian Parliament: A Critical Assessment," *Presidential Studies Quarterly* 18, no. 2 (1988), Dianne Pothier, "Parties and Free Votes in the Canadian House of Commons: The Case of Capital Punishment," *Journal of Canadian Studies* (1979).

Despite these paradoxical motives for calling a conscience vote, politicians themselves generally seem to be not dissatisfied with this arrangement. In New Zealand, Jenny Shipley, a former prime minister, pronounced herself “a very committed party person,” yet was also prepared to recognise that “in the 14 and a bit years that I have been [an MP] I have often thought Parliament is at its best when people have to stand up and convince each other of the relative merits of an argument.” For Shipley, while parties were desirable for encouraging “tidy minds and tidy systems,” it was appropriate that “issues of conscience [should] depend on the quality of the debate.”⁵ This view was echoed by another MP who felt that conscience voting engendered a greater rigour in debates as a result of individual perspectives being freed from having to “toe the party line.”⁶

Other MPs have expressed support for conscience voting on the grounds that it countered parties’ propensity to promote division by fostering a sense of camaraderie. One MP was grateful for the “collegiate atmosphere given to members by the opportunity to have individual votes.”⁷ This heightened sense of collegiality provided “a wonderful opportunity for parties to vote together and for old friends and colleagues to vote against each other without, one hopes, giving offence to them”⁸ leading to MPs “agreeing and disagreeing with bits of each speaker’s speech”⁹ in a respectful manner.

Support for the removal of party whips is not universal however, and parties’ role in providing a coordinated policy response and well drafted legislation underlay David Lange’s view that conscience voting engendered debate that was very substandard, “an appalling ragbag of bigotry and sentimentality”¹⁰ that was unlikely to lead to good decision-making. Further, parties have a role to play, some believe, in ensuring legislation is more than merely the sum of its constituent parts but that it is considered in the context of a government program. Conscience voting potentially enables “bright ideas dreamed up on the spur of the moment, [to be] drafted on the back of an envelope, and submitted as amendments” that “invariably get us into trouble.”¹¹ Nevertheless, the view that debate during conscience votes produces “a very healthy process”¹² is dominant, largely due to

⁵ Jenny Shipley, *NZ Parliamentary Debates*, 20 February 2002, Shop Trading Hours (Abolition Of Restrictions) Bill

⁶ George Hawkins, *NZ Parliamentary Debates*, 19 November 1998, Sale of Liquor Amendment (No.2) Bill

⁷ Gavan Herlihy, *NZ Parliamentary Debates*, 10 October 2000, Casino Control (Moratorium Extension) Bill

⁸ Ian Revell, *NZ Parliamentary Debates*, 25 August 1999, Sale of Liquor Amendment (No.2) Bill

⁹ Bob Simcock, *NZ Parliamentary Debates*, 26 August 1999, Sale of Liquor Amendment (No.2) Bill

¹⁰ David Lange, *My Life* (Auckland: Penguin Group, 2005). p. 113

¹¹ Peter Dunne, *NZ Parliamentary Debates*, 4 May 2000, Matrimonial Property Amendment Bill

¹² Bob Simcock *NZ Parliamentary Debates*, 26 August 1999, Sale of Liquor Amendment (No.2) Bill

MPs being forced to “set the debate, exercise the mind, and ... consider the rationale for whatever position one decides to take.”¹³

Despite the warm reception many MPs give conscience votes, they are politically and personally challenging. A dilemma faces members during every conscience vote over questions such as: Who, exactly, do MPs represent, particularly in an MMP environment? How should diverse electoral interests be best satisfied? How should the opinion of an electorate or interest group be measured? What relative weights should be given to the member’s own conscience as against the views of constituents? And given the complexity of many conscience issues, how can members of the public be made sufficiently knowledgeable for them to make informed judgements on these matters?

The struggle many MPs feel in answering these questions is exemplified in the decision of one Labour MP¹⁴ to abstain on the final reading of the Prostitution Reform Bill of 2003. Torn between his conservative personal convictions as New Zealand’s first Muslim MP and the more liberal stance of his electorate, his resolution was to abstain which, in the event, proved decisive in allowing the bill to become law. Ironically, his response to the dilemma he found himself in only made matters worse, for his indecisive stance was interpreted as betrayal by both New Zealand’s Muslim population and his electorate.

The role of parties during conscience votes is complex. By definition they have no role in the outcome of the vote, but voting patterns demonstrate that even when party whips are removed, MPs continue to vote along party lines to a surprising extent. Lindsey found that a high degree of party cohesion existed for even the most contentious conscience votes,¹⁵ and Overby, Tatalovich and Studlar, in the Canadian context, found that free voting patterns became increasingly similar to party voting as the conscience legislation moved through parliament. By the third reading, free votes were largely indistinguishable from

¹³ Sandra Goudie, *NZ Parliamentary Debates*, 7 December 2004, Civil Union Bill, p.17508

¹⁴ Ashraf Choudary

¹⁵ David Lindsey, "Conscience Voting in New Zealand" (Dissertation, University of Auckland, 2005).

party votes. Similar patterns have been found in the British context¹⁶ to a such an degree that Cowley insists that “whatever may be claimed, conscience issues *are* party issues.”¹⁷

Parties frequently continue to provide their MPs with the usual benefits of party membership during conscience votes such as information, resourcing and publicity. Pothier reported that in the series of Canadian capital punishment debates in the 1960s and 1970s members found it advantageous to utilise the pre-established party infrastructure to disseminate information, garner support and mobilise resources despite their being free votes, and parties were only too happy to provide it.¹⁸ Although officially parties do not take sides during conscience votes it is common, though oxymoronic, for the government (or more accurately the executive) to introduce bills that are given conscience votes but which they nevertheless want passed. During the Committee stage of the Property (Relationships) Amendment Bill in 2000, for example, most opposition parties wanted to prolong the debate while parties on the government side wished to see it passed as soon as possible. Most government members therefore didn’t bother even turning up to the debating chamber prompting one opposition MP to complain that “it would be nice to see some Government speakers here.”¹⁹ As noted later in this paper, these government bills very rarely fail to become law even when the whips are theoretically absent. Conversely, private members bills almost always fail without government support, indicating that there is certainly a party effect. Private members bills that are advanced may not be entirely in sync with a wider government initiative on an issue, placing the government parties in a dilemma as to how free they will make the vote for their members. In such a case, the government may try to take the bill over, as happened with the Shop Trading Hours (Abolition of Restrictions) Bill first introduced in 1999 by an opposition member, or they may encourage their members to vote against it with the intention of introducing their own legislation.²⁰

¹⁶ Philip Cowley and Mark Stuart, "Sodomy, Slaughter, Sunday Shopping and Seatbelts: Free Votes in the House of Commons, 1979 to 1996," *Party Politics* 3, no. 1 (1997), Anthony Mughan and Roger M. Scully, "Accounting for Change in Free Vote Outcomes in the House of Commons," *British Journal of Political Science* 27, no. 4 (1997), Melvyn Read, David Marsh, and David Richards, "Why Did They Do It? Voting on Homosexuality and Capital Punishment in the House of Commons," *Parliamentary Affairs* 47, no. 3 (1994). Charles Pattie, Ron Johnston, and Mark Stuart, "Voting without Party?," in *Conscience and Parliament*, ed. Philip Cowley (London: Frank Cass Publishers, 1998). point out, however, that “Party allegiance carries with it a wide range of ideas and ideologies, such that members of a political party should have more views in common with each other than with members of other parties.” p.172

¹⁷ Philip Cowley, "Unbridled Passions? Free Votes, Issues of Conscience and the Accountability of British Members of Parliament," *Journal of Legislative Studies* 4, no. 2 (1998). p.81

¹⁸ Pothier, "Parties and Free Votes in the Canadian House of Commons."

