An Assessment of the Impact of Party Law on Intra-Party Democracy in Common Law
Nations

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This paper presents a comparative analysis of the legal framework that influences the organisation of political parties in common law countries. The nations included are Australia, Canada, New Zealand and the United Kingdom. The study will assess the legal foundations for the existence and operation of political parties in these democracies, including constitutions, statutory instruments and judicial attitudes as to the justiciability of political disputes. Addressing the question 'is democracy working?', the paper will examine legislative and judicial attitudes as to the place of parties in society, the impact of legal regimes on the democratic organisation of political parties and the law's role in facilitating greater membership participation in competitive electoral democracies where intra-party democracy is often considered a hindrance to electoral success.

Introduction

This paper presents a comparative analysis of the legal framework that influences the organisation of political parties in four common law nations: Australia, Canada, New Zealand and the United Kingdom. Despite common agreement amongst political scientists as to the historical predominance of political parties as the agents of representation in modern democracies, the extent to which they both shape and are constrained by the legal system in which they operate is rarely analysed. Nonetheless, the potential for the law to influence the activities of political actors is significant, and one which has practical implications for the functioning of democracy in any particular nation. As Müller (1993) notes, legal regulations are the most direct form of state intervention in party politics, requiring parties to fulfil conditions that relate to content and form of their organisations (for example, acceptance of intra-party democracy, a prescribed party statute and minimal level of activity).

1 Exceptions, nonetheless, include Janda (2005), Johns (1999) and Epperson (1986).
Whether legal regulation is desirable or not is beyond the scope of this paper, which is limited to assessing the actual impact of the law on internal party organisation and in particular, its impact on intra-party democracy. However, examining the changing status of political parties in the law and the increasing amount of legislative regulation to which they are subject paints an excellent picture of the historical place of political parties in society and the changing relationship between parties and the state over time. Laws, after all, are designed to reflect the prevailing social attitudes and norms of their day. Therefore, the purpose of this paper is twofold: first, to examine in comparative perspective the extent to which the law seeks to regulate party organisations, how this has changed over time and its impact upon intra-party democracy. Second, to place these laws in their social context – to uncover the normative assumptions about the place of parties in contemporary societies that are inherent in these laws and that have influenced their development.

The focus of this paper is the body of party law, which Janda (2005: 3) defines as the state-based regulations that determine the legal status of parties, and which often define party membership, dictate how parties must be organised, their financial arrangements and how they campaign. Party law derives from a variety of sources, including legislation, common law decisions and constitutions. The volume and comprehensiveness of party law varies within each legal system and although there are specific laws that target parties as organisations in many democracies, in the established common law nations surveyed in this paper such a discrete body of law does not exist. Rather, to ascertain the extent of the law’s impact on the internal organisation of political parties it is necessary to look at numerous other areas of law: electoral, campaign and finance law, employment law, the law of contract, administrative law and associations law.
The paper begins with an analysis of the absence of political parties from the constitutions of common law nations, which was heavily influenced by liberal political thought and the constitutional design of the United Kingdom and United States. The law’s influence in four areas of party organisation is then examined: registration, candidate selection, intra-party disputes and party discipline within the parliamentary party. The four nations chosen for analysis are established democracies that share a common legal history - Australia, New Zealand and Canada having drawn much of their common law tradition from the United Kingdom. However, over one hundred years of development has seen each country emerge with distinctive electoral systems, democratic designs and consequently divergent regulatory regimes with numerous novel elements (for example, party hopping laws in New Zealand), which are given particular attention in this paper.

Over the last century, parties have become subject to greater legal regulation, particularly through legislation. Nonetheless, these statutory instruments say very little as to how parties should be organised, and how their internal affairs and decision-making processes ought to be conducted. With the exception of New Zealand, nothing in statute law requires parties to be organised democratically. However, a significant change in the position of parties at common law over the last century has meant that intra-party decisions are now open to legal challenge. In adjudicating such disputes, common law judges have applied legal principles such as ‘natural justice’ and have interpreted party constitutions in a way that prioritises democratic decision-making processes, suggesting judicial support for intra-party democracy despite legislative indifference.

I. The Constitutional Recognition of Political Parties

A logical place to begin any examination of the legal status and regulation of political parties is with the national constitution, the basic function of which is to regulate how a political system should operate. Further, the drafting and evolution of a constitution viewed in the context of the broader
development of party law provides valuable insight into the history and changing role of political parties in modern democracies. Nonetheless, despite this potential, there has been little scholarly attention given to the recognition of political parties in national constitutions and the role of these documents as sources of party law (Janda 2005: 5).

In established common law democracies, this inattention can be explained by the historical ambivalence towards parties in national constitutions. Indeed, many have altogether ignored the existence of political parties. This omission is usually treated as somewhat of a curiosity, given the prominent role parties play in these representative democracies. As Barendt (1998: 149) notes,

One might, therefore, expect constitutions to lay down some framework rules for political parties, at least to prevent them from adopting totalitarian policies and to safeguard the rights of individual members. But constitutions rarely say much about parties, while some have totally ignored their existence. The United States Constitution has never taken any notice of them, an attitude which is shared by the uncodified arrangements in the United Kingdom.

