

A Shifting Balance: Parliament, the executive and the evolution of politics in New Zealand*

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Abstract

The reforms to the New Zealand Parliament of the 1980s and 1990s shifted the balance between executive and legislature away from the former. Through much of the twentieth century the executive had dominated. This article looks at an earlier period when the balance between the executive and legislature was strikingly different. It describes the shift towards greater executive dominance in three respects important to the functioning of Parliament — parliamentary expenditure, the impact of political parties and electoral politics, and increased government control over business in the House of Representatives.

Introduction

In a modern society in which government assumes a central place it is easy to take it for granted that Parliament provides the jousting ground for ‘continuous election campaigns’ that allow governments to demonstrate their prowess and Oppositions to put forward an alternative and to examine and criticise current policy. The recent adoption of mixed-member proportional representation (MMP) as New Zealand’s electoral system has broadened this combative atmosphere between contending groups so that a range of parties touts their wares, but it has not deflected the long-term trend towards the electorate and away from the arena of the chamber in which the country’s representatives are gathered. Instead, the continuous election campaign orientation has spread beyond the chamber and into select committees.

MMP has undermined the sense of assurance of governments that an unproblematic majority would emerge out of elections and that this would be sustained through a full parliamentary term. Mustering support in Parliament and finding the means to put through legislation have become much more salient. This makes us think more of that far-off time of the nineteenth-century when governments were made on the floor of a House not made up of cohesive political parties. We need to understand better the environment of Parliament at that time, together with the changes leading up to party government, to make a comparison. This is the subject of this paper.

We shall explore some of these issues by tracing the shifting balance between the executive and the legislature in the nineteenth and early twentieth centuries. This is a matter of interest given the parliamentary reforms of the 1980s and 1990s that in some ways shifted the balance back to Parliament by giving the Speaker the responsibility for expenditure on services to Parliament and by enhancing the role of select committees. The relationship was strikingly different in the nineteenth century. The consolidation of executive dominance into the twentieth century and the emergence of organised political parties decisively shifted the balance of power.

The relationship between the executive and the legislature was complicated for some time by the independent powers of the Governor and the upper House (the Legislative Council). The matter of fully responsible government had to be threshed out when Parliament first met in 1854. Would elected representatives in Parliament be able to form governments from majorities on the floor of the House? The matter had not been clarified in the Constitution Act 1852, although it transpired that Britain had assumed all along that the New Zealand Parliament would assume such powers. Meanwhile an indecisive and cautious acting Governor, political factionalism and an unseemly incident on the floor of the House of Representatives gave the country's Parliament a hesitant if colourful beginning. It was not until 1856, after Britain confirmed its intentions, that the first fully responsible government was formed.

From 1856 and until the mid 1860s the precise role of the Governor in relation to executive government was a vexed one. This was especially the case when the autocratic Sir George Grey became Governor again in 1861. The pressures of the wars of the early 1860s brought matters to a head and the Governor lost his reserved powers over military and Maori affairs.

While the Governor played the more dramatic role in the constitutional struggles of these early years, it was the Legislative Council that proved a more durable ingredient in the constitutional mix. Perhaps surprisingly to those who view it as a 'nominee', conservative and moribund institution of little use, it had a substantial role during the nineteenth century.

The Council was at times vigorous in blocking legislation emanating from the lower House. It also put forward a substantial number of bills itself independently. It was not averse to challenging the House's sovereignty over money bills and it had its own ideas concerning the employment of its staff. The Council tended to see itself as the constitutional custodian of Parliament, as the protector of Maori interests, and as the promoter of services to Parliament such as Bellamy's and the library. Such a role came naturally to an institution more detached from the political fray than the House of Representatives, and to experienced parliamentarians who had migrated from the House. Such politicians perhaps showed greater appreciation for the general place of Parliament and for the succour and refreshment — both for the body and soul — that it could provide. From the 1890s, however, the Legislative Council was rendered impotent. It was eventually abolished after decades of inactivity in 1951.

We now turn to look at three central aspects of the relationship between the executive and the legislature — control over money, the influence of political parties, and control over business of the House.

Taking Charge of Parliamentary Expenditure

In a practical sense the matter of expenditure on Parliament was at the heart of the issue of the relative powers of the executive and the legislature. Spending money on Parliament buildings, parliamentary staff and other miscellaneous needs of the institution was authorised by approval of the legislative estimates in the House of Representatives. The question of who should submit the estimates and who should be responsible for the expenditure was not prescribed when the New Zealand Parliament first met in 1854. Nor was the process of appointing parliamentary staff. These controversial matters with constitutional implications were not to be resolved until Premier Richard John Seddon abruptly intervened in favour of the executive at the end of the nineteenth century.

The matter of appointment powers was immediately at issue in 1854 as the new Parliament required staff for essential positions. When it came to appoint a Clerk of the House of Representatives and a Serjeant-at-Arms it was eventually agreed that appointing parliamentary staff was the Governor's prerogative as it was the monarch's in the House of Commons.¹ But the matter did not rest there.

When responsible government was instituted in 1856 the relationship between the executive and the House of Representatives (with its Speaker as its representative) took centre stage. The Governor continued to be involved in a range of staff appointments in an ad hoc fashion until the early 1860s but in practice the Speaker dealt with most matters concerning appointments and salaries.²

In 1857 the ambiguous situation was highlighted as the strengthening executive now sought to intervene. The Speaker, Charles Clifford, protested at the interference of the government. Officers of the House 'should be solely responsible to the Speaker, & I believe this to be the opinion of the House, several times expressed'.³ The underlying issue was exposed in 1862 when Premier William Fox refused to let a prospective staff member recommended by Speaker David Monro leave a government department. Fox argued strongly that such appointments were the government's responsibility; the Speaker's actions were irregular and unconstitutional.⁴

Fox argued that all staff appointments were to be made by the government, citing British and Australian precedents. The Speaker suggested that the decision should rest with the House. He then stated with a flourish — 'I consider it my duty, as [the House's] Chief Officer, to assert its independence of the Executive, and in doing this I am only carrying out a view of the matter which was strongly insisted on by my predecessor.'⁵