¹⁹ Ron Mark (NZ First), *NZ Parliamentary Debates*, 1 June 2000, Property (Relationships) Amendment Bill

²⁰ See Richard Prebble’s comments in *NZ Parliamentary Debates*, 11 June 2000, Shop Trading Hours (Abolition of Restrictions) Bill (later renamed the Shop Trading Hours Act Repeal Act (Abolition of Restrictions) Amendment Bill)

Conscience Voting and Conscience Issues

Conscience voting is invoked to deal with some of the most significant issues that come before parliament. In New Zealand, these issues include homosexuality, prostitution, gambling, abortion, euthanasia, the regulation of social issues such as pornography, Sunday trading, divorce and matrimonial property, adoption, and the sale of alcohol. Other issues have also been the subject of conscience voting but less frequently, such as electoral reform, the compulsory wearing of seat belts, mandating the fencing of swimming pools, and smoking in public places. In addition, some administrative matters are given free votes, notably the appointment of the parliamentary speaker.

This list of conscience issues is relatively wide-ranging and spans matters of life and death (e.g. euthanasia, abortion), morality (e.g. pornography), relationships (e.g. divorce, matrimonial property, adoption), and some commercial matters (e.g. Sunday trading, and the sale of alcohol). The compulsion of certain actions such as wearing a seat belt, fencing a swimming pool or refraining from smoking in public places is also a common theme, although quite why these particular matters are viewed as appropriate for a conscience vote when enforcing the road speed limit, mandating safety standards for children's toys and restraining public nudity have always been party matters is not immediately obvious.

Conscience voting is not equivalent to conscience issues. What the latter have in common is an element of contention, their infusion of morality, and/or their potential to alter the social values of society. The former, however, are issues that are given a particular institutional treatment – traditionally a 'conscience' or unwhipped vote. While there is considerable overlap between these two, conscience issues are not necessarily treated with conscience votes, and conscience votes are not necessarily conducted on conscience issues.²¹

A strong case can be mounted, for example, that both the legislation removing prohibition on experimentation with genetic modification and the repeal of Section 59 of the Crimes Act have sufficient moral content to qualify as conscience issues, yet neither received conscience votes. Conversely, the use of seat-belts and the fencing of swimming pools were treated with conscience votes despite the relevant parties having transport and health and safety policies that could have brought the issue within the gambit of a party vote.

²¹ Pothier, "Parties and Free Votes in the Canadian House of Commons.", p.80; Cowley, "Unbridled Passions?.", p.74

The mere passing of time and the consequent evolution of society may eventually empty all conscience issues socially charged and politically contentious content. Parliament's institutional treatment of certain issues may lag the evolution of attitudes towards the relevant activity. For example, in New Zealand Sunday trading was once considered a religiously charged issue replete with moral overtones, and parties dealt with a regular stream Sunday trading legislation by the prolific use of unwhipped votes. In more recent times however, this is generally considered a commercial issue with considerations of worker protection, freedom of choice, and consumerism trumping attendance at church and community standards in the debate. Nevertheless, almost every piece of Sunday trading legislation introduced into the House continues to carry an expectation that it will be a conscience vote. Likewise for the sale of alcohol. Whereas once the debate surrounding the 'demon drink' had a distinctly moral overtone to it as demonstrated by the prominent role played by organisations such as the Women's Christian Temperance Union,²² for some decades now the issue has been more about public order and road safety than obedience to biblical injunctions. As with Sunday trading, the expectation of a conscience vote with liquor legislation has remained.

Conscience voting has developed something of a life of its own, and at least partially exists today as a convention independent from the tenor of the issues it is applied to. The remainder of this paper sketches the historic contours of its development as a parliamentary convention within New Zealand's party-based system.

Classifying Conscience Votes

Research done for this paper into the history and use of conscience voting necessitated establishing a database of conscience votes. The classification of a conscience vote is not a straightforward matter however. Although New Zealand has comprehensive official records, a number of factors make the researcher's task difficult:²³

1. New Zealand's official parliamentary records pre-1996 do not specifically identify a vote as a conscience vote. At the very least, considerable effort is required to identify the attitudes of the parties and the members involved in the debate, and a certain degree of surmising is required.
2. Some conscience votes have only been applied to specific, and sometimes minor, parts of bills and not the complete piece of legislation, or only some stages of a

²² Jeanne Wood, *A Challenge Not a Truce : A History of the New Zealand Women's Christian Temperance Union 1885-1985* (Nelson: The Union, 1986).

²³ Some of these challenges are specific to New Zealand e.g. the use of Personal Votes, but most are applicable to other countries that use free votes.

bill's progress through the House. The Care of Children Bill, introduced in 2003, for example, was a party vote for all stages of the bill's progress through the House except for three of the proposed amendments which were dealt with as personal votes by the Committee of the Whole House.

3. Some legislation has been treated as a conscience vote by some parties and not by others e.g. the Smoke-free Environments Amendment Bill, introduced in 1999.
4. A party may officially declare a free vote, but the voting patterns of members may result in a bloc vote, making it unclear to what extent it was actually considered free by the individual members of the caucus. In some instances, parties may go so far as to state their preferred policy position over a 'free vote', further blurring the distinction between free and whipped votes. Although Labour gave their members a free vote during the Licensing Amendment Bill (1976), for example, Labour members nevertheless all voted the same way. And while technically a free vote for National MPs, all members of that party agreed to vote together during the consideration of select committee report on the Matrimonial Property Amendment Bill (2000).

TONY RYALL (NZ National): I say at the beginning of this session that, while at the end of this debate there will be a free vote, National MPs have agreed to vote en bloc against the reporting back of this bill. We believe that the bill should go back to the select committee for improvement and further public submission. ... However, having said that, I point out that next week National members will exercise a conscience vote [on this bill].²⁴

5. Since 1996, the Speaker has had the authority to call for a Personal Vote for reasons other than just a conscience vote, so conscience votes cannot be equated with personal votes. Although all personal votes to date, however, have been conscience, this may not always be the case in the future.
6. A bill that has been treated as a conscience matter may not actually become law, either through failing to gain a majority or by being discharged before their final reading. A bill that never reaches the statute books tends to be remembered and cited less, and is generally harder to identify. Such was the fate of the Sale of Liquor (Health Warnings) Amendment Bill (introduced in 2000), the Death with Dignity Bill (2003), and the Shop Trading Hours (Easter Trading Local Exemption) Bill (2004).
7. A bill is sometimes split into more than one piece of legislation at some point in its passage, and it is debatable whether each resulting bill should be treated as a

²⁴ *NZ Parliamentary Debates*, 14 November 2000, Matrimonial Property Amendment Bill, Consideration of Report of Justice and Electoral Committee, p.6518

separate conscience vote or just the parent bill. For example, the Relationships (Statutory References) Bill was originally introduced into the House in 2004 as a single piece of legislation, but was split into 23 separate bills by the Committee of the Whole House upon the recommendation of the Justice and Electoral Select Committee after its second reading. All 23 bills passed into law in 2005 after each receiving a personal vote for its third reading. An additional complexity is encountered when bills that have received conscience votes in the early part of their progress through the House are then split and subsequently passed with a party vote. The Care of Children Bill, for example, introduced in 2003, was split into two bills only after amendments were negatived in the Committee of the Whole House with personal votes. The split bills were subsequently progressed to their third reading with party votes. Alternatively, it may happen that a bill is split into several parts, only one of which receives a conscience vote. The question therefore arises: should the split bills be treated as having received personal votes or just the parent bill, and under what circumstances? This study generally only considers the parent bills, treating split bills as a single piece of legislation, and thus as a single conscience vote.