Whilst the constitutions of the United Kingdom and United States may make no mention of political parties, this is not a universal phenomenon. A 1976 survey of national constitutions found that at least-two thirds mentioned political parties (Janda 2005: 6). A great deal of variance actually exists between constitutions with respect to the acknowledgement and regulation of political parties. In Germany, for example, the regulation of political parties by the Basic Law is comprehensive. Article 21 prescribes that political parties should

…participate in the formation of the political will of the people. They must be freely established. Their internal organisation must conform to democratic principles. They must publicly account for their assets and for the sources and the use of their funds.
A product of political history developed in response to the Nazi regime, the external enforcement of intra-party democracy is viewed as a fundamental guard against the centralisation of political power and a means to ensure popular control of government. The constitutions of Spain and Portugal also prescribe an internally democratic organisation for political parties. Article 6 of the Spanish Constitution states:

> Political parties express democratic pluralism, assist in the formulation and manifestation of the popular will, and are a basic instrument for political participation. The creation and the exercise of their activity are free within the observance of the Constitution and the laws. Their internal operation and structure must be democratic.

Similarly, Article 51(5) of the Portuguese Constitution dictates that political parties must be governed by the principles of transparency, democratic organisation and management and the participation of all of their members. Constitutional recognition is also a feature of many developing and transitional democracies, where the regulation of political parties is a key feature of democratisation and institution-building - for example, Nigeria, Liberia, Nepal and several newly established democracies in Europe (see van Biezen 2004).

Placed at the other end of the spectrum, the constitutional traditions of Australia, Canada and New Zealand were drawn from the design of government of the United Kingdom and were heavily influenced by the constitutional structure of the United States. As such, political parties do not figure prominently in these documents. There is no mention of political parties in Canada’s Constitution Acts 1867 to 1982 and New Zealand’s Constitution Act 1986. Political parties were similarly absent from the Commonwealth of Australia Constitution Act 1900, until a reference to parties in the context of casual Senate vacancies was inserted by referendum in 1977 (see case study below). Given that
constitutional non-recognition cannot be regarded as the norm among democracies, an analysis of their absence provides valuable insight into the traditional place of parties in the overall scheme of governance in these nations.

One explanation for this absence is that at the time of drafting, political parties had not yet developed as significant organisational entities. Mass parties with distinct extra-parliamentary organisations are a phenomenon of the twentieth century. Parties within English and colonial politics did not emerge until the late 1800s (Barendt 1998: 150; Loveday, Martin & Parker 1977: 6-15). Before this time, organisational groupings were formed to serve the interests of individual parliamentarians, but these ‘factions’ were transient, prone to destabilisation through lack of any party discipline and based on pragmatism rather than on principle or ideology.

However, whilst political parties as organisations may not have evolved far enough to elicit priority from the framers of the constitutions, parties did not entirely escape their attention. During the Constitutional Conventions of the 1890s that preceded the drafting of the Australian Constitution, the existence and inevitability of the formation of political parties was acknowledged by participants, although there was no sustained discourse during the debates. John Macrossan and Alfred Deakin raised the general query that political parties may in fact form the basis of representation in the Senate, and may ‘coalesce and throw in their lot with each other…irrespective of state boundaries altogether’. Macrossan predicted that ‘the influence of the party will remain much the same as it is

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2 See Cockburn (1901: 32); Parkes (1892: 401); Sir John Downer, Federation Debates, Sydney 1891, p. 572; Reid, Federation Debates, Melbourne (Third Session) 1898, p. 174; Higgins, Federation Debates, Melbourne (Third Session), Friday 11 March 1898.

3 Alfred Deakin, Federation Debates, Sydney (Second Session) 1897 at 335.
now, and instead of members of the Senate voting, as has been suggested, as States, they will vote as members of parties to which they will belong".\footnote{John Macrossan, \textit{Official Report of the National Australasian Convention Debates}, Sydney, Tuesday 17 March 1891, p. 434.}

The infancy of parties’ formation cannot satisfactorily explain their constitutional absence, particularly in those Constitutions that have more recently been revised such as Canada and New Zealand. Rather, social attitudes towards political parties and the influence of liberal constitutional theory provide a fuller picture of the historical place of parties in society and the theoretical view that continues to deter constitutional recognition to this day. In each Australian colony prior to federation, the ‘ruling ideal of independence’ was taken to mean that men should not attach themselves regularly to parties, leaders or causes but should instead exercise independent judgement on all matters which came before Parliament (Loveday et. al. 1977: 42). This sentiment was shared by other liberal democracies at the time. As van Biezen (2003: 174) notes, ‘the existence of political parties was essentially incompatible with the liberal democratic tradition rooted in the political philosophy of Locke and the radical democratic tradition inspired by Rousseau, both of which are difficult to marry with partisan institutions’.

Epperson (1986) documents the animosity towards political parties held by America’s founding fathers and leading politicians at the time of Confederation. Although political parties were present in American politics prior to the ratification of the US Constitution and the first government quickly divided into partisan groups that formed the basis of the nation’s first party system (Epperson 1986: 3), political discussion during the 18\textsuperscript{th} century was pervaded by a kind of anti-party cant (Hofstader 1969). Parties were criticised as unnecessarily divisive, the cause of needless social conflict – appealing and acting as the instruments of narrow and special interests. Alexander Hamilton and James Madison contemplated the role of parties in the \textit{Federalist Papers} in the 1780s, both regarding
them as a pestilence contaminating the body politic (Epperson 1986: 3). The consequence of similar liberal thinking meant that in Britain, Australia, Canada and New Zealand, parties have been regarded as private organisations, without official legal status as actors in the political process, governed by the law of contract and by the rules which apply to other unincorporated associations, such as religious bodies and trades unions (Barendt 1998: 150).