Enquiries to Australia suggested that the issue was not resolved consistently there either but the general position was that officers were appointed by the government on the recommendation of the Speaker. The issue was discussed in the House and it was agreed likewise that clerks and other officers would be appointed by the government on the recommendation of the Speaker.⁶

This became the formula governing subsequent appointments. It provided a compromise practical solution even if remaining ambiguous.⁷ While it effectively gave day-to-day practical power to the Speaker in making appointments, as Fox pointedly stated it should be understood that if there were strong reasons against the recommendation then the government could act otherwise. Ultimate responsibility still lay with the executive. Nonetheless the formula would be taken as handing over power to the Speaker, as later Speaker Maurice O'Rorke would point out.⁸

As Parliament grew as an institution the struggle shifted to the legislative estimates, a fertile source of conflict. Speakers wanted to have charge of drawing up and shepherding the estimates through the House but the government had to find the money.

Premiers Edward Stafford and William Fox established a *de facto* pattern in the 1860s, in spite of denials to the contrary, that the government should submit the legislative estimates.⁹ In 1863 the House, guided by Speaker David Monro, followed House of Commons precedent in agreeing that it was not necessary to go through the Governor when an item on the estimates was changed. A minister, being a member of the House, could recommend such changes 'on behalf of the Crown'. This implicitly consolidated power in the executive rather than the Speaker.

Matters came to a head in 1868.¹⁰ Stafford disingenuously stated that he had never interfered with legislative appointments and never would do so, because it was wrong. Appointments should be in the hands of the Speaker.

The Speaker begged to differ on Stafford's rendition of arrangements, pointing out that the Speaker did not usually prepare the estimates, but was pleased if not surprised to hear his opinion. The Speaker argued that he should appoint staff and control the legislative estimates, citing British precedent.¹¹ He likened the role to ministers of departments bringing their departmental estimates into the House. Stafford denied the relevance of Britain on the basis that in the colonies there was no distinction between executive and legislative departments concerning expenditure.

In 1869 the matter was forced by the issue of the employment of a clerk in Parliament who continued to work as a journalist.¹² This was deemed politically improper and threatened the disestablishment of the position at a time of retrenchment. The Speaker recommended continued funding but Premier Fox insisted on the position's deletion from the estimates.

In the early 1870s the new Speaker Francis Dillon Bell picked up the gauntlet on the Speaker's role.¹³ He argued for powers of appointment for a newly created clerical position and firmly stated that he would personally bring the legislative estimates into the House — this was more appropriate and practical. Just installed Premier Stafford and displaced Premier Fox together disingenuously disclaimed any practical executive responsibility while still asserting a responsibility in principle. The issue had been more one of no-one assuming the necessary responsibility rather than executive interference they claimed, but they reasserted the ultimate responsibility of the executive nonetheless. Responsibility for presenting the estimates in the House was handed over to the Speaker.¹⁴ The pattern became one of the Speaker sending in estimates to the government, which would accept them without challenge.

But as the economy deteriorated in the latter half of the 1870s, members in the House of Representatives began to attack the salaries paid to parliamentary staff. This became entangled in the issue of control over expenditure. In 1875 when the Opposition attacked proposed salary increases Treasurer Harry Atkinson disclaimed any responsibility and they were not approved. The same futile exercise occurred the following year.¹⁵ In 1877, in relation to responsibility for expenditure on Parliament Buildings, Premier Atkinson forced a division on the matter when he took exception to the Speaker's argument that executive involvement was unconstitutional. Some concession to the executive government holding the purse strings was made by an amendment that financial liabilities required government approval.¹⁶ And in 1878 attempts were made to cut the salary of the Speaker himself and abolish some parliamentary staff positions.¹⁷

New Speaker Maurice O'Rorke, elected in 1879, was to become New Zealand's most eminent Speaker as a result of his firm control and his grasp of the standing orders. He was a strong advocate for a strengthened role for the Speaker. He doggedly tried to keep the retrenchers at bay as the depression deepened into the 1880s.¹⁸ Now it was the House itself rather than the executive that was intent on imposing cuts on parliamentary staff. Members disputed the right of the government to make the decisions and a band of government supporters demanded reductions to parliamentary expenditure, including the abandonment of *Hansard* and abolition of members' pay. The Speaker was in the invidious position of defending legislative expenditure each year while the House vigorously swung the retrenchment axe.¹⁹

In 1880 Premier John Hall desperately but unsuccessfully tried to beat off members who were baying for blood. Legislative Council staff salaries were cut across the board — salaries were a weapon in the struggle between the two Houses.²⁰ Staff for the House of Representatives came next. The Speaker had to relent. He accepted that £200 should be lopped off his salary of £800. But when the Serjeant-at-Arms had his salary substantially reduced the Serjeant-at-Arms resigned.²¹

Speaker O'Rorke, however, managed to retain control over the estimates. In following years he restored the salary of the Serjeant-at-Arms and defended other

positions.²² Retrenchment enthusiasts complained that when members tried to economise they had to ask the House to vote against the Speaker himself, and this made it difficult if not impossible.²³

In 1882 Premier Atkinson tried a different tack over the issue. While disclaiming any control over salaries, in the context of substantial extensions to the buildings he managed to gain administrative control over the buildings by making it a condition of giving funding.²⁴ The Speakers of the two Houses lost their overall control and were relegated to the day-to-day control of the buildings during the session only.