8. Some personal/free votes are conducted during the Committee of the Whole House. Technically, these are not votes of the House, but of the Committee. These votes have nevertheless been included in this study.
9. It is often difficult, particularly pre-1996, to gauge in any particular vote whether a lack of party cohesion was attributable to a conscience vote or mere dissent. Even when a party has declared a conscience vote, it is usually not possible to tell whether it was called to prevent a member crossing the floor or for some other motive, thus blurring the distinction between a conscience vote and dissent.
10. Parties may decide to officially cast a split party vote instead of a conscience vote. A split party vote is a facet of New Zealand's post-1996 Standing Orders whereby members of a party vote against each other with the sanction of their party, even though it is still technically a party vote. It is a mechanism by which opposing views can be recorded in the parliamentary record without a full conscience vote being held. Hansard records the names of that party's members on each side of the vote if the party so requests. Strictly speaking, therefore, split party votes did not exist before 1996. The Shop Trading Hours (Abolition of Restrictions) Bill, first introduced in 1997, for example, was so treated when the National Party split 20 to 19 that the Bill proceed to its Committal stage, and split again 17 to 10 that the Bill

proceed past consideration of the select committee's report. Such a situation makes it difficult to classify as either a party vote or a personal vote, although in the case of the Shop Trading Hours (Abolition of Restrictions) Bill, a personal vote was also taken during the Committee of the Whole House stage. Other bills, such as the Smoke-free Environments Amendment Bill (1997) and the Human Assisted Reproductive Technology Bill (2004) have had split party votes but no personal vote. For the purposes of this study, these bills and others like them that have had split party votes but not personal votes have not been included.

11. Some personal/free votes are held on non-legislative matters. For example, appointments to the Abortion Supervisory Committee and the election of the Speaker of the House at the beginning of each parliamentary session. These have not been included in this study.

Despite these difficulties, a reasonably complete and accurate record has been compiled by including any bill that has received a conscience vote by any party at any stage of its progress through the House. The following guidelines were used to determine that a conscience vote had been held:

1. Explicit statements from the Speaker stating that a particular vote or set of votes will be a conscience vote.

Mr SPEAKER: "This is a member's bill, on which people will have a conscience vote..."²⁵

Mr DEPUTY SPEAKER: "Can I just say that there are no whips involved. I have no idea whether people are for or against this bill..."²⁶

2. Explicit statements from parties via the whips, usually during the parliamentary debates.

JOHN CARTER (Senior Whip---NZ National): "I want to draw to your attention [Mr Speaker] and to the attention of the House the fact that this debate is a matter of conscience and members will be voting accordingly at the conclusion."²⁷

3. Explicit statements from members in the course of their speeches during the debate.

GORDON COPELAND (United Future): "The Shop Trading Hours Act Repeal (Easter Trading) Amendment Bill in the name of Steve Chadwick will be a conscience vote for United Future, so the remarks that I will be sharing with the House tonight are according to my conscience, and they are mine alone."²⁸

²⁵ *NZ Parliamentary Debates*, 26 March 2003, Rotorua District (Easter Sunday Shop Trading) Bill 2003, p.4445,

²⁶ *NZ Parliamentary Debates*, 6 September 2000, Sale of Liquor (Health Warnings) Amendment Bill 2000, p.5362

²⁷ *NZ Parliamentary Debates*, 1 June 2000, Matrimonial Property Amendment Bill 1998, p.2754

²⁸ *NZ Parliamentary Debates*, 14 June 2006, Shop Trading Hours Act Repeal (Easter Trading) Amendment Bill 2006, p.3608

4. An explicit statement in the select committee report that the parties intend to make a subsequent vote a conscience matter.

“The bills will be conscience votes for members.”²⁹

“The New Zealand National caucus has determined that this matter will be a conscience vote.”³⁰

5. A statement from parliament’s Business Committee that the parties have agreed to make it a matter for a conscience vote.

RICK BARKER (Senior Whip---NZ Labour): “...the next item is the Matrimonial Property Amendment Bill. The Business Committee has discussed this matter and agreed that the bill should be set down as the first item of business on Tuesday. It is a conscience vote.”³¹

6. Colleagues from the same party taking opposing sides of the argument during the debate.

BILL ENGLISH: “I oppose this bill for a simple reason: one of the strongest presumptions in our law is the presumption against taking a life. ... We as lawmakers have for the whole life of this Parliament now set a high threshold around the taking of life. I oppose this bill because it lowers that threshold.”³²

MAURICE WILLIAMSON: “I think that the concept of somebody wanting to terminate his or her own life because of incurable agony, and the pain and suffering that is going to go on for a limited time before he or she finally dies, is a perfectly legitimate issue over which an individual should have a right to make a decision.”³³

7. Use of personal pronouns during debate e.g. “I” rather than “we”.

WARREN KYD (National): “I am one who does not favour legislation favouring same-sex marriages. I think such law will have tremendous implications.”³⁴

8. Voting patterns e.g. members of a party voting in opposite lobbies.
9. Media reports.

“To ... take the step of wielding prime ministerial authority to direct how MPs should vote on what many people believe should be a conscience issue is to invite a public backlash.”³⁵

10. Statements from MPs outside parliament.

11. The issue is traditionally a conscience vote e.g. it is on the subject of alcohol.

PHIL GOFF (Labour): “Liquor issues in this House, as members well know, are regarded as a conscience vote. That means more accurately, I think, that every member votes according to his or her individual views on the issue.”³⁶

²⁹ Report of the Select Committee, Shop Trading Hours Act Repeal (Easter Trading) Amendment Bill 2006

³⁰ Report of the Select Committee, Manukau City Council (Control of Street Prostitution) Bill 2005

³¹ *NZ Parliamentary Debates*, 9 November 2000, Matrimonial Property Amendment Bill 1998, p.6491

³² *NZ Parliamentary Debates*, 30 July 2003, Death With Dignity Bill 2003, pp.7483-7484

³³ *NZ Parliamentary Debates*, 30 July 2003, Death With Dignity Bill 2003, p.7492

³⁴ *NZ Parliamentary Debates*, 6 May 1998, Matrimonial Property Amendment Bill 1998, p.8270

³⁵ John Armstrong, *NZ Herald*, ‘Clark Whip Spurs Voter Backlash’, 31 March 2007

³⁶ *NZ Parliamentary Debates*, 27 July 1999, Sale of Liquor Amendment (No.2) Bill 1998, p.18558

History

Using this methodology, the first recorded conscience vote in New Zealand was in 1893. Since then, a total of 131 bills introduced into parliament have received a conscience vote, at an average of approximately 1.1 each year.

The usage of conscience voting in New Zealand was initially slow. For the first six decades after the first conscience vote, they were held at an average rate of just 1.5 per decade. Only two conscience votes had been held by 1900 and just nine by the end of the 1940s. The reasons for this slow adoption of the mechanism are associated with the only gradual development of party politics and the predominantly economic outlook of the early New Zealand parliaments.