**Trends toward Recognition: Australia as a Case Study of Social Attitudes**

Only in the last few decades have political parties gradually been incorporated into the body of constitutional law of the United Kingdom, Australia and New Zealand. In the United Kingdom and New Zealand, which do not have a single constitutional document, constitutional principles are sourced from a combination of statutes, the common law and conventions. The comparative fluidity of this constitutional arrangement means that political parties have been recently recognised and progressively incorporated in the constitutional design of representative democracy, particularly through parliamentary conventions and legislative instruments such as the *Electoral Act* 1986 (NZ) and the *Registration of Political Parties Act* 1998 (UK) (see next section).

As previously noted, reference to political parties was incorporated into the Australian Constitution by referendum in 1977. The referendum, its context and the associated debates present an interesting case study as to the progression of political parties from private to public entities and their increasing importance and institutionalisation in the system of government.

The reality that parties played a crucial role in the political process and required some degree of constitutional status came to the fore in the events surrounding the sacking of the Whitlam

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5 For example, the New Zealand constitution comprises of the *Constitution Act* 1986, the *New Zealand Bill of Rights Act* 1990, the *Electoral Act* 1986, the *Treaty of Waitangi*, the *Standing Orders of the House of Representatives*, and various conventions.

government and the 1975 ‘constitutional crisis’. In part, the crisis arose following the actions of the New South Wales and Queensland State Parliaments in appointing senators to casual senate vacancies who were not from the party that originally held the seat. These appointments reduced the government’s already tenuous control in the Senate to a minority position (Whitlam 1977: 222). The Senate’s subsequent refusal to pass supply effectively restricted the Whitlam government from governing and produced the stalemate that brought about its downfall. In 1977, a constitutional amendment was presented to the electors of Australia, which was designed to prevent a similar crisis from reoccurring. Section 15 of the Constitution, pertaining to casual Senate vacancies, was amended to ‘ensure so far as is practicable that a casual vacancy in the Senate is filled by a person of the same political party as the Senator chosen by the people and for the balance of his term’. Heavily advocated by the Prime Minister Malcolm Fraser, the amendment received bi-partisan support at the federal level.

The referendum passed successfully both nationally and within all six States, carrying significant implications for the legal recognition of parties as legitimate and ‘official’ actors in the political process. An analysis of the ‘yes’ debate surrounding the amendment reveals that parties were regarded as an indispensable element of representative democracy, and their constitutional recognition was ‘fundamental to [the] rights [of] a voter that representation in the Senate should always reflect the wishes of the electorate’. Those opposed to the amendment acknowledged the importance of parties as political actors, but maintained that they should remain the subject of unwritten conventions, rather than ‘rigid constitutional requirements’.

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7 AEO Referendums to be held on Saturday May 21 1977 – Arguments for and Against published by the Australian Electoral Office (28 March 1977).
8 Nationally, 72.02% of electors supported the amendment whereas 26.2% voted against it. At the State level, the referendum passed with the greatest majority in New South Wales (82.64%) and the least support in Tasmania (52.8%). See Blackshield & Williams (2002: 1307).
9 AEO, n 7, p. 4.
codification of parties would transfer power to political parties at the expense of State Parliaments
and ‘complete the process of making the States House entirely a party political house’. 11

Perhaps the constitutional crisis of 1975 provided electors with sufficient inducement to vote in
favour of the amendment. Opinion polls taken before the referendum indicated little doubt that the
proposal would pass successfully. 12 Although there was a degree of apathy amongst the electors, 13
given the cases for and against the amendment were well-publicised it could be argued that electors
were sufficiently well informed to make a choice as to the desirability of including mention of parties
in the Constitution. In this regard, the success of the referendum indicated popular support for the
view that parties ought to be regarded as ‘official actors’ in the political process and set the stage for
their increased regulation by the state.

II. Party Funding and Registration

Despite their absence from national constitutions, the last few decades has seen a marked increase in
the legislative regulation of political parties, particularly through the introduction of public funding
and the associated requirements of registration. Canada and Australia introduced public subsidies to
underwrite election costs and limitations on expenditure relatively early: Canada in 1974 and
Australia in 1984. New Zealand and the United Kingdom do not provide for the public funding of
political parties’ election expenses, 14 although a system of party registration and financial regulation
was introduced in New Zealand in 1993 and the United Kingdom in 1998.

11 AEO, n 7, p. 14. This sentiment was shared by Jim Odgers, Clerk of the Senate - see The Australian, Saturday 7 May
13 See The Australian editorial, Tuesday 10 May 1977, p. 10.
14 Nonetheless, the state provides other important benefits that amount to significant subsidies such as free postage to
candidates, tax credits and broadcasting time.
There is a substantial body of literature on the consequences of public funding on the internal organisation and management of parties, and their relationship to the state. However, this paper adopts a narrower focus, analysing the specific legal requirements of party registration (a condition of access to financial and other benefits provided by the state) to assess their potential impact on party structures. Although there is a broad trend towards the increased regulation and disclosure of party finances, the internal structure of parties remains subject to little legislative control.