In 1886 the House set up a special Legislative Expenditure committee to ram through cuts in expenditure.²⁵ O'Rorke refused to serve on the committee, saying it was there to judge him, and he was infuriated when it omitted to call either him or the Speaker of the Legislative Council to give evidence.²⁶ The committee recommended that the government should be directly responsible for all expenditure on Parliament but the disintegrating Stout-Vogel government (1884-87) would not or could not take the matter further.²⁷

The parsimonious Atkinson replaced the more expansive Stout-Vogel government in 1887. Retrenchment advocates became ever more vocal. Premier Atkinson decided that the government would take responsibility for the estimates and brought a resolution into the House to deal with the issue, declaring that there was no doubt that this was the constitutional position and that it was improper for the Speaker to introduce the estimates.²⁸ He also moved to take greater charge over parliamentary staff, causing considerable concern for the Clerk of the House and his Clerk-Assistant. Speaker O'Rorke said there were dangers in having parliamentary staff made subject to the government of the day.

The squabble was aired on the floor of the House. The Speaker refuted an interpretation based on a letter obtained from parliamentary authority Erskine May in England, and pointed out that Erskine May's work relied upon Todd's publication which actually gave control to the Speaker. He insisted that the Speaker continue to submit the estimates. In putting it to the vote the House asserted its right to make the final decision and countermanded the Premier's wish to regain control, but went even further than the government had intended in the cuts imposed on salaries and it abolished a clerical position.²⁹ The Speaker was now forced to defend his estimates just as ministers did by sitting at the Table for the debate.³⁰

Premier Atkinson, piqued by his rejection, said he believed that the House did not know what it had done, and absolved the government from any further involvement in legislative expenditure. While this was a perverse victory for a rampant House it stored up trouble for the Speaker. There were those present such as Liberal Richard John Seddon who could see how the debate had been opened up to advantage. If the House could be persuaded to grant powers to the government, the Speaker could be sidelined. There the matter rested for a time, with Atkinson afflicted by ill health and his government paralysed by the triumphant retrenchers.

When the Liberals attained power in 1891 suddenly the balance of power shifted. Seddon as Minister of Public Works had power over spending on improvements to the Parliament buildings and grounds. He pressed Premier John Ballance to take charge of the legislative estimates, plainly speaking of the need to control expenditure in the interests of taxpayers.³¹

Ballance left it in the hands of the House — a very different House from that of a few years earlier. Eminent Speaker O'Rorke had been replaced by a weak and dithering Liberal Party Speaker, W.J. Steward, and more definite political party lines had begun to form. Speaker Steward offered virtually no defence against Seddon's move — he even admitted that he did not want to present the estimates in the House. Conservative Sir John Hall and Liberal intellectual William Pember Reeves — aware of the constitutional implications — vainly tried to resist Seddon.

In a close but crucial vote the House made a symbolic reduction of £1 in the legislative estimates, signalling that the government should take charge. Party government had arrived and with it executive control over legislative expenditure. Seddon's desire for power over-rode any constitutional niceties. He airily dismissed them. 'I have taken the commonsense view of it, and I care very little for these old traditions or musty precedents which are raked up occasionally, and as it were rammed down our throats'.³²

Seddon became Premier on the sudden death of Ballance in 1893. He now argued that control over the estimates also meant control over the appointment of parliamentary staff.³³ Speaker Steward protested more vigorously than before and refused to co-operate with the move. In desperation Steward sought support from Australian State practice which did indeed confirm that, constitutionally, it was the Speaker in all States who had control over both appointments and legislative expenditure. Seddon ignored any arguments and took charge.³⁴

Sir John Hall challenged Seddon's actions as a matter of privilege and constitutional propriety, but the Privileges Committee, stacked by Seddon, endorsed the decision based on the landmark vote of 1891.³⁵ When the Privileges Committee reported back to the House, Seddon refused to take the matter in Committee, thereby restricting debate and not allowing the Speaker to participate. He and Minister of Lands Jock McKenzie poured scorn on Hall's and Sir Robert Stout's constitutional qualms. McKenzie went so far as to say that Erskine May's authoritative work on parliamentary procedure should be burnt on a bonfire on the parliamentary tennis court!³⁶

Opposition leader William Rolleston, an acute advocate of constitutional matters, bitterly called the move an abuse of powers and 'an absolute carelessness of the privileges and position of Parliament' as recognised in other British colonies.³⁷ The Legislative Council, fully aware of the implications, refused to be a party to the changed practice and its Speaker continued to be responsible for the employment of its own officers and other staff.

This substantial victory for executive government over the Speaker in the 1890s represented a crucial symbolic break with the nineteenth-century balance of executive and legislature. Executive government and party would assert a much stronger role in the future. Underlining the shift, the legislative estimates which had traditionally opened the estimates debate now became submerged in a free-ranging debate on government policy.³⁸ And in 1912 the de facto situation created by Seddon was formalised by the creation of a Legislative Department under a responsible minister in cabinet. Most commonly this minister was the Prime Minister himself.

Taking Power by Party

If the nineteenth century was a time of constitutional struggle amid factional politics, the twentieth was one of the working out of the implications of party government once the constitutional balance had shifted in favour of the executive.

The outlines of the emergence of party politics are relatively well-known but the impact of political parties on Parliament itself has not been explored. Around the turn of the century, foreshadowed by something of a false dawn in the late 1870s, party politics appeared in the guise of the Liberal Party. Before long New Zealand's more conservative politicians responded with their own organisation into the Reform Party. This was followed by the Labour Party during the First World War. With Labour being elected to power in 1935 the two-party system became established. This characterised New Zealand's politics until the electoral system of MMP was introduced in 1996.

Historians and others have largely been interested in electoral politics and party organisation outside of Parliament. What is less appreciated is that party brought with it fundamental changes to Parliament. These changes are now discussed. They include the method by which political power is assumed following elections, the appointment of and the role of the Speaker, aspects of parliamentary procedure, and the priority accorded to government business.

In the nineteenth century the electoral mandate was indirect in that elected representatives largely acted as 'trustees' for their constituencies. Candidates were declared publicly by means of 'requisitions' from their supporters. This would be followed by canvassing of voters and public meetings. Nomination would take place on the hustings on an appointed day, at which candidates would give speeches to the assembled crowd, there would be a show of hands by electors. A formal poll would follow a few days later as usually demanded by the losing candidates. Candidates did not typically make pledges on their actions when elected even if policy differences were vigorously debated, although it was expected that they would pursue the interests of their electorates when government money was involved. In matters of the funding and provision of desired local public works a strong 'delegate' role was almost invariably adopted.