Before political parties became the dominant feature of our parliamentary system, every vote was effectively a 'free' vote, cast by independent MPs who made up their own mind largely unencumbered by party considerations.³⁷ Although a network of allegiances existed, these were loose and informal, and could be ignored with no serious electoral, parliamentary or vocational consequences. In response to the increasing size and complexity of government and the greater degree of competitiveness in parliament, political parties became increasingly formalised in the final two decades of the 19th century. The result of this formalisation was that parties, rather than individual MPs, became the basic unit of parliament, and MPs' prime responsibility shifted from their electorate to their party.

While on the hustings a candidate may have undertaken to faithfully represent the voters' views, it was only as a member of a party that they could hope to put this into practice. From this perspective, parties became a necessary evil for MPs, for without party support they would find it much harder to get elected, but once elected their ability to represent those who voted for them was more limited. The party became the *de facto* recipient of the electors' vote, despite the continued presence of local representatives.

For the most part, the presence of cohesive parties in New Zealand's political landscape was accepted without contention by the voting public. But while MPs were usually content to support their party's policies and submit to its discipline, there were some issues that evoked widespread dissent and posed a challenge to party unity. Some members felt so strongly about certain issues that party discipline was not sufficient to ensure the cohesion of the party. These issues were those that contained a high level of ethical, as opposed to

³⁷ Hobby, "The Crack of the Whip?"

political, content, and a safety valve was needed to prevent disagreement from becoming disunity.³⁸

The increasing incidence of public drunkenness during the second half of the 19th century led to the regulation of the sale of alcohol becoming the first issue to shape this safety valve. Political parties of the late 19th century contained a mixture of prohibitionists, those who wished to restrict access to alcohol, and those who advocated free access. Parties recognised that not only were these positions potentially irreconcilable, but maintaining a firm party policy on this issue carried considerable political risks. Party discipline was therefore removed for this issue rather than risk members crossing the floor. Thus, it was no coincidence that the first conscience vote held in New Zealand, in the 1890s, coincided with the formation of political parties, as only when parties developed was there a need for such a safety valve. It also coincided with the issue of public drunkenness that had become a significant social problem and that had prompted, in response, the formation of such groups as the Women's Christian Temperance Union.³⁹

Once conscience voting had become an accepted and effective technique for handling sensitive moral issues, its use increased, though only gradually. This proliferation largely reflected the difficult and sensitive issues that parliament was called increasingly upon to address throughout the first half of the 20th century. Early conscience issues, such as the regulation of alcohol and the placement of advertising hoardings, were recognised as clearly outside the gambit of political parties, but the increasing use of conscience voting also tended to reflect back upon the parties' understanding of what the government's role actually was. Thus, the belief in the minds of MPs and voters alike that moral and ethical issues were not party issues was not only a historical artefact, but it was reinforced by the increasing use of conscience voting when these matters arose.

In addition to the above factors, three more reasons can be cited for the uncommon use of conscience voting before World War Two:

- 1) Early government in New Zealand dealt with only a relatively narrow range of issues. While many of these issues were contentious, alcohol was the only one that cut across party policies. Parliament was only confronted with the need for more

³⁸ David McGee, *Parliamentary Practice in New Zealand*, 3rd ed. (Wellington: Dunmore Publishing, 2005). p.100

³⁹ An alternative and more pragmatic account of conscience voting's inception was provided by Graham Kelly, an apparently unusually candid Labour MP, who considered that the "allowing of conscience votes on this issue [alcohol] goes back to the 1930s when the Labour Party was first represented in the House." Lamenting that this led to an historic pattern of free votes on an issue that didn't merit it, he was prepared to "blame the Labour Party; we will take the blame for it [because] [i]t was done to get the support of other people." Graham Kelly, *NZ Parliamentary Debates*, 26 August 1999, Sale of Liquor Amendment (No.2) Bill

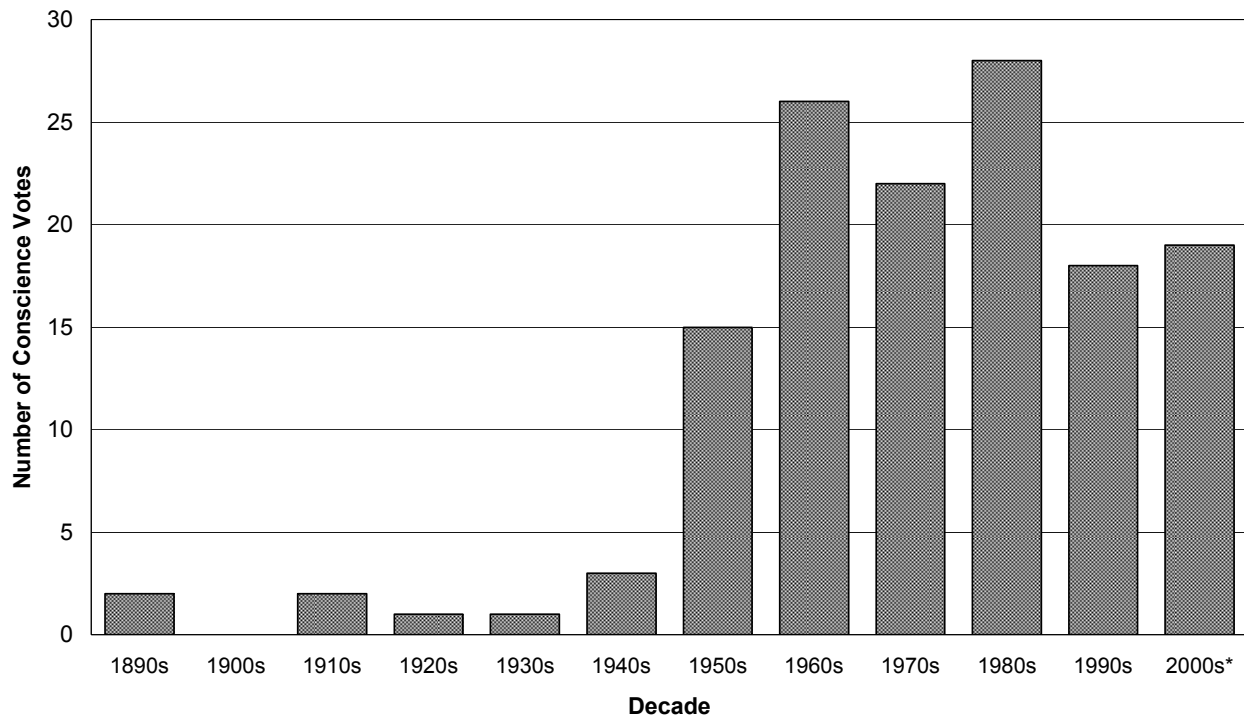
conscience votes when the role of government and the scope of issues it dealt with expanded.

- 2) New Zealand was originally a colony of Great Britain with little self-rule. Thus, the major decisions that guided the development of the colony were made in the Mother Country with decision-making in New Zealand occurring only at a local level and over relatively minor issues. The cultural and political influence of Britain ensured that, for the most part, New Zealand willingly followed its example. Indeed, as discussed later, the frequency of conscience votes increased dramatically after full independence was gained in 1947.
- 3) Early government in New Zealand was based on strong provincial government, with provincial leaders meeting semi-regularly to discuss matters of national importance. Many decisions were therefore made at a local level first, the national parliament dealing with a much more limited range of issues. This situation prevailed until the provincial governments were abolished in 1876.⁴⁰

Since the 1950s however, the conscience vote became dramatically more common. Two thirds more conscience votes were held in the 1950s than had occurred in the history of the New Zealand parliament up until that time. Since then, there has been an average of 2.1 conscience votes each year.

