



Canada

United Kingdom

Australia

New Zealand

# How the 'other dominions' have defined their unwritten constitutional conventions

Presentation to "Your Canada, Your Constitution"  
by  
Bruce M. Hicks, Ph.D.



## Shared

## Monarch

- **Westminster model**
  - responsible parliamentary government
- constitutional conventions
  - Conventions should, absent legislative or constitutional alteration, operationalize the same (and most conventions emerged prior to 1867)
  - Constitutional scholars in each of these countries draw on precedents from the other to identify the proper functioning of the conventions
- *Statute of Westminster, 1931*
  1. Canada's current constitutional conventions surrounding the reserve powers had been established by 1931
  2. Reserve Powers/Personal Prerogatives of Queen (delegated by Royal 'Letters Patent' to the governor general)



## Differences

1. Approach to reserve powers (process)
2. Types of governments formed (outcome)



# Australia

## Swan by-election, 1918

Party		Candidate	Votes	%	
	Labor	Edwin Corboy	6,540	<b>34.4</b>	
	Farmers and Settlers	Basil Murray	5,975	<b>31.4</b>	
	Nationalist	William Hedges	5,635	<b>29.6</b>	
	Independent	William Watson	884	4.6	
<b>Turnout</b>			19,213	64.3%	



# Australia

- Preferential Voting (Alternative Vote/Instant Run Off Voting)
  - Nationalist Government
  - Bill Hughes , PM
  - 52/75 seats
- 1919 election saw the Nationalist only winning 37 seats (Labour 25 and Country 11)
- 1922 election, lost its majority, and it formed a coalition with the Country Party.
  - As part of the coalition deal, Hughes was removed as party leader and Stanley Bruce became the first coalition Prime Minister.
- Semi-permanent Coalition



- Leader of party with most seats=PM
- Leader of the junior party is Deputy PM and chooses their party's cabinet members

Geoff Gallop & Labor - A BETTER GOVERNMENT

How to Vote for  
**Ross Bromell**



**Legislative Assembly VASSE**

**WHITE BALLOT PAPER**

**3** PARTRIDGE John  
DEMOCRATS

**6** EMBRY Patricia  
PAULINE HANSON'S ONE NATION

**4** MORGAN Beryle  
NATIONAL PARTY

**1** BROMELL Ross  
AUSTRALIAN LABOR PARTY

**2** FRANSSSEN Bill  
GREENS (WA)

**5** MASTERS Bernie  
LIBERAL

**YOU MUST NUMBER EVERY SQUARE**

**Legislative Council (UPPER HOUSE) SOUTH WEST REGION**

**PINK BALLOT PAPER**  
VOTE ONLY IN ONE WAY

This way **OR** This way

**NUMBER THIS SQUARE ONLY**

**1** AUSTRALIAN LABOR PARTY

LIBERAL

GREENS WA

DEMOCRATS

COWDELL John

FARRER Aileen

BISHOP LINDAHL

RICHARDS Ursula

CREEVEY Patricia

MEVIMAN Garry

HOISE Barry

STRETCH Bill

McSWEENEY Aileen

SALCOCK

HALLET J

NICHOLSON

CARBONE

SHARP C

SCHUR B

TREMBATH Judy

DENHAM AIE

WYLIE Alison

**DO NOT FILL IN THIS SIDE**

*If you make a mistake on your ballot paper return it and ask for another.*

**ALP AUSTRALIAN LABOR PARTY**  
Authorised by G.Gallop, 62 Beedfort Street, Perth. Printed by Advance Press, 186 Railway Parade, Bossanova WA 6054



# Australia

**SUSIE DOUGLAS** 

**SURFERS PARADISE**

**START HERE** →

*IMPORTANT – Please number every square*

9	FRASER, Fred
4	CROSS, Perry
8	COGLAN, Arthur
6	HORKINGS, Tony
7	McGILL, Linda
11	ALCORN, Richard
2	LANGBROEK, John-Paul [Liberal]
3	BELL, Lex
1	DOUGLAS, Susie [National]
12	MILLAR, Lesley
10	McJANNETT, Rob
5	HEPBURN, Dean