Public opinion was in this way kept a safe distance from the chamber. It was the opinions and affiliations of the assembled members that defined the public good, and gave rise to governments and their policies and bills. Governments were formed directly from the flux of alliances and factions on the floor of the chamber. The government as expressing a majority of those in the House of Representatives had a discretionary power which was not to be bound by the views of public opinion.

The party system forged a much closer link between election platforms, governments and legislative activity.³⁹ A greater role was conceded to public opinion. Now it was the role of the government to lead public opinion, having consulted, listened and reflected in general terms the wishes of the electorate in its policies. With well organised political parties that put up detailed election platforms in consultation with their extra-parliamentary party membership, legislative activity began to bear a closer relationship to election platforms. The function of elections shifted from choosing between the virtues of individual candidates to the merits of rival party manifestos and choosing governments. Governments were chosen from the parties standing in elections.

The manner in which Parliament reflected this altered form of electoral mandate changed relatively slowly — and was particularly tardy when it came to governments changing. As late as 1928 a new government was formed on the basis of members' votes in the House rather than directly as a result of an election.

The tradition that the confidence of the House had to be tested had been established in the 1850s as part of the process of establishing responsible government. It was evident in the resignation of the Fitzgerald ministry in 1853, the defeat of the Forsaith ministry in 1855 in its first division, and the resignation of Fox's ministry in 1856 following the Speaker's casting vote against him. It was perpetuated thenceforth through the customary practice of members being summoned to Parliament after elections to see how a government could be assembled. It was also expressed in a number of governments resigning during sessions over difficulties in gaining or holding the support of the House.

This approach still held after the election of late 1890. It was not particularly evident that Premier Atkinson should yield up power to Ballance's Liberals. Atkinson wanted to see how the factions coalesced.⁴⁰ Parliament was called very early in 1891 to resolve the matter.

The election of a Speaker became the determining vote of confidence on who would become the government. A new Speaker had to be found with O'Rorke having lost his seat in the election.⁴¹ Electing a Speaker, although always politically charged, had not become so closely identified with government formation and party politics until this time. It proved to be a bitter contest.

Alfred Saunders — an independent member who had been in the House on and off since 1861 — proposed patrician statesman and conservative William Rolleston for

the position. He argued that the matter should not be made a 'party question'. Many expected Rolleston — who had been in the House since 1868 apart from a narrow defeat in the election in 1887 for the previous Parliament — to be accepted quickly. However, Seddon rose and proposed the relatively undistinguished Major Steward from the Liberal Party, as having been in Parliament longer (continuously from 1871) and as having acted as Chairman of Committees (the Speaker's deputy) and on various committees including the Standing Orders Committee. The matter went to a vote, won by the Liberals 36:29 on party lines. The division confirmed the Liberal majority in the House and John Ballance formed a government. The Liberals were to hold power for the next two decades.

This election represented a break with tradition and heralded the twentieth-century Speakership, closely allied with party and with government. But Speaker Steward — whom we have seen was unable to resist Seddon — also proved incapable of controlling the House. In 1893 the elderly ex-Speaker O'Rorke (who had traditional Liberal affiliations) was re-elected to the House. When Parliament came together again in 1894, in a cross-party move, Seddon and Saunders jointly proposed O'Rorke. Steward in an unprecedented move to that time insisted on having his name put forward. O'Rorke was easily re-elected with general support in the House. O'Rorke was sufficiently eminent that it would have been very damaging politically to have insisted on retaining Stewart.

Political party considerations became increasingly central to the Speakership. The Speaker's assistant position of Chairman of Committees became much more of a party matter under the Liberals and in 1893 the strongly loyal Arthur Guinness was elected along party lines to the position. In 1902 O'Rorke lost his seat again and Guinness was elected Speaker unopposed.

Guinness remained Speaker during the remainder of the period of Liberal government. When William Massey's Reform Party defeated the Liberals in the House in 1912 and Reform took the reins of power the existing Parliament still had some time to go and Guinness remained in the Chair. Reform member F.W. Lang became Chairman of Committees under Massey, and was soon thrust into the more onerous duties of Speaker with the death of Guinness in 1913.

Lang continued as Speaker until 1922 when he lost his seat. This provided Prime Minister Massey with a considerable dilemma. Reform had been unable to consolidate its grip on power as a result of the three-party system that emerged during the First World War. Reform was counterbalanced by a continued Liberal presence and the rising Labour Party. The three parties jockeyed for position. Reform and the Liberals joined in coalition for the duration of the First World War and Massey gained his only clear majority at the polls in 1919 after the Liberals left the government. Following the inconclusive election of 1922 Parliament had to be summoned early to test the House. Massey continued to cling to power as the Liberals and Labour proved unable to forge an alternative.

Massey could not afford to elect a Speaker from his own ranks because of his non-existent majority so he cast around the ranks of the Opposition for a suitable candidate. Attention began to focus upon Charles Statham, dissident Reformer and latterly independent. Statham had the additional qualification of being a barrister. Massey put forward Statham to which Labour's leader Harry Holland responded with his own candidate to test Liberal Party allegiances.⁴² The Liberals voted en bloc with Reform and Statham was installed, the first New Zealand-born person in the position. Statham would preside until he retired in 1935.

In the early 1930s, with the fracturing of the alliance between the United Party (ex-Liberals led by Sir Joseph Ward) and the Labour Party and the coalition between the United and Reform parties, the two-party system had crystallised out. The election of 1935 put the seal on these developments. Labour as government and the new National Party as Opposition faced each other in the debating chamber when Parliament came together in 1936.

The election of Labour's Frank Barnard to the Speakership cemented the party anchorage of the position, with Barnard nominated by Labour's whips.⁴³ Labour's Speakers would notably participate in debates (and sometimes vote) while the House was in Committee. Such voting was deemed appropriate given the small majorities in 1947-9 and 1958-60. National for its own part accepted party nomination of Speakers and Speakers have continued to come from government party ranks to the present day (apart from the election of Labour Opposition member Peter Tapsell in 1993 when National had a mere one seat majority).