⁴⁰ Jonathan Hunt, "The Election of 1875-6 and the Abolition of the Provinces" (University of New Zealand, 1961), John E. Martin, "Political Participation and Electoral Change in Nineteenth-Century New Zealand," *Political Science* 57, no. 1 (2005).

Figure 1: Frequency of Conscience Voting in New Zealand by Decade



* Extrapolated. 13 conscience votes had been conducted between 2000 and August 2007. At that rate, the decade would see 19. The conscience bills have been classified according to their date of first introduction into parliament

The post-World War Two escalation in conscience voting coincided with major cultural, economic and political developments in New Zealand society. As a result of New Zealand gradually becoming less culturally, socially, religiously, and economically homogeneous, a greater range of views were held by New Zealanders, particularly on social issues, leading to a wider range of subjects becoming the focus of parliamentary decision-making. These decisions cut across party policies more often and created a greater demand for conscience votes. The Great Depression also led to the government adopting a more pervasive role in New Zealand society, and New Zealanders became more prepared to accept legislation in subjects previously considered off-limits to government. The post-depression era also coincided with the decline in the pervasive influence of religion, and the state filled the gap it left. Conscience voting was therefore partly seen as a mechanism for handling sensitive issues in the absence of the homogenising influence of the church. New Zealand's gaining full political independence from Britain also meant that a greater range of issues were dealt with locally, and self-determination brought its share of debate and disagreement which conscience voting was increasingly called upon to assist with.

The most frequent subject for conscience voting has been alcohol (Table 2), which includes an array of issues such as provisions relating to the sale of liquor, minimum drinking age, liquor licensing, TV advertising of liquor, and breath testing. 55 conscience

votes, or 42% of all consciences votes, have been related to the control and provision of alcohol. This is well ahead of the next most common subject, gambling, which accounts for 25 conscience votes, or 19% of the total. Votes on gambling have dealt with issues such as casino control, horse racing, minimum gambling age, and gaming law. The only other subject receiving a significant number of conscience votes are a class of issues relating to family, children and marriage. This includes matrimony and divorce proceedings, care of children, matrimonial property, civil unions, contraception, and abortion. These issues have been the subject of 20 conscience votes, or 16% of the total. More than three quarters of conscience votes are focussed on these three subjects, with the remaining 23% spread over a range of other matters.

Table 2: The Subjects of Conscience Votes

Subject	Number of Conscience Votes
Alcohol ¹	53
Gambling ²	25
Marriage/Family/Children ³	20
Business/Employment ⁴	11
Health and Safety ⁵	7
Crime and Punishment ⁶	5
Administration ⁷	4
Morality/Ethics ⁸	3
Homosexuality ⁹	2
Life and Death ¹⁰	1
Total	131

Notes: Conscience votes have been categorised according to their major issue. This typology has been developed as a balance between simplicity and functionality, although it is recognised that any number of alternative typologies are possible. Many conscience votes are taken on bills that span a number of subjects. In this situation, the main subject has been used for classification purposes.

1 – includes sale of liquor, minimum drinking age, liquor licensing, TV advertising of liquor, breath testing

2 – includes casino control, horse racing, minimum gambling age, gaming law

3 – includes divorce proceedings, care of children, matrimonial property, civil unions, contraception, abortion

4 – includes shop trading hours, Sunday and Easter trading

5 – includes mandatory use of seat belts, fireworks restrictions, swimming pool fencing, smoke free legislation

6 – includes abolition of corporal punishment and the death penalty

7 – includes appointment of acting parliamentary speakers, human rights commission, Parliamentary Commissioner for Investigations, electoral reform

8 – includes control of indecent publications, prostitution

9 – includes legalisation of homosexuality

10 – euthanasia

Analysis of the subjects of conscience votes by decade reveals that some topics have become more important over time, while others have become less so (Table 3).

Table 3: The Subjects of Conscience Votes by Decade

Subject	1890s	1900s	1910s	1920s	1930s	1940s	1950s	1960s	1970s	1980s	1990s	2000s
Alcohol	2		2	1		2	8	11	13	9	3	2
Business/Employment					1	1		1		1	3	4
Gambling							4	9	2	3	6	1
Marriage/Family/Children							2	2	3	8	2	3
Crime and Punishment							1	1	1	1	1	
Administration								1		1	2	
Morality/Ethics								1				2
Health and Safety									3	3	1	
Homosexuality										2		
Life and Death												1
Totals	2	0	2	1	1	3	15	26	22	28	18	13

Note: See notes under Table 2 for explanations of subjects.

Not only was alcohol the subject of the very first conscience vote in New Zealand, but it was also the only subject for conscience voting until the Employment Promotion Bill joined it in 1936. Even then, conscience voting on alcohol-related matters continued to be the predominant subject for conscience votes and have remained so to the present day. The very first conscience vote in the New Zealand House of Representatives, the Licensing Bill, sought to take the first steps towards regulating what its long title called ‘the Sale of Intoxicating Liquors,’ though a long public debate and several ignored petitions had preceded (and has succeeded) it. Alcohol appears to have been a particular issue of interest in the 1950s to the 1980s with most of the conscience voting on alcohol being conducted during this period. The 1950s saw a succession of bills relating to liquor licensing. In the 1960s, the focus of attention turned to the actual sale of liquor, with a succession of Sale of Liquor Bill votes being conducted. By the 1970s, liquor licensing trusts were created as a mechanism for regulating the availability of alcohol and the distribution of profits in the community, and this is reflected in the Licensing Trust Bills that appeared during this decade.

Bills relating to businesses and employment were the next to be treated as conscience issues, although this wasn’t until 1936. The Employment Promotion Bill (1936) was followed, twelve years later, by a bill regulating the use of advertising hoardings. The gradual widening of conscience issues that these two bills initiated coincided with an increase in ‘non-party issues’ which Mr Wilson, MP for Palmerston North, spoke of as he introduced his private members Hoardings Bill into the House in 1948:

There are a lot of matters which are not directly concerned with the policy of the Government of the day, or any Government, but which are of general importance to the community, and in which individual members of Parliament can usefully take some share of the responsibility. I suggest that this bill, which aims at prohibiting hoardings along the countryside, is such a measure. It is not in any sense, and could hardly become, a party measure, but it is something which concerns the welfare of the community as a whole. Whether I am right or wrong in introducing it is, of course, for

members to say, but it is a matter of general concern, and something which it is most suitable for individual members in this House to concern themselves with.⁴¹

The Hoardings Bill was a short private member's bill of just four clauses that sought to protect New Zealand's natural beauty and motorists' safety by prohibiting hoardings outside of urban areas. Although there were many members who concurred with what he said about both conscience votes and hoardings, Mr Wilson's bill was nevertheless defeated at the second reading. A number of other business and employment matters have been treated as conscience votes since then, but these have been relatively infrequent.

By the 1950s, the government's role in society was expanding further and other subjects came to be viewed as legitimate areas for government attention. Some of these were treated as conscience votes, including bills relating to families, crime/punishment and, especially, gambling. The 1950s and 1960s were decades when, in addition to alcohol, the regulation of gaming came to the fore. Conscience votes on gambling increased again in the 1990s, though this time it was about the legalisation of casinos.