In Australia, parties registered for public funding must be established on the basis of a written constitution, have a minimum of 500 members or one Member of Parliament, and are required to submit an annual disclosure of party funding. The benefits of registration include the use of the party name on ballot papers, public funding provided the party’s endorsed candidates poll at least 4% of the primary vote, and a copy of the Electoral Roll. Although registered parties require a formal written constitution under the provisions of the Commonwealth Electoral Act 1918, the structure and content of the constitution are essentially regarded as internal matters for the party to determine. The Act requires only that the aims of the party (which must include the endorsement of candidates to contest federal elections) be enumerated, in addition to the terms and conditions of membership (for example, the procedures for accepting or terminating membership). Although recommended, the current regulatory regime does not require parties to formulate rules for the appointment of office bearers and constitutional amendments. Nor does the Act require the party to submit any details of its structure (AEC 2005: 10-11).

The situation is similar in the United Kingdom. Under the Political Parties, Elections and Referendums Act 2000 (UK) registration is not compulsory, but is open to any party that declares its

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intention of contesting one or more elections (see Bradley & Ewing 2003: 155-8). Electoral reform in the United Kingdom has been slow in coming – as Gay (2001: 245) notes, ‘electoral law traditionally characterised elections to the Commons as a series of contests between individual candidates, rather than a battle between national party organisations’. Although an attempt to legislate for the registration of political parties was first made in 1968, it was not until the Registration of Political Parties Act 1998 that parties became formalised entities in electoral law.\(^{17}\)

Under the current regime, only candidates representing a registered party may be nominated for election; other candidates must be nominated as independents or without description.\(^{18}\) Although a party must provide details of its financial structure and a copy of its constitution upon registration, again, there are no formal requirements as to what it should contain. The Electoral Commission (UK) (2006: 13) suggests that a party constitution contains provisions as to the structure of the party (branches, headquarters, affiliated organisations), how it is run (frequency of meetings, decision-making, appointment of officers) and its aims and objectives. However, again these are merely recommendations.

Registered parties in the United Kingdom are eligible for policy development grants from the Electoral Commission, with a total pool of £2 million each year to be divided among eligible registered parties.\(^{19}\) This subsidy could impact significantly on the policy development process within parties, and has the potential to downgrade the role of rank and file members as increased state funds allow parties to employ policy experts. Therefore, intra-party democracy may be

\(^{17}\) The Representation of the People Bill 1968-9 attempted to register political descriptions, but was opposed by the Conservatives as it did not fit with the party’s structure and would make registration of all the party’s constituent organisations impractical.

\(^{18}\) Political Parties, Elections and Referendums Act 2000 (UK) ss 22, 28. This provision was inserted to overcome the problem of candidates adopting similar names to the parties to confuse electors. For example, in one instance a candidate stood as a Literal Democrat (Sanders v Chichester (1994) SJ 225).

\(^{19}\) Political Parties, Elections and Referendums Act 2000 (UK) s 12. The parties must have parliamentary representation.
weakened by this measure if the role of party members in policy development is outsourced to professionals.

Political parties in Canada received official legislative recognition in 1970 with the *Canada Elections Act*. A political party is defined by the Act as ‘an organization one of whose fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election’.\(^{20}\) It is important to note, as in all the common law nations surveyed, there is no legislative regulation of the formation of political parties – only their voluntary registration. In Canada, there are no requirements for party organisation; a party need not draft a constitution to obtain registration. Nonetheless, a party must have at least 250 members to be registered,\(^{21}\) which implies that it must at least have a membership base, but it need not be integrated into decision-making in any way.

New Zealand is the only democracy of those surveyed that requires a party to formulate and provide a copy of the party membership rules upon registration that show what is required for current financial membership and detail candidate selection rules that provide for the democratic involvement of members in the process.\(^{22}\) The party rules and candidate selection procedures then become a public document available for inspection and displayed on the Elections New Zealand website, thus encouraging transparency in internal management. In addition, the *Electoral Act 1993* (NZ) also imposes a minimum membership threshold of 500. However, despite the broad requirement of democratic selection procedures, there is no further legislative guidance given as to how the party should be structured, or what ‘democratic involvement’ actually involves (see next section).

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\(^{20}\) *Canada Elections Act* 2000, s 2.

\(^{21}\) *Canada Elections Act* 2000, ss 366, 380.

\(^{22}\) *Electoral Act 1993* (NZ) s 71.
III. Candidate and Leadership Selection

In the United Kingdom and at the federal level in Canada and Australia, a party is free to determine how it selects its candidates without any external regulation or guidelines. Party pre-selection is considered an internal matter for the party, and can only be regulated by the law to the extent that party members wish to challenge the conduct of the pre-selection under the party’s own rules and constitution. There are no statutory requirements that require candidate selection to be conducted in a democratic manner.