The interventions of Seddon in the 1890s had fundamentally shifted the balance between the executive and the legislature in the funding and administration of legislative services and in the manner of election of Speakers. But it still took some time for this shift to be expressed in the formation of governments. The calling of Parliament was still integral to the creation of a majority of members in the House of Representatives from which a government might be formed.

The shift of government from the Liberals to Reform in 1912 followed this pattern. Following the vote on the Speakership in 1891 the Liberal government had remained unchallenged in power for a substantial period. After the death of Seddon in 1906 its grip on the electorate began to falter under Sir Joseph Ward, and the outcome of the 1911 election was unclear. The Liberals tried to delay a meeting of Parliament until June 1912 but the Governor-General Lord Islington protested.⁴⁴ Lord Islington rightly pointed out that such delay was unconstitutional when the parties were so finely balanced and that he might be forced to take action since the government did not appear to 'possess the confidence of the country'. Parliament came together in February 1912. Ward maintained his extremely precarious hold by surviving a vote of confidence, but only on the casting vote of the Speaker. Parliament adjourned to meet again in the middle of 1912. On this occasion William Massey and his Reform Party was able to take office by defeating the Liberals in a vote of no confidence in the House in July.

The complexities of three-party politics over the next two decades and the Reform government's ability to hang onto power prevented any proper test of a direct electoral mandate for a new government. With Massey's death in 1925 Reform's new leader Gordon Coates convincingly won the election later that year.

In 1928 confusion reigned after the election as the elderly Ward resurrected the old Liberal cause in the more conservative clothes of the United Party. He had made a stunning comeback, accompanied by a mistaken promise of massive public works and many thousands of jobs. Prime Minister Coates called Parliament together before the end of the year knowing full well that a resurgent Labour Party would support United. The inevitable no-confidence motion soon came, won 50:28 as United and Labour combined forces.⁴⁵

Ward's United Party in alliance with the Labour Party took power — this was the last time that a new government was formed on the floor of the House. From then on election results, and if necessary negotiations between parties after elections, produced changes of government.

These various changes came together in the mid 1930s. Labour's emphatic victory in the election of late 1935 ushered in a silent revolution that had its beginnings in 1891. The electorate mandate related to political parties determined governments. Labour did not need to summon Parliament to assume the reins of power. Ministers were appointed and they got to work over the summer on radically new policies. Parliament did not meet until late March 1936. Without consulting the House, Prime Minister Michael Joseph Savage had radio broadcasting equipment installed in Parliament in preparation for the session so that the Labour government's message could be communicated effectively. There was no test of confidence in the government during the Address-in-Reply. The first division came only when Labour introduced its Reserve Bank of New Zealand Amendment bill establishing state control over the bank.⁴⁶

The previously pivotal place of motions of no confidence immediately disappeared and their introduction for any purpose at all fell into disuse as the two-party system consolidated in the late 1930s. Then the war intervened. Motions of no confidence that were introduced subsequently were a means of introducing an important debate rather than part of a fundamental challenge that might topple a government.⁴⁷

Taking Control of Business in the House

During the parliamentary session the government has to find time to state its policies, bring down a budget and pass its legislation. Time also has to be found for debate on measures, scrutiny of the government and consideration of other members' bills. Relevant factors include the length of parliamentary sessions, governments' disposition for legislative activity and their cohesion, and the extent and complexity of legislation flowing from the state's place in the economy and society.

The New Zealand state has become more interventionist over time and has developed a greater array of functions, responsibilities and activities. Parliamentary sessions have lengthened so that today Parliament sits the entire year with periodic recesses; in the early days it sat intensively for a few months during winter.

By the late nineteenth century the state's interventionist powers were becoming highly developed and were widely acknowledged, with some describing the phenomenon as 'state socialism'. The number of bills introduced rose, parliamentary sessions stretched out in length and the hours of sittings lengthened. On the other hand, party disciplines were still novel and private members expected considerable room for manoeuvre.

The Liberals were of course renowned for a limited number of landmark pieces of legislation but what is less appreciated is that they were little more effective than previous governments in getting the bulk of their legislation through. Rates of success of government bills were still relatively low and private members' bills remained important and many got into the statute book. Under Premier Seddon less than half of his government's bills were passed.

Changing the rules of parliamentary procedure was an obvious and important means by which governments were able to get their business through more effectively but this was not easy.⁴⁸ Until the late nineteenth century there were no specific provisions to do this other than reserving the sitting days of Tuesday and Thursday for government business. There was no method of speeding up proceedings nor of bringing lengthy, tiresome and obstructive debate to an end.

Seddon pushed hard for government business and his heavy legislative programme to be given priority. Speaker Steward shortly after assuming the Chair in 1891 conveniently ruled that private members' business could be superseded by government business without suspending the standing orders.⁴⁹ Seddon then would take over the sitting day (Wednesday) traditionally reserved for private members.

Seddon engaged in other tactics.⁵⁰ He had the House sit on Mondays and allowed bills to pass all their final stages after midnight after they had gone through Committee to accelerate progress in the last few weeks of the session. He began sittings in the morning and suspended various other standing orders (in particular the order that prevented new business after midnight).

By the turn of the twentieth century a precedent had been established that the government within the last two weeks of the session could have bills read a second time, committed, and passed on the same day. This was the precursor to moving urgency in the House so that government business might have priority. In 1903, the revised standing orders explicitly allowed the government to move urgency 'in the public interest' without notice or debate.⁵¹ This allowed bills and other matters to be dealt with during that sitting by extended hours if necessary. It led to numerous late night sittings towards the end of sessions. Taking urgency became a common practice into the twentieth century.