*Please recycle this paper.*

*How to Vote*

**NATIONAL**

Authorised by Vicki Thomas, 52 Davenport Street, Southport 4215



# Australia

- **Governments need to have the confidence of the House to govern** (pursuant to our shared constitutional conventions)
- Without a majority, they negotiate for support of independents/smaller parties
  - When this support shifts, another political party can form the government (or an election is called, depending on how long since the last election)
  - Maximum length between elections is 3 years
  - Equally, when the standings shift and a government gets a majority, support agreements are sometimes continued even though no longer necessary
- 2010 election:
  - Labour 74 versus Liberal-National Coalition 74
  - 1 Green and 6 Independents
  - 17 days of negotiation (both public and private) resulting in Labour PM Gillard forming government
    - Supported by green and 3 independents
      - Likelihood of Liberal-National Coalition opportunistically calling election in less than 3 years was a factor
    - Independent MP (Oakeshott) offered and declined a Cabinet seat
    - Written agreements include parliamentary reform
      - Commitment to fixed elections every 3 years (next to be held in Sept. or Oct. 2013, to be agreed upon by the parties, though no steps have yet been taken to make this change)



# Australia

Government formation has been largely left to party leaders but...

## Reserve Powers

- The Governor General's office describes the reserve powers as those "which the Governor-General may, in certain circumstances, exercise without – or contrary to – ministerial advice". In Australia these "are generally agreed to at least include:
  - "1. The power to appoint a Prime Minister if an election has resulted in a 'hung parliament';
  - "2. The power to dismiss a Prime Minister where he or she has lost the confidence of the Parliament;
  - "3. The power to dismiss a Prime Minister or Minister when he or she is acting unlawfully; and
  - 4. The power to refuse to dissolve the House of Representatives despite a request from the Prime Minister."
- The Governor General also claims "a supervisory role to see that the processes of the Federal Executive Council are conducted lawfully and regularly" and "protect the Constitution and to facilitate the work of the Commonwealth Parliament and Government".
- For example, the governor general has to satisfy herself that a law has passed both chambers of Parliament and received the certification of the Attorney General before giving Royal assent.

Office of the Governor General, "Governor General's Role" published at <http://www.gg.gov.au/content.php/category/id/1/title/role>.



# Australia

## ■ Government Dismissal

### – Dismissal of PMs

- 1932, New South Wales Governor Sir Philip Game dismissed Premier Jack Lang
- 1975, GG Sir John Kerr dismissed Labour PM Gough Whitlam
  - Senate informed PM that it would only grant supply following a general election; PM refused and supply was denied
  - PM recommended dissolution but was told that his commission had been withdrawn
  - Opposition leader, Malcolm Fraser, was appointed PM on condition he delivered supply and he recommend dissolving both chambers

### – Refusal to dismiss Cabinet

- 1987, Queensland Premier Joh Bjelke-Petersen asked Governor Sir Walter Campbell to dismiss the ministry and reappoint him as PM with a new Cabinet → Campbell convinced the premier to try to obtain the 5 specific resignations he wanted and when he couldn't, GG agreed to dismiss 3 of them



# New Zealand



# New Zealand

## ■ Electoral System

– 1996 switched to Mixed Member Proportionality (MMP)

- Parties get additional seats to bring their representation into line with the percentage of votes they received national-wide
- 5% a minimum

## ■ 1996-1999 tumultuous/short-lived governments

## ■ Choice of Governors General

- 1996-2001, Sir Michael Hardie-Boys, former Court of Appeal Judge
- 2001-2006, Dame Silvia Cartwright, former High Court Judge
- Sir Anand Satyanaud, former District Court Judge and Ombudsman

OFFICIAL MARK [Consecutive Number]

**YOU HAVE 2 VOTES**

**PARTY VOTE** Explanation: This vote decides the share of seats which each of the parties listed below will have in Parliament. Vote by putting a tick in the circle immediately after the party you choose.

**ELECTORATE VOTE** Explanation: This vote decides the candidate who will be elected Member of Parliament for the [insert name] ELECTORATE. Vote by putting a tick in the circle immediately before the candidate you choose.