In contrast, section 71 of the Electoral Act 1993 (NZ), introduced with the transition to proportional representation, requires that parties follow democratic procedures in candidate selection. The provision reflects the suggestion of the Royal Commission on the Electoral System that candidate selection take place either a vote by party members or delegates to a party convention in light of the German experience (see Wallace 1986: 239). However, the terms of the Act remain relatively open to interpretation from parties and leave wide scope for a variety of pre-selection procedures. Section 71 reads:

Every political party that is for the time being registered under this part of the Act shall ensure that provision is made for participation in the selection of candidates representing the party for election as members of Parliament by –

(a) current financial members of the party who are or would be entitled to vote for those candidates at any election; or

(b) delegates who have (whether directly or indirectly) in turn been elected or otherwise selected by current financial members of the party; or

Intra-party disputes are now justiciable – see next section.
However, as Miller (2005: 110) notes, ‘there has been no attempt to legally enforce that provision in the Electoral Act requiring parties to uphold democratic selection procedures’. The provision’s implications for intra-party democracy are debateable. On one hand, the flexibility of the legislation may be welcomed as providing an overall requirement of democratic organisation to which parties aspire, but are free to implement as they wish. On the other, the provision may be viewed as vague, without any real substance, and exceedingly difficult to enforce. Nevertheless, despite the introduction of the provision, New Zealand preselections are characterised by their diversity - from the relatively centralised procedure of the Labour Party and small, personality-driven parties, to the more inclusive processes of National and ACT, in which local electorate delegates and individual members have a greater influence (see Miller 2005: 114-5). This is consistent with Sundberg’s (1997) findings of a study of parties in Finland that a uniform legal regime does not necessarily generate uniform party practices in preselection and organisation.

**Preselection and Anti-Discrimination Legislation in the United Kingdom**

A further theoretical and practical challenge lawmakers face is the relationship between intra-party democracy and quotas designed to produce broader equality in representation. Under the provisions of the *Sex Discrimination (Election Candidates) Act 2004* (UK) parties in the United Kingdom receive limited exemption from anti-discrimination legislation and are able to adopt positive discriminatory measures to achieve gender parity in the election of candidates to parliaments in the United Kingdom. The legislation was enacted after an industrial tribunal found that the Labour Party’s policy of women shortlists for the 1997 general election constituted direct discrimination.
against men contrary to the *Sex Discrimination Act 1975* (UK). The provisions of the 2004 Act preserve the independence of parties, as they are permissive rather than restrictive (allowing parties to take certain measures to achieve gender parity, but stopping short of requiring them to do so). This is probably as far we can expect legislation with cross-party consensus to reach in this area, as the relationship between discrimination (whether positive or negative) and democracy is highly contentious. In abstract terms, discriminating based on race, age and gender could be considered ‘anti-democratic’, but may be normatively desirable to achieve a more democratic balance of representation in the long term (both within Parliaments and party organisations).

**Leadership Contests in Canada**

Although leadership selection is not regulated by law in any of the nations surveyed in this paper, it has caused the most concern in Canada, where party rules and requirements are used to restrict participation in these votes. In reporting the results of the Canadian Democratic Audit, Cross (2004: 92) writes:

> The most disconcerting aspect is that party rules are being used to dampen public participation in the leadership contest. Canadians would not tolerate obstacles such as poll taxes, ninety-day cut-off periods for voting eligibility, and efforts by candidates to freeze the composition of the electorate more than a year prior to the vote in general election contests. Nor would the Charter of Rights and Freedoms probably allow such barriers to democratic participation. However, because leadership contests are widely considered the private business of parties, no one has yet raised a Charter challenge to these practices and it is uncertain whether one would be successful.

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25 Political parties in Australia are also exempt from the *Sex Discrimination Act* 1984 (except party employees). Pre-selections do not fall under the ambit of employment legislation, as pre-selections are not seen in Australian law as necessary qualifications for the profession of politics – see *Scott v Gray* [1999] HREOC 15 (HREOC, 3 August 1999). Affirmative action programs are protected by Article 15(2) of the *Constitution Act* 1982 (Canada) if they have the objective of ameliorating the conditions of disadvantaged groups.
What is particularly interesting is that many of these internal practices would be regarded as desirable in order to preserve the integrity of any internal leadership ballots in Australia, the United Kingdom and New Zealand. Cross’ views constitute somewhat of a paradigm shift, as Canada is routinely compared with the United States, where open party primaries are the preferred method of leadership selection. This presents an example of a law reform agenda driven by a different set of normative principles to maximise participation and actually remove key decisions from the exclusive domain of the parties:

It is peculiar that party leadership selection is considered a private event of the political parties. Selecting a leader (which often means selecting a premier or a prime minister) is not like the choice of a party president or secretary. The latter are clearly internal party affairs. The importance of the leadership choice, however, goes far beyond the internal interests of the parties. In a democratic audit, one is left with the question of why the rules governing who gets to make this important decision should be left to the parties…(Cross 2004: 105).

IV. The Justiciability of Intra-Party Disputes

Political parties in the United Kingdom, Australia, Canada and New Zealand have traditionally been given the legal status of ‘voluntary associations’ - free to organise and conduct their internal affairs in any manner they wish, subject to the laws of contract, associations and administration. In this section, I examine just how the law has become more involved in intra-party disputes in two democracies – Australia and the United Kingdom, and the implications of this increased involvement has for party organisations and members. Although many political parties would like to keep their ‘internal affairs’ beyond the reach of the law, the trend over the last century is for parties to be viewed more as public entities rather than private organisations and consequently to treat intra-party disputes as justiciable. Whether parties have viewed this increased judicial ‘intervention’ as a
welcome event is debatable, but as Sayers & Young (2004: 7) note, ‘political parties construct the rules that govern the electoral process. The conflict of interest is profound…Fortunately for democracy, chance and unintended consequences often usurp the intentions of electoral engineers’.