Later governments built upon the foundation provided by Seddon to expedite government business — extension of hours to midnight, taking over of private members' time, taking non-sitting days, and using urgency. But the most important means of speeding up government business took many years to achieve in the New Zealand Parliament. This involved putting limits on the blatant obstruction of business by 'stonewalling', that is endless debate by Opposition members simply to prevent progress.

Stonewalling was soon adopted in the New Zealand Parliament and became increasingly prevalent in the 1860s. The generous speaking opportunities allowed for backbenchers compared to other parliaments encouraged the practice. All members were able to speak on a matter before the House and there was no restriction on the length of speeches. All it took to bring business to a standstill was a small group of members to decided to mount concerted obstruction by talking endlessly. Stonewalling was seen as a fundamental right to freedom of speech. To impose restrictions would allow 'a tyrannical majority to coerce the minority'.⁵²

There were no effective restrictions on debate that might control such abuses of procedure. By the latter part of the 1870s the practice had become part of the folklore of Parliament and in the record-breaking examples one member spoke for more than 24 hours at a stretch (with dinner breaks) in 1876 and a sitting lasted for a week and a half without an adjournment in 1889.

The New Zealand Parliament refused to impose controls long after others including the House of Commons had done so. Members continued to accept that stonewalls were an integral if frustrating and exhausting part of parliamentary business. It was often observed that the government controlled the business of the House but the Opposition determined how long it took to get the business through.

But when the Liberals came to power in the 1890s the ground began to shift. Far less tolerance was shown for concerted obstruction. The government was increasingly prepared to use what was termed the 'iron-hand' to ride roughshod over members. Party dictates began to take precedence over members' unrestrained freedom.

Premier Seddon in 1893 took the startling step of moving that the standing orders expire next session to bring matters to a head as sittings stretched out endlessly.⁵³ Knowing that he had a new and inexperienced House in front of him, Seddon firmly seized the nettle the following year. The Speech from the Throne opening the session starkly stated that revision of the standing orders would take precedence over everything else — 'under the honoured name of "parliamentary privilege" has been masked in practice the discomfort, if not slavery, of a majority of your members. It is notorious that the license of prolix speech indulged in by a few' has prevented proper debate.⁵⁴

Seddon tabled a printed, comprehensively revised set of standing orders for the House that dramatically limited the ability of the House to obstruct business.⁵⁵ He managed to get most of them through but only by persistence and compromise, even with the Liberal party at its peak and a supine Opposition. However, even Seddon was unable to get the House to agree to 'closure', a provision that gave the majority in the House the means to bring debate on a measure to an end, by a motion that was itself not to be debated.

In a pathbreaking move the new standing orders regulated members' speaking time for the first time — an hour for important debates and half an hour in general. When in Committee, members were allowed ten minutes on each point and could speak no more than four times on each question (each clause of a bill). The Speaker or Chairman of Committees could stop members speaking for 'continued irrelevance or tedious repetition'. Some of the old stonewalling tricks had been stymied by the new standing orders of 1894.

The most important change — the introduction of closure itself — was in the end rebuffed by the House. A range of opportunities for stonewalling remained, particularly with the House in Committee.⁵⁶ And, as opponents of time limits had always pointed out, setting a limit had the unfortunate effect of encouraging people to speak up to that limit, and to speak faster.

There matters rested for some time. Prime Minister Massey seemed particularly loath to reopen the issue and likely would not have succeeded in controlling debate further, given the fragility of governments in those years. But in the latter half of the 1920s pressure mounted as the Labour Party demonstrated its capacity for organised obstruction.⁵⁷

In 1929 the Standing Orders Committee proposed reduced speech times and these were adopted reluctantly by the House.⁵⁸ Members could speak for one hour only when the financial statement was being debated. New limits ranging from 5 to 15 minutes were introduced for most other speaking opportunities.⁵⁹

The new provisions helped push government business through in conditions of deepening depression, but the use of urgency for government business proved insufficient in 1931 in the face of one of the most strenuous struggles ever mounted in the House.⁶⁰ The government's Finance Bill of that year proposed 10 percent cuts to public service salaries and would allow the Arbitration Court to amend industrial awards. The Labour Party stonewalled in the House all week until Prime Minister George Forbes, to Labour's astonishment, notified members that he would bring in closure.⁶¹

Forbes said bluntly that the changes of 1929 had been an experiment dependent upon the goodwill of members — and they had failed. Closure, which had been adopted in the Parliaments of other dominions, was now required here as well. After several days of ferocious resistance by Labour the new standing order was adopted.

The House moved back to the Finance bill and by invoking closure on four occasions, together with more than 70 divisions over nearly 100 hours sitting for nine days, the government had the bill passed.

Parliament was never going to be the same. A measure adopted in emergency conditions soon became a routine element of parliamentary procedure. Labour was elected to power in 1935 and it used urgency regularly and established closure as a key tool in pushing legislation through. This was against the protest of the Opposition which argued that it should have been a depression measure only.

Conclusion

Such procedural changes in the House meant that the executive could take much firmer control over the passage of its legislation by the mid twentieth century. Fewer government bills were introduced but they were virtually guaranteed success — 90 percent or more of bills passed.⁶² The modern-day pattern of a compact government legislative programme emerged. Daily sitting hours declined and sitting until after midnight almost disappeared.

Traditionally, private members' bills had followed local bills on the first six Thursdays of the session but such bills were increasingly squeezed out as governments moved that their business had precedence straight after the conclusion of the financial debate. Of the time theoretically available to the private members, more than half was taken by government for its business or for special debates in the national interest. The numbers of private members' bills reduced to insignificant proportions.

The role of private members was also limited by the waning influence of select committees in the early twentieth century. There was now little time for their deliberations, the mornings available having been whittled away to Wednesdays. Members left for the weekend on Fridays and Thursdays were taken up by party caucuses. Tuesday had always been unpopular with returning members. One commentator suggested that select committees were 'competent enough to be useful to the House, but not independent enough to be dangerous to the government'.⁶³

Members who were independent of party disappeared during the 1940s. The death of Harry Atmore in 1946 signalled the end of the independent member. As party discipline hardened and Parliament was subjugated to the party system, voting became far more predictable and occurred along party lines on virtually all measures.⁶⁴

New Zealand's two-party system rapidly entrenched itself. Party cohesion and discipline was extremely strong, allowing cabinet dominance. The country had in the short space of four decades or so shifted markedly from a loose factional form to a highly organised form of party politics in which the executive held sway over Parliament.