Vote for only one party      Vote for only one candidate

LABOUR	<input type="radio"/>	ALLEN, Fred LABOUR	<input type="radio"/>
ACT NEW ZEALAND	<input type="radio"/>	BARKER, Mary ACT NEW ZEALAND	<input type="radio"/>
NATIONAL	<input type="radio"/>	DENIS, Alistair NATIONAL	<input type="radio"/>
ALLIANCE	<input type="radio"/>	ELLIS, John ALLIANCE	<input type="radio"/>
THE GREENS, THE GREEN PARTY OF AOTEAROA/NEW ZEALAND	<input type="radio"/>	GREIG, Tony THE GREENS, THE GREEN PARTY OF AOTEAROA/NEW ZEALAND	<input type="radio"/>
NZ FIRST	<input type="radio"/>	ILLOTT, Anne NZ FIRST	<input type="radio"/>
ROC	<input type="radio"/>	MARTIN, Hamish ROC	<input type="radio"/>
CHRISTIAN DEMOCRATS	<input type="radio"/>	NEMETH, Elizabeth CHRISTIAN DEMOCRATS	<input type="radio"/>
UNITED NZ	<input type="radio"/>	OSBERT, Sebastian UNITED NZ	<input type="radio"/>
CHRISTIAN HERITAGE PARTY OF NEW ZEALAND	<input type="radio"/>	PEOPLES, Wendy CHRISTIAN HERITAGE PARTY OF NEW ZEALAND	<input type="radio"/>
McGILLICUDDY SERIOUS	<input type="radio"/>	QUENTIN, Oliver McGILLICUDDY SERIOUS	<input type="radio"/>
TE TAWHARAU	<input type="radio"/>	RAWIRI, Whare TE TAWHARAU	<input type="radio"/>
REPUBLICAN PARTY	<input type="radio"/>	ROSS, Arthur REPUBLICAN PARTY	<input type="radio"/>
DEMOCRATS	<input type="radio"/>	RUSCOE, Noel DEMOCRATS	<input type="radio"/>
	<input type="radio"/>	SMITH, Eugene INDEPENDENT	<input type="radio"/>
ADVANCE NZ	<input type="radio"/>	TULIP, Belinda ADVANCE NZ	<input type="radio"/>
CONSERVATIVE	<input type="radio"/>		
SOCIAL DEMOCRATS	<input type="radio"/>		
SUPERANNUITANTS PARTY	<input type="radio"/>		

Final Directions

1. If you spoil this ballot paper, return it to the officer who issued it and apply for a new ballot paper.
2. After voting, fold this ballot paper so that its contents cannot be seen and place it in the ballot box.
3. You must not take this ballot paper out of the polling booth.



# New Zealand

- No political party could expect to get a majority
- Multiple political parties in legislature (currently 8)
- Coalition governments or
- Semi-coalition 'minority' governments
  - Agreements for confidence and supply
  - minority party leaders sometimes given portfolios but don't serve in Cabinet
- Culture change: Political, academic and media elites now avoid terminology like 'hung parliament' or announcing on election night who should form a 'minority government'



# New Zealand

## Cabinet Manual

### ■ Process

- Has been a manual since 1979 (a restricted document with limited distribution)
- With MMP, the manual was revised and made publically available in 1996
- Lessons from 1996-1999 (and speeches from the GG during this period) informed the 2001 edition
- Compiled by the Cabinet office
- It is adopted by each administration
- Officials and academics submit suggestions to the cabinet office for improvements
- When sufficient number, office proposes a new edition to the PM

### ■ Content

- It emphasizes that the politicians should be left to their own devices to bargain and horse-trade, without outside interference.
- Civil servants can assist the negotiation, but they should limit their advice to areas of policy where there may be potential conflict or potential convergence.
- It stresses that the party with the biggest number of seats **does not** get to go first in attempting to form a government.
- It also lays down very clear procedures for the operation of a 'caretaker government', during the election and during the weeks that it will take to strike a deal.