As noted, political parties have traditionally been viewed as ‘private’ or ‘voluntary’ associations. In one of the first legal judgements dealing with the internal organisation of political parties, *Cameron v Hogan* (1934) 51 CLR 358, the position of political parties was clarified. They were:

likely to be formed without property and without giving to their members any civil right of a proprietary nature. They are for the most part bodies of persons who have combined to further some common end or interest, which is social, sporting, political, scientific, religious, artistic or humanitarian in character, or otherwise stands apart from private gain and material advantage. Such associations are established upon a consensual basis, but, unless there was some clear positive indication that the members contemplated the creation of legal relations *inter se*, the rules adopted for their governance would not be treated as amounting to an enforceable contract.  

Therefore, parties were regarded as similar to sporting clubs, their internal decision-making procedures beyond the reach of the law and unable to be legally challenged by members. The internal organisation, structure and management of the political party were matters to be determined entirely within the party, subject to no external interference.

The current legal status of political parties in the United Kingdom gradually evolved from decisions pertaining to unions, which could be regarded as broadly analogous to political parties in their organisation and operation. As Forbes (1995) notes, the English courts realised that ‘voluntary associations’ were often incapable of protecting the rights of their members, and a way to overcome

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26 *Cameron v Hogan* (1934) 51 CLR 358 at 370-1.
the overly technical restrictions of *Cameron v Hogan* had to be found. That mechanism came by way of the ‘legal fiction’ that the rules of associations were of such social importance that they must have been intended by their members to be contractually binding. This principle originally pertained only to trade unions, but was applied to the Labour Party in two later cases in which the contractual nature of the party rules and constitution was assumed to be binding upon the organisation and its members. In *Lewis v Heffer* [1978] 1 WLR 1061, Ormrod J held that ‘rules of associations of this kind ultimately derive their legal effect from the acceptance, by the members, of the terms and conditions of the association when they join the group’. The same assumption was made with respect to the Conservative Party, which was described as ‘an unincorporated association with an identifiable membership bound together by identifiable rules…a contract which such members have made *inter se*’. The contractual enforceability of the rules of political parties is still the legal means by which judges claim to have the jurisdiction to settle intra-party disputes in the United Kingdom. Further, nothing within a party’s constitution or rules can oust the court’s jurisdiction in this matter.

The implication of this reasoning is that decision-making within political parties must be exercised according to the rules and constitution of the party. There is no legal requirement that decisions of the party be made democratically – indeed, it is entirely possible to have an autocratic party organisation – but they must be made fairly and according to the principles of natural justice. As Lord Denning explained of domestic bodies and trade unions in *Breen v Amalgamated Engineering*

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27 *Enderby Town Football Club Ltd v Football Association Ltd* [1971] Ch 591 at 606 per Denning LJ.
30 *Lewis v Heffer*, n 29 at 1076.
32 The principle was more recently upheld in *Weir v Hermon* [2001] NICh 8. See also *Mortimer and Ors v Labour Party*, Ch D (Parker J) 14 January 2000 (unreported).
33 *Weir v Hermon*, n 32 per Girvan J.
‘…their rules are said to be a contract between the members and the union. So be it. If they are a contract, then it is an implied term that the discretion should be exercised fairly’.

In Australia, the court’s approach to the social significance of political parties has been far more explicit. The legislative and constitutional recognition of political parties as ‘official actors’ in the political process and the increasingly ‘public’ nature of their activities has formed the foundation of the justiciability of intra-party disputes in Australia, which appears to be far more transparent and satisfactory than the English legal fiction of contractual enforceability.

Although the change in the common law’s position has been slow, Australian judges expressed concern with the refusal to adjudicate intra-party disputes as early as 1974. In McKinnon v Grogan [1974] 1 NSWLR 295, Wooten J took the opportunity to question the continuing persuasiveness of the High Court’s decision in Cameron v Hogan, which dealt with ‘an area of human affairs which has changed and continues to change greatly in social significance’. Wooten J suggested that perhaps the time had come to reconsider the nature of political parties in society and their legal classification:

\[\text{Cameron v Hogan} \] was forty years ago, and I suspect that in that period it has been more frequently distinguished or ignored than it has been applied, simply because its application in full rigour has been increasingly out of tune with the felt needs of the time…With the greatest respect to the eminent and forward-looking judges who gave the decision, it has tended to justify judicial abdication from areas the orderly regulation of which has become of ever-increasing importance. The resultant categorization in legal analysis of a great political party…with a group of friends agreeing to meet for a game of tennis, is simply inadequate.

\[\text{34 [1971] 2 QB 175 at 190.}\]
\[\text{35 \textit{McKinnon v Grogan} [1974] 1 NSWLR 295 at 297.}\]
\[\text{36 \textit{McKinnon v Grogan}, n 35 at 297.}\]
An analysis of this statement reveals two key imperatives for the legal adjudication of internal party disputes. The first is the nature of party activities and their increasing social importance. The second is a strong desire to reject the courts’ previous reluctance to decide political disputes. Wooten J explains that

One can understand that judges, who feel so keenly the importance of standing apart and being seen to stand apart from partisan politics, would be reluctant to see the internal factional struggles of political parties brought into the courts. But the proper desire to avoid identification of the judiciary with partisan politics is not a justification for eschewing responsibility for legal questions which happen to arise in the political arena.  