These changes were registered not only in the wider world of politics but also within Parliament in the way that it worked. The executive took charge of parliamentary expenditure, Parliament lost its role in the formation of governments to the electoral process, and governments exerted stronger control over business in the House. The balance between executive and legislature had decisively shifted in favour of the former. ▲

Endnotes

- * Based on a paper given to the 'Parliament — Primary Functions of Government' conference, Parliament House, October 2004. Generally, see John E. Martin, *The House: New Zealand's House of Representatives, 1854–2004*, Palmerston North: Dunmore Press, 2004.
- ** Parliamentary Historian, New Zealand
- ¹ Archives NZ, (Internal Affairs) IA1, 54/1749, 31 May, and 54/2658, 14 August 1854, incl. 54/1917, 1932, 1940, 1947, 2525. IA1, 84/12, incl. 54/2127, Speaker's letter of 7 July 1854. (Legislative Department) LE1, 1854/304, Speaker's letterbook, 1854–6, Charles Clifford letter of 7 July 1854. *Southern Cross*, 8, 15 September 1854, estimates of expenditure of House of Representatives. *NZ Parliamentary Debates (NZPD)*, 1854, pp. 7, 96, 224.
- ² LE1, 1854/304, Speaker's letterbook 1854–6. However, the Speaker directly appointed the Second Clerk-Assistant. LE1, 1862/142a.
- ³ Alexander Turnbull Library, Edward Stafford Papers, MS Papers 28, folder 31, Clifford to Stafford, 4 June 1857.
- ⁴ *Appendices to the Journal of the House of Representatives (AJHR)*, 1862, D–19.
- ⁵ *AJHR*, 1862, D–19, p. 5.
- ⁶ *NZPD*, 1862, p. 660. *Journal of the House of Representatives (JHR)*, 1862, pp. 115–16. IA1, 62/971, 1234–5, 1382, 1670–3, 1844. IA1, 84/12/1, incl. 63/2956, 64/1947.
- ⁷ See Speaker Maurice O'Rorke's subsequent assertion of this power, *NZPD*, vol 62, 1888, p. 143. Examples of appointments: IA1, 84/12, Henry Otterson as Second Clerk-Assistant in 1875 (75/3042), George Friend as Clerk and other clerks in 1889 (89/3203, 89/3432); IA1, 14/18/2, Serjeant-at-Arms in 1880, 1889 and 1901.
- ⁸ The exceptional case to the formula was that of the Clerk-Assistant, who was to be appointed on the recommendation of the Chairman of Committees, because he acted as the Clerk of Committees. *NZPD*, vol 62, 1888, p. 143.
- ⁹ *NZPD*, 1861, p. 234; 1863, pp. 968–9; 1865, pp. 727–8; 1866, pp. 1034–5; vol 2, 1867, pp. 1270–1.
- ¹⁰ *NZPD*, vol 4, 1868, pp. 236–7.
- ¹¹ *AJHR*, 1868, D–2, pp. 3–4, in the context of appointing a Private Bills Clerk.
- ¹² *NZPD*, vol 6, 1869, pp. 440–1.
- ¹³ *NZPD*, vol 11, 1871, pp. 136–40; vol 13, 1872, pp. 302–4. There was also discussion in 1871 on making the Maori interpreter an employee of the House rather than the government. Maori members had complained, arguing that independence from the government was required.
- ¹⁴ *NZPD*, vol 3, 1876, p. 180.
- ¹⁵ *NZPD*, vol 18, 1875, pp. 624–31; vol 23, 1876, pp. 180–8.
- ¹⁶ *NZPD*, vol 26, 1877, pp. 252, 453–5; vol 30, 1878, pp. 1094–9. *Journal of the Legislative Council (JLC)*, 1877, no 8. *JHR*, 1877, p. 198.