The 1980s was a big decade for family issues, with eight conscience votes on this subject during these years. The hot topics at the time were abortion and the status of the unborn child. Family issues have come to the fore again more recently, with one in three conscience votes since 2000 being on family matters. Recent family issues have included matrimonial property and alternative forms of families, such as civil unions. An argument is sometimes advanced that the state should not be involved in developing law on issues so heavily saturated with moral issues, even in a conscience vote, although others argue that discrimination in family issues should be treated in the same way as it is in any other area, thus making it a fair topic for government attention.

Health and safety matters were of interest in the 1970s and 1980s, and conscience votes on these matters revolved around improving the safety of people from themselves and others by introducing regulation relating to the mandatory use of seat belts, fencing of swimming pools, and limiting the availability of dangerous fireworks. Part of the reason these issues were treated as conscience votes was that there was debate about the role of the state in regulating health and safety. While few argued that people should not be kept safe if possible, there was disagreement over the balance between state regulation and personal responsibility. An exchange between two MPs during the Transport

⁴¹ *New Zealand Parliamentary Debates*, Vol. 281, 1948, p. 998

Amendment Bill (No. 2), first introduced in 1971 and which introduced mandatory use of seat belts, illustrates this debate well:

A.E. ALLEN: I am also wondering just how much further this Parliament, or any other Parliament, intends to go in infringing the rights of the individual. We are reaching the stage where one cannot do anything unless Big Brother - Parliament - says so.⁴²

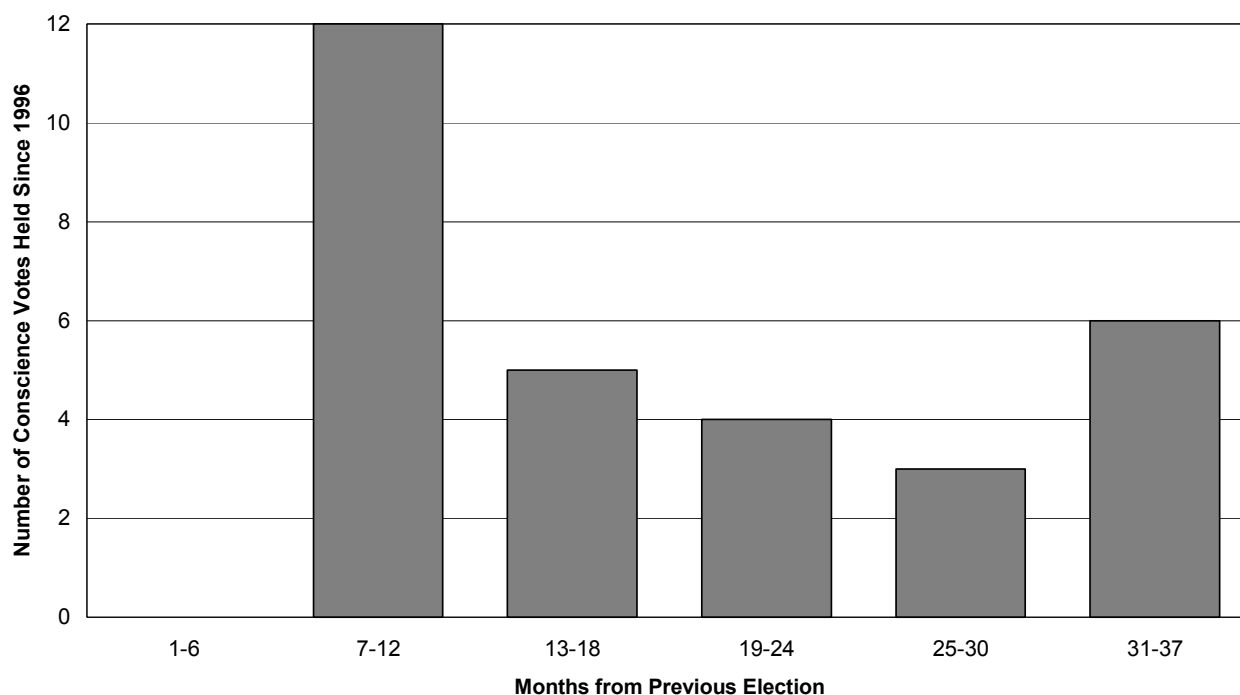
P. BLANCHFIELD: Is not the compelling of people to wear seat belts to obviate the possibility of injury, even though they are safe and slow drivers, similar to prohibiting people from smoking because they may get lung cancer?⁴³

A clear pattern exists with respect to the point in the parliamentary cycle at which conscience votes are most commonly held (Figure 2). Governments take some time to be constituted and get their legislative programmes in order, and, not surprisingly, no conscience votes have been held in the six months after an election in the last four parliamentary terms. The most popular period for conducting conscience votes is in the second half of the first year in office – nearly half of all conscience votes conducted since 1996 have been held in this period. This correlates with the period in which a lot of new legislation is introduced by governments, particularly over contentious subjects such as is often dealt with in conscience votes. Another increase is seen at the end of the parliamentary session, just before the following election, when it is likely that effort is expended to clear legislation – particularly contentious ‘conscience’ legislation – before the election.

⁴² *New Zealand Parliamentary Debates*, Vol. 376, 11 November 1971, p. 4553

⁴³ *New Zealand Parliamentary Debates*, Vol. 376, 3 November 1971, p. 4287

Figure 2: Patterns of Conscience Voting by Parliamentary Cycle, 1996-2005



This figure counts the number of conscience votes in 1st, 2nd or 3rd readings, not the bills themselves and not votes during other stages of the bills' progress. Although there were 20 conscience bills between October 1996 and August 2007, only 17 met this criteria i.e. there were a total of 30 votes on 17 bills in this period. A further three had only party votes for their 1st, 2nd or 3rd readings.

Since 1996, ten of the 20 bills that have received conscience votes were members bills, with a further eight being government bills. The remaining two were introduced by a local authority. The relatively high proportion of members bills observed in conscience voting reflects the controversial and/or moral nature of many members bills – subjects on which parties often have no official policy and on which they are less likely to introduce legislation e.g. euthanasia. Nearly all of these members bills were defeated before they became law however, and the only one to succeed, the Prostitution Reform Bill, did so by the narrowest of margins. Only one government bill was defeated during this period (Table 4), and this bill – the Gaming Law Reform Bill 1998 – was defeated only because there was a change of government and the bill was superseded by new gambling legislation. The overwhelming success of government bills suggests that party membership is still influences voting patterns even in unwhipped votes.

Table 4: Success of Bills Receiving Conscience Votes, 1996-2007

	Parent Bills	
	Total Bills	Passed into Law
Government Bills	8	7
Members Bills	10	1
Local Bills	2	0
TOTAL	20	8

What is the relationship between the use of conscience votes and the party in government? Table 5 illustrates the number of conscience votes held since 1950 under each party in government.

Table 5: Number of Conscience Votes Conducted Under Each Major Party in Government, 1950-2007

Party in Government	Number of Years in Government	Number of Bills Receiving Conscience Votes Introduced ¹	Average Number of Conscience Bills Introduced per Year in Government
National	38	81	2.1
Labour	20	41	2.1
Total	58	122	2.1

Notes: New Zealand electoral system until 1996 favoured a political duopoly. Since then, one of these same two parties has constituted the dominant party of the government.

1 – Includes both government and private members bills

Controlling for the length of time that each party was in government, there appears to be no difference in the number of conscience votes introduced during National and Labour-led governments. Both have introduced, or had members introduce, an average of just over two items of such legislation each year they have been in office since 1950. This suggests that, at least on the surface, neither party have markedly different approaches to introducing legislation that require a conscience vote, although the subjects do differ somewhat (Table 6).