The increasing social significance of parties and consequent legal implications was observed by the Queensland Supreme Court in *Baldwin v Everingham* [1993] 1 QdR 10, which concerned a dispute within the Liberal Party over preselections. In this case, Dowsett J agreed with Wooten J’s observations in the earlier case *McKinnon v Grogan*, noting that

On general principles, where an albeit voluntary association fulfils a substantial public function in our society, it may appear indefensible that questions of construction concerning its constitution should be beyond judicial resolution. It is one thing to say that a small, voluntary association with limited assets, existing solely to serve the personal needs of members should be treated as beyond such supervision; it is another thing to say that a major national organisation with substantial assets, playing a critical role in the determination of the affairs of the country should be so immune.

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37 *McKinnon v Grogan*, n 35 at 297.
38 *Baldwin v Everingham* [1993] 1 QdR 10 at 17.
However, Dowsett J felt that such observations (even though they had been expressed in a number of other comparative jurisdictions\(^39\)), did not justify the court’s intrusion into internal party affairs as it was not for a single judge of a State Supreme Court sitting at first instance to determine matters of policy. This was regarded as a matter for the High Court.\(^40\) Nonetheless, Dowsett J embarked on a different line of reasoning that led him to much the same conclusion. He considered the effect of the *Commonwealth Electoral Act* upon the legal status of political parties. His Honour observed that ‘[f]or a very long time, the parliamentary system functioned upon the assumption that parties had no official status in the electoral process. The Act indicates that such is no longer the case’.\(^41\) Therefore, Dowsett J concluded that the internal disputes of political parties were justiciable owing to the legislative recognition of such organisations in the *Commonwealth Electoral Act*.\(^42\)

The Australian common law judgments discussed thus far reveal two separate justifications for the intrusion of the law into the internal affairs of political parties. The first is the official legislative recognition of parties in the electoral process. The second is the nature of political organisations and the significant public functions they perform. Avoiding the need to decide difficult questions of policy, State Supreme Courts have based their reasoning on the first justification. In taking the somewhat ‘easier’ route, the High Court’s decision in *Cameron v Hogan* that the internal disputes of political parties are not justiciable is simply not applicable, as the legislative recognition of political parties has taken these organisations beyond the status of voluntary associations.

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\(^{39}\) See *Finnigan v New Zealand Rugby Football Union Inc* [1985] 2 NZLR 159; *Breen v Amalgamated Engineering Union* [1971] 2 QB 175 per Lord Denning.

\(^{40}\) *Baldwin v Everingham*, n 38 at 18.

\(^{41}\) *Baldwin v Everingham*, n 38 at 15. The Act defines the term ‘political party’ and contains provisions for the registration of parties, the nomination of party candidates and the provision of public funding.

\(^{42}\) This reasoning was subsequently followed in *Clarke v ALP* [1999] SASC 365, a case concerning ‘branch-stacking’ within the South Australian Labor Party.
However, this first justification, on its own, is not particularly persuasive from a normative perspective. Why should the legislative recognition of political parties in the electoral arena necessarily justify legal intrusion into their internal affairs? Indeed the aim of much of the legislation that pertains to political parties is to safeguard the democratic process on a macro scale – to ensure that voters have a clear choice between parties and candidates at elections. Provided that parties abide by the rules of the game with respect to elections, what should it matter that the internal rules and procedures of the party have not been complied with in the preselection of candidates?

The second reason for judicial intervention - that parties perform an important social and political function, provides the normative justification for justiciability. Behind this idea is the assumption that as powerful actors in the political process that make key political decisions, parties themselves ought to be subject to some degree of democratic accountability. The thought that a candidate may be able to buy his or her preselection in a safe seat tends to offend the basic principles of electoral democracy. Therefore, the fundamental theoretical consideration that still underlies the legal debate concerning the justiciability of political disputes is the demarcation of the boundaries of electoral democracy and the level at which democratic participation in the political process should be secured. Should this be within the party, or at the ballot box?

*The Consequences of Justiciability*

There is now a significant body of precedent supporting the proposition that the internal disputes of political parties are justiciable. This is characteristic of a general extension of the established principles of public and administrative law to domestic bodies, or voluntary associations such as unions and social clubs, once considered part of the private sector. However, the next that question

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43 *Baldwin v Everingham* was followed by the New South Wales Supreme Court in *Thornley v Heffernan* (Unreported, Brownie J, 25 July 1995); *Sullivan v Della Bosca* [1999] NSWSC 136 (3 March 1999) (hereinafter *Sullivan*), *Clarke v ALP* n 42, and *Tucker v MacDonald* unreported, Supreme Court of Queensland (Muir J) 3 August 2001 (BC 200105064).
that arises is how these disputes ought to be resolved. Upon first examination, this decision seems relatively uncontroversial, as most disputes will simply involve the application of the party rules and constitution to determine whether the actions of a party executive are unconstitutional. Yet, in a closer analysis, this application is not so straightforward.