- ¹⁷ *NZPD*, vol 28, 1878, pp. 185–91, 312–17.
- ¹⁸ *NZPD*, vol 36, 1880, p. 448ff., 481ff.
- ¹⁹ *NZPD*, vol 35, 1880, p. 683; vol 36, 1880, pp. 448–71, 481–6.
- ²⁰ Attacks on Legislative Council staff salaries persisted through the 1880s as its Speaker continued to submit increases and they were taken off in the House.
- ²¹ *NZPD*, vol 36, 1880, p. 461; vol 46, 1883, p. 571; vol 62, 1888, p. 143. IA1, 14/18/2, O’Rorke letter to Premier John Hall, 5 August 1880. *NZ Times*, 4 August 1880.
- ²² *NZPD*, vol 40, 1881, pp. 573–9; vol 46, 1883, p. 570ff.; vol 50, 1884, pp. 373–6.
- ²³ *NZPD*, vol 56, 1886, p. 743.
- ²⁴ *NZPD*, vol 43, 1882, pp. 941–2, 957–8, 962–5.
- ²⁵ *AJHR*, 1886, I–10. *JHR*, 1886, pp. 97–9, 263–4.
- ²⁶ *NZPD*, vol 62, 1888, p. 144.
- ²⁷ *NZPD*, vol 56, 1886, pp. 739–41. *AJHR*, 1887, session I, B–6, p. v. *JHR*, 1887, session I, p. xxi.
- ²⁸ *NZPD*, vol 62, 1888, p. 139. See also *NZPD*, vol 59, 1887, pp. 854–7; vol 61, 1888, p. 462; vol 62, 1888, pp. 54, 139–87; vol 69, 1890, pp. 447–8. *NZ Herald*, 7 August 1888.
- ²⁹ *NZPD*, vol 62, 1888, pp. 181, 501–12.
- ³⁰ *NZPD*, vol 74, 1891, p. 747.
- ³¹ *NZPD*, vol 71, 1891, p. 45; vol 74, 1891, pp. 722–35.
- ³² *NZPD*, vol 80, 1893, p. 298.
- ³³ *NZPD*, vol 78, 1892, p. 450; vol 80, 1893, pp. 293–302; vol 142, 1907, pp. 246–7. *NZ Gazette*, 1894, p. 668. *JHR*, 1894, p. xxiii. *AJHR*, 1894, I–1, p. 7. Archives NZ, A6, 3, Audit Department register, 1891–4. IA1, 94/2726.
- ³⁴ See *AJHR*, 1893, A–3, I–8, I–8A; *JLC*, 1893, nos 1 and 7. *NZPD*, vol 82, 1893, pp. 256–8, 984.
- ³⁵ *NZPD*, vol 82, 1893, pp. 642–82.
- ³⁶ *NZPD*, vol 82, 1893, p. 657.
- ³⁷ *AJHR*, 1893, I–8, p. 5. *NZPD*, vol 82, 1893, pp. 269–70, 309–11, 603–4.
- ³⁸ *NZPD*, vol 90, 1895, p. 302. H. Otterson, *Notes in Connection with Procedure in Committee of the Whole*, 1897 (held in Parliamentary Library).
- ³⁹ K.J. Scott, *The New Zealand Constitution*, Oxford: Clarendon Press, 1962, pp. 48–51.
- ⁴⁰ W.D. Stewart, *William Rolleston — A New Zealand Statesman*, Christchurch: Whitcombe and Tombs, 1940, p. 177, Atkinson to Rolleston, 8 December 1890.
- ⁴¹ *NZPD*, vol 70, 1891, pp. 2–6. Stewart, *Rolleston*, pp. 178–9.
- ⁴² *NZPD*, vol 199, 1923, pp. 2–12.
- ⁴³ T.D.H. Hall, Manuscript on parliamentary procedure, Victoria University Library (Beaglehole Room), chapter 3. R.J. Tizard (MP) interview, 21 March 2003.
- ⁴⁴ David Hamer, *The New Zealand Liberals*, Auckland: Auckland University Press, 1988, chapter 10. T.E.Y. Seddon, *The Seddons — An Autobiography*, Auckland: Collins, 1968, pp. 204–10. Michael Bassett, *Three Party Politics in New Zealand, 1911–1931*, Auckland: Historical Publications, 1982, p. 6.
- ⁴⁵ *NZPD*, vol 220, 1928, p. 166.
- ⁴⁶ *NZPD*, vol 244, 1936, p. 224.
- ⁴⁷ *NZPD*, vol 283, 1948, pp. 2447, 2465–6.
- ⁴⁸ For the increased dominance of government business in the latter half of the twentieth century, see Geoffrey Palmer, *Unbridled Power: An Interpretation of New Zealand’s Constitution and Government* (second edition), Auckland: Oxford University Press, 1987, p. 112, table 7.3.
- ⁴⁹ *NZPD*, vol 73, 1891, pp. 13–14.

- ⁵⁰ *NZPD*, vol 118, 1901, p. 4; vol 130, 1904, pp. 716–19; vol 188, 1920, p. 8. In 1900 Seddon attempted to alter the standing orders to eliminate the general precedence for private members' business on Wednesdays and replace it with a qualified priority for such business for the first six weeks only, LE1, 1900/12.
- ⁵¹ *NZPD*, vol 119, 1901, p. 602. 1903 *Standing Orders*. As was later observed by the Speaker, giving reasons in the public interest was 'more honoured in the breach than in the observance', *NZPD*, vol 237, 1933, p. 735.
- ⁵² *NZPD*, vol 24, 1877, p. 131.
- ⁵³ *NZPD*, vol 82, 1893, pp. 1025–8.
- ⁵⁴ *NZPD*, vol 83, 1894, p. 9.
- ⁵⁵ LE1, 1894/15. *JHR*, 1894, pp. 48–53, 57–8, 67–71, 75–82, 94. *NZPD*, vol 83, 1894, pp. 623–30.
- ⁵⁶ R.M. Burdon, *King Dick — A Biography of Richard John Seddon*, Christchurch: Whitcombe and Tombs, 1955, p. 164. *NZPD*, vol 91, 1895, pp. 163–4.
- ⁵⁷ *NZPD*, vol 205, 1924, p.1197; vol 215, 1927, p. 682; vol 216, 1927, p. 303; vol 218, 1928, pp. 425–57 *passim*.
- ⁵⁸ *NZPD*, vol 220, 1929, pp. 163–4. *AJHR*, 1929, I–18.
- ⁵⁹ *NZPD*, vol 227, 1931, p. 544.
- ⁶⁰ *NZPD*, vol 227, 1931, pp. 433–720 *passim*. H.E. Holland, *Lest We Forget! The Salary and Wage Reductions and the Record of the Division Lists*, Wellington: Clarté Bookshop, 1931.
- ⁶¹ *NZPD*, vol 227, 1931, pp. 668, 671, 682, 684, 695.
- ⁶² J. Halligan, 'Continuity and change in the New Zealand Parliament', PhD thesis, Victoria University of Wellington, 1980, p. 58, table 2.5.
- ⁶³ P. Campbell, 'Politicians, public servants, and the people in New Zealand, I and II', *Political Studies*, vols 3 and 4, 1955–6, p. 210.
- ⁶⁴ For discussions of these changes see R.N. Kelson, 'Voting in the New Zealand House of Representatives, 1947–54', *Political Science*, vol 7, no 2, 1955. T. May, 'Parliamentary discipline', in L. Cleveland and A.D. Robinson, (eds), *Readings in New Zealand Government*, Wellington: Reed, 1972. M.G. Hobby, 'The crack of the whip? Party cohesiveness and institutional consensus: the New Zealand House of Representatives, 1936–1985', MA thesis, University of Canterbury, 1987. Halligan, 'Continuity and change', pp. 69–83.