### ■ Descriptive, rather than prescriptive

- Akin to a dictionary
- Practices and procedures are developed in Cabinet, stem from statute or convention and are reported in the manual, not created by the manual
- Manual will lag behind

### ■ Manual's credibility comes from its content



# United Kingdom



# United Kingdom

## 2010, Election Prep. for a 'Hung Parliament'

- Gordon Campbell instructs Cabinet Secretary to draft sections for the *Cabinet Office Manual* codifying the conventions surrounding government formation in a hung parliament and the 'caretaker convention'
- Content
  - Goal of the section/manual is not to constrain the monarch (or legislature) but to govern the operations of the public service during an election and the period needed by a hung parliament to decide upon a government
    - Commits the Cabinet office to support the political parties in parliament to explore alternative government configurations
    - Limits the authority of ministers to make controversial decision (and sets out process to obtain opposition concurrence for urgent decision)
- Process
  - A select committee is struck in parliament (entitled the "Justice Select Committee on the constitutional processes following a general election") and the sections are submitted to them
    - Cabinet secretary as well as constitutional scholars appear before it before recommending changes
  - All political parties committed to ensuring that the Queen be left out of the partisan fray
  - Parliament is to fulfill the role as the 'electoral college' for the country



# United Kingdom

- Labour and Conservatives explore coalition with Liberal-Democrats
  - PM has cabinet secretary provide departmental expertise to all political parties
- Current coalition government
  - Conservative PM Cameron ( $\frac{3}{4}$  cabinet)
  - Liberal-Democrat Deputy PM Clegg ( $\frac{1}{4}$  cabinet)
    - Agreement to last until 2015
      1. Deficit Reduction
      2. Spending Review - NHS, Schools and a Fairer Society
      3. Tax Measures
      4. Banking Reform
      5. Immigration
      6. Political Reform
      7. Pensions and Welfare
      8. Education
      9. Relationship with the EU
      10. Civil liberties
      11. Environment



# United Kingdom

- *Fixed-term Parliaments Act, 2011*
  - First Thursday in May (beginning May 7, 2015)
    - Government can delay election for up to 2 months, with cause (and both chambers of Parliament must agree to this).
  - Only 2 ways to trigger an early election:
    - Motion: “That this House has no confidence in Her Majesty’s Government”
      - Results in a 14 day ‘government formation’ period during which a new government (or presumably the same if support is re-established) must get the House of Commons to adopt the motion: “That this House has confidence in Her Majesty’s Government”
    - Motion: “That there shall be an early parliamentary general election” (requires 2/3 majority)
  - The Queen can no longer dissolve Parliament
- Cabinet Manual
  - Draft manual submitted to Parliament (and the public) by coalition in December 2010
  - Hearings by the Political and Constitutional Reform Committee, the House of Lords Constitution Committee and the Public Administration Select Committee
  - Reports responded to by the Cabinet
  - Manual adopted by Cabinet (with amendments)
  - Both PROCESS and CONTENT

# In Sum

# Causation for Process Difference

- Electoral system
  - expectation of future majority alters bargaining strategy in government formation and cooperation
- Cultural, Temporal and Historic Differences
  - Hicks, B. M. 2010. "British and Canadian Experience with the Royal Prerogative", *Canadian Parliamentary Review* 33 (2): 18-24.
- Different relationship between the politicians(people) and the:
  - Queen
  - Governors
    - Hicks, B. M. 2009. "The reserve power as a safeguard for democracy, and other lies my forefathers told me", *Inroads* 25: 60-69.

# Differences in outcome

		Majority		
		<b>Single Party Majority Rule</b> (e.g. Canada 2010-Present; UK 1979-2010)	<b>Coalition Majority Rule</b> (e.g. UK 2010-present; Scotland 1999-2007; Wales 2007-2010)	
Single Party				Multi- Party
		<b>Single Party Minority Rule</b> (e.g. Canada 1921-1925; 1957-1968; 1972-1973; New Zealand 2008-present; Australia 2010-present; Ontario 1985-1987)	<b>Coalition Minority Rule</b> (e.g. New Zealand 1999-2008)	
Negotiated				
			Minority	
		<b>Unsupported Rule</b> Liberals 1925-1926; Liberals 2004-2006; Conservatives 2006-2010		
Ad Hoc				