As noted, party rules and the details of party constitutions are largely internal matters. In Canada, the United Kingdom and Australia, there are no legal requirements that party decision-making procedures be detailed in party constitutions, nor that they conform to democratic principles. New Zealand law requires that party preselections be conducted democratically, but as we have seen, this provision is sufficiently broad to be interpreted in a multitude of ways. Consequently, each party’s constitution and rules are unique, containing different objectives and some being far more detailed than others. Like any other constitution, whether establishing a national government or a local political party, issues concerning the interpretation of these documents arise. Many ‘gaps’ exist in party constitutions, which are likely to become the source of political disputes. Therefore, underlying the judicial interpretation of party constitutions are a number of latent assumptions as to how parties should operate, and where the boundaries of democratic participation lie.

The English courts have been relatively restrained, taking a technical view of intra-party disputes and interpreting and applying rules in a methodical fashion. Judicial creativity has not been required, as the intra-party disputes that have made it to the public courts for determination have generally involved detailed party constitutions that adequately provide for decision-making processes (for example, the Labour and Conservative Party). Nonetheless, the courts in the United Kingdom and Australia have applied the administrative legal principles of ‘natural justice’ and ‘procedural fairness’ to the management of political parties and the intersection between these principles and internal party democracy is particularly interesting.
Natural justice and procedural fairness dictate that any decisions made by the political party that may have a significant impact on the membership (as individuals or as a group) must be made in accordance with the party’s rules and regulations and exercised fairly. For example, internal dispute resolution bodies within political parties must give members due notice\footnote{John v Rees [1970] Ch 345.}, a fair hearing and a chance to hear and answer the case against them\footnote{See Enderby Town Football Club Ltd v Football Association Ltd [1971] Ch 591; Pett v Greyhound Racing Association Ltd [1969] 1 QB 125; Faramus v Film Artistes’ Association [1964] AC 925.}. In assessing the adequacy of such mechanisms, the courts have looked to the objectives and rationale of the political party. If it is intended to be democratically organised, decision-making processes will be evaluated in light of this objective, despite the often conflicting priorities of the party office and executive\footnote{Subject to the principle of ‘good administration’. For example, immediate suspension pending an inquiry does not require a hearing. See Lewis v Heffer [1978] 1 WLR 1061 at 1073 per Lord Denning MR.} (see for example Clarke v ALP [1999] SASC 365), indicating a trend for the courts to uphold minimum standards of intra-party democracy. However, there is still a great deal of ambiguity in this area of the law, as interpretations necessary depend on the substance and detail of party rules. Absent any detailed regime to prescribe particular constitutional forms or models of best practice decision-making within political parties at the point of registration, this uncertainty will continue to the detriment of parties and their members.

V. Regulation of the Parliamentary Party: Representative Roles and Party Discipline

An often overlooked aspect of the legal framework governing the organisation of parties is the extent to which the law regulates the activities of the parliamentary party. In one respect, this omission is understandable - the English common law tradition has a very strong history of protecting the independence of parliamentarians and any regulation of their activities would be contrary to the Burkean ideal of representative democracy that underpins the foundations of the Westminster parliamentary system. Nonetheless, this legal position has important implications for intra-party
democracy, particularly for the balance of power between the party organisation and membership and the party in public office.

The United Kingdom and Australia: Burkean Visions of Representative Democracy

As noted, the constitutional design of representative democracy in the United Kingdom and its former colonies is rooted in Burkean conceptions of the role of the parliamentarian as an independent representative (or more accurately trustee) of his/her electorate rather than a party delegate. Despite changing party systems and the modification of electoral laws to accommodate political parties as formal actors in electoral and parliamentary processes, the common law has held a relatively consistent view of the representative role of a parliamentarian for the last one hundred years.

The common law’s view on the proper relationship between a parliamentarian and his/her electorate was first expressed by the English Court of Appeal in 1909:

To deliver an opinion is the right of all men; that of constituents is a weighty and respectable opinion, which a representative ought always to rejoice to hear; and which he ought always most seriously to consider. But authoritative instructions; mandates issued, which the member is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to the clearest conviction of his judgment and conscience; these are things utterly unknown to the laws of this land, and which arise from a fundamental mistake of the whole order and tenor of our constitution. Parliament is not a congress of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You chose a member indeed; but when you have chosen him, he is not member of Bristol, but he is a Member of Parliament.\(^{47}\)

\(^{47}\) Per Farwell LJ in *Amalgamated Society of Railway Servants v Osborne* [1909] 1 Ch 163, at 197 (Court of Appeal).
If a member of parliament is not bound by the wishes of his/her electorate, they certainly cannot be bound in common law by the wishes of the party they represent. This line of reasoning was later applied in the 1980s by UK courts in two key cases concerning party discipline and the delivery of election promises at the local council level.

According to the decisions in *Bromley London Borough Council v Greater London Council* [1983] 1 AC 768 and *R v Waltham Forest London Borough Council; ex parte Baxter* [1988] 2 WLR 257, parliamentarians are required to take individual responsibility for their actions and at all times consider the ‘public interest’ when voting or contributing to debates.\(^{48}\) Parliamentarians should not consider themselves bound by policy documents or previous promises made by the party, even if the electorate has endorsed them. As Denning MR commented:

> It seems to me that no party can or should claim a mandate and commitment for any one item in a long manifesto. When the party gets into power, it should consider any proposal or