Table 6: The Subjects of Conscience Voting by Party in Government, 1950-2007

Subject	Labour-led		National-led		Total	
	No.	Percent	No.	Percent	No.	Percent
Alcohol	9	20%	37	80%	46	100%
Gambling	7	28%	18	72%	25	100%
Marriage/Family/Children	7	35%	13	65%	20	100%
Business/Employment	5	56%	4	44%	9	100%
Health and Safety	3	43%	4	57%	7	100%
Crime and Punishment	3	60%	2	40%	5	100%
Administration	2	50%	2	50%	4	100%
Morality/Ethics	2	67%	1	33%	3	100%
Homosexuality	2	100%	-	0%	2	100%
Life and Death	1	100%	-	0%	1	100%
Totals	41	34%	81	66%	122	100%

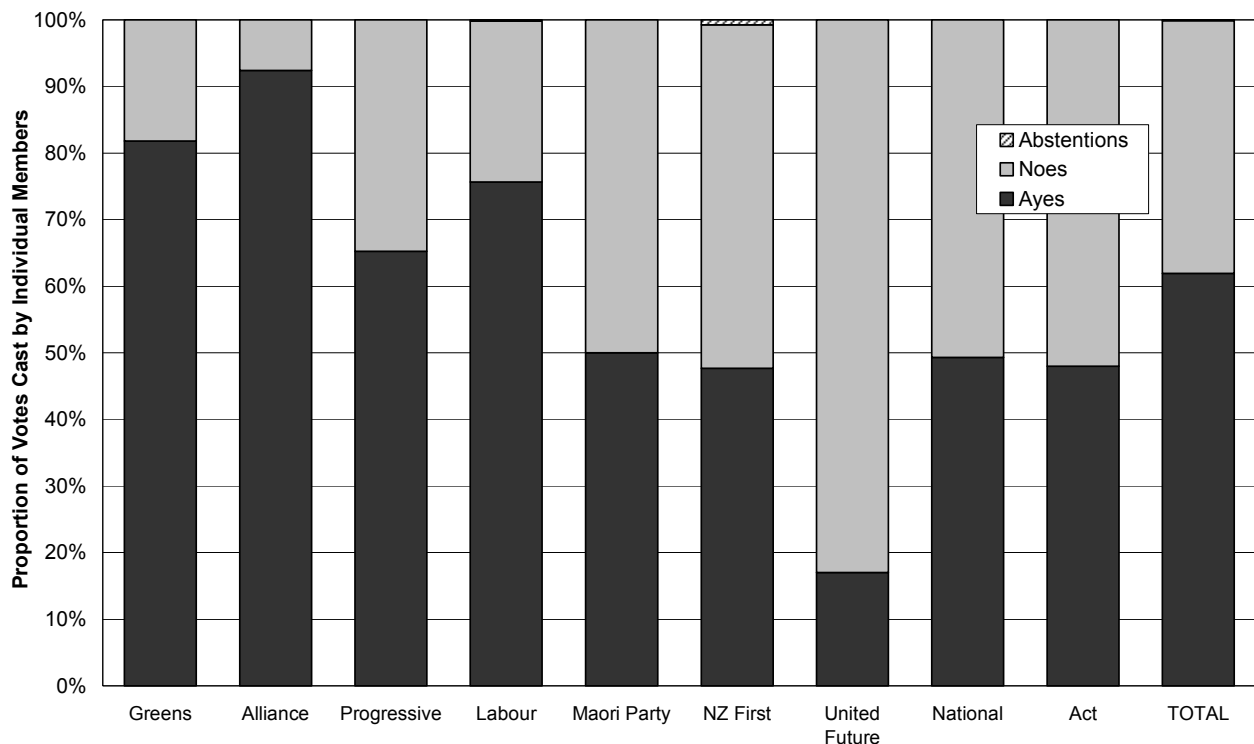
Note: This table includes members and local bills i.e. it does not seek to focus solely on government-introduced bills, merely the bills that were introduced during their term in government.

Conscience votes during Labour-led governments are, broadly speaking, spread over a wider range of subjects. National's tendency towards social conservatism may reduce the likelihood of their introducing socially progressive legislation, or of members introducing it during their term, whilst leading them to submit the alcohol issue to a free vote more

frequently than Labour. Although alcohol-related issues do predominate for Labour-led governments, they do so to a much lesser degree than under National-led governments. Both conscience votes concerning homosexuality and the Death with Dignity Bill were introduced under Labour-led governments.

Figure 3 illustrates that parties on the left of the political spectrum, including Labour, are far more likely to vote 'Aye' in conscience votes than 'Noe', while the reverse is true for those on the right. For all the conscience votes held since 1996, 62% of the votes cast by MPs were 'Ayes', while 38% were 'Noes.'

Figure 3: 'Positiveness' of MPs by Party for Bills Receiving Conscience Votes, 1996-2005

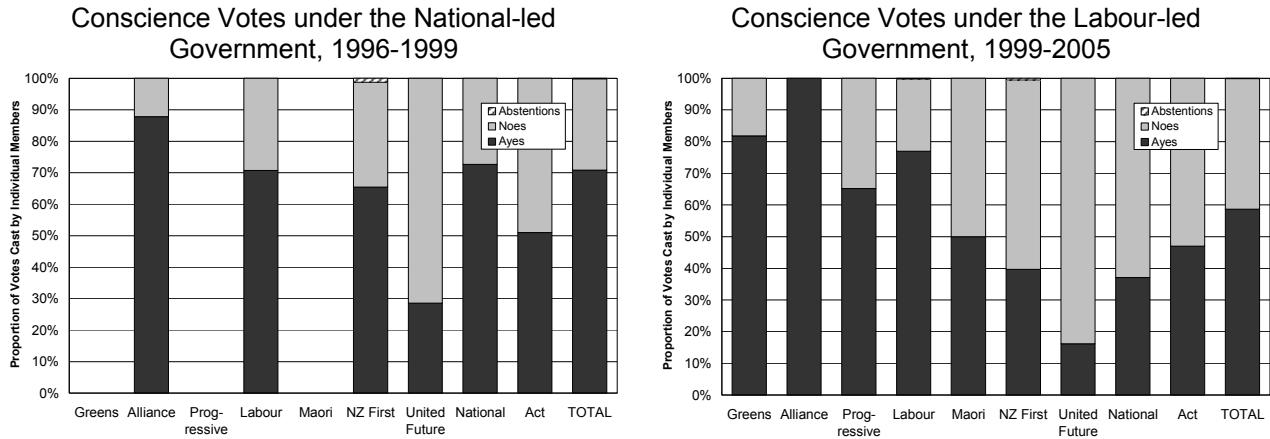


Notes: Total includes Christian Heritage Party (Frank Grover, formerly of the Alliance) and independent MPs. Bills included in this figure received a conscience vote for either the first, second and/or third readings.

Members of the Greens, the Alliance, the Progressives and Labour voted 'Aye' more than they voted 'Noe', with the reverse holding true for right-leaning parties. Since 1996, members of the Green Party, for example, have voted 'Aye' 82% of the time during conscience votes. This is in contrast with Act members who cast only 48% of their votes as 'Ayes.' Even more stark is the example provided by members of United Future who, in the conscience votes they have been a part of, have voted 'Aye' just 17% of the time. Furthermore, nearly half of these 'Aye' votes were cast by just one of their number – Peter Dunne, their leader. Without Dunne's somewhat more positive voting pattern, United Future members would have an almost perfect record of opposing all the legislation that have been the subject of conscience voting since 1996. These patterns are somewhat more pronounced when votes conducted under the Labour led government of 1999-2005

are isolated, but this general pattern holds even during the National-led government of 1996-99 (Figure 4).

Figure 4: ‘Positiveness’ of MPs by Party in Government for Bills Receiving Conscience Votes, 1996-2005



Notes: Excludes Christian Heritage Party (Frank Grover, formerly of the Alliance), and independent MPs. Bills included in this table received a conscience vote for either the first, second and/or third readings.

Party differences during conscience votes perhaps stem not only from social conservatism/progressivism, but also from their differing attitude towards the role of government. Parties on the left traditionally take recourse to legislation more often because of their more interventionist conception of the state. The social conservatism of United Future’s members appears to be evident in their reluctance to use legislation to influence social norms or intervene in private matters, but this disinclination is observable in all the right-leaning parties. As will be discussed later however, right-leaning parties are not only more conservative, but are also more split in their voting patterns.

In conscience votes where most members of right-leaning parties vote ‘Aye’ most members of left-leaning parties tend to vote ‘Noe’ (Table 7) suggesting that, on the whole, philosophical differences remain even when party whips are not applied. Only on three bills have the majority of both ends of the political spectrum voted in the same lobby. Two of these were business related, and none were government bills. All three of these bills were defeated, so it appears that members may be more comfortable voting in the same lobby with traditional political enemies when the issues they are voting on are relatively inconsequential or are unlikely to become law.

Table 7: Voting Patterns for Bills Receiving Conscience Votes, 1996-2005

Left Parties	Right Parties	
	Aye	Noe
Aye	Shop Trading Hours (Repeal of Restrictions) Rotorua District (Easter Sunday Shop Trading) Sale of Liquor (Youth Harm Reduction)	Casino Control (Poll Demand) Amendment Casino Control (Moratorium) Amendment Sale of Liquor Amendment (No. 2) Prostitution Reform Sale of Liquor (Health Warnings) Amendment Casino Control (Moratorium Extension) Death with Dignity Civil Unions Relationships (Statutory References)
Noe	Gaming Law Reform Shop Trading Hours (Easter Trading Local Exemption)	

Notes: Left parties = Greens, Progressives, Labour, Maori Party; Right parties = National, Act

Bills are classified according to the majority vote received.

Bills included in this table received a conscience vote for either the first, second and/or third readings.

Duplicating Table 7 for subjects of legislation rather than individual bills (Table 8), it can be observed that members of right-leaning parties generally vote 'Aye' for bills involving issues of Business/Employment and 'Noe' on almost everything else. Members of left-leaning parties are observed to vote 'Aye' across the gamut of issues that have been the subject of conscience votes.

Table 8: Voting Patterns on Subjects Receiving Conscience Votes, 1996-2005

Left Parties	Right Parties	
	Aye	Noe
Aye	Business/Employment (2) Alcohol	Gambling (2) Alcohol (3) Morality/Ethics Life and Death Marriage/Family/Children (2)
Noe	Gambling Business/Employment	

Notes: Left parties = Greens, Progressives, Labour, Maori Party; Right parties = National, Act

Bills are classified according to the majority vote received.

Bills included in this table received a conscience vote for either the first, second and/or third readings.

As informative as this survey of conscience voting is about the use of conscience voting, even more revealing are the issues that weren't treated as conscience votes. Various parties have chosen to treat several votes over trading on public holidays as conscience issues and parties treated the Hazardous Substances Bill, the bill that lifted the experimentation ban on genetically modified organisms, as a party vote. This bill was contentious and contained a strong ethical element that meant it technically fulfilled the criteria to be treated as a conscience vote. Another controversial bill introduced by the

government but not treated as a conscience vote was the 2004 Supreme Court Bill that, while not morally charged, made a major alteration to the country's constitutional arrangements, attracted significant opposition and lacked, in the opinion of many, an appropriate period for debate and consultation. While the fact that these bills weren't given a conscience vote may suggest that a hidden agenda existed, it is more likely that there were political motivations for ensuring that these government bills became law and were not opened to the political risks associated with free votes.

While all of the above bills were government bills, members bills have also been the subject of anomalous voting behaviour. The 2005 Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill sought to repeal that section of the Crimes Act that allowed parents to defend a charge of assault on a child because they were 'justified in using force by way of correction towards the child, if the force used is reasonable in the circumstances.' This bill invoked issues of state interference in parental control and contained, on the face of it, the requisite level of moral and ethical content to be treated as a conscience vote. Nevertheless, all parties treated it as a party matter although National, NZ First and United Future did allow split party votes at various stages of the bill. Before the first reading vote, the New Zealand Herald reported that 'Act MP Muriel Newman said she was expecting parties to give their MPs a "conscience vote" on the bill. But Labour Cabinet minister Ruth Dyson said Labour would vote as a block to send the bill to a [select] committee, and no other party indicated that it would allow a free vote.'⁴⁴ At a loss for explaining a similar inconsistency in Britain, Cowley concluded that 'free votes on conscience issues are the norm, they are not the rule.'⁴⁵

Conclusion

Conclusions from this survey of conscience voting over the last 130 years include the following:

- 1) In the late 19th and early 20th centuries, conscience voting established itself as a pragmatic response to tensions created by party politics and representative government, specifically the maintenance of party unity. During the 20th century however, a number of conventions and expectations built up that enabled, constrained and guided its use, and this continues into the 21st century. Though still an extra-constitutional parliamentary provision conscience voting has become an integral part of modern parliamentary procedure.

⁴⁴ *New Zealand Herald*, 'Smacking bill wins over MPs', 30 June 2005

⁴⁵ Cowley, "Unbridled Passions?." p. 75

- 2) While the basis of conscience voting is political, its operation is heavily influenced by the norms, debates, and standards prevalent within society. The subjects treated as conscience votes have diversified since World War Two, reflecting the evolution of society and the changing role of the state. Increasing societal complexity and diversity has presented new challenges and debates. There is every likelihood that the subjects and practice of conscience voting will change further in the future as both society and government continue to evolve.
- 3) The role of the state is an ever-present debate that lies just below the surface of many contentious issues, and treating these issues as conscience votes appears to be one way for parties to avoid the charges of 'social engineering', big government, or over-regulation. Nevertheless, voting patterns demonstrate a strong relationship between members who believe government intervention should take the form of legislation and those who do not.
- 4) The topics of conscience votes are not unimportant and it is ironic that, on these of all issues, parties should ostensibly give their MPs little or no advice as to how to vote. New Zealand parties are not generally shy about confronting contentious issues such as genetic modification and the abolition of appeals to the Privy Council, yet matters with such import as euthanasia, gambling, abortion, and the regulation of smoking are regularly submitted to the will of individual members rather than the collective wisdom of parties. Legislation with a moral/ethical component not treated as a conscience vote may be purely anomalous, or may belie political motivations for introducing social legislation.
- 5) Conscience voting can be considered a politically useful mechanism for dealing with socially contentious issues. The unpredictability of the outcome provides an incentive, if not compulsion, for parliamentarians to consider more carefully their own views, those of their constituents and the implications of their vote. It also has the added advantage of creating a healthy interest in parliament for interest groups, political scientists, the media and voters. The entrenchment of parties in the parliamentary system however, and the voting patterns of MPs during conscience votes means that it is hard to avoid the conclusion that, at least in part, conscience voting is about parties being unable, or unwilling, to involve themselves in potentially electorally damaging issues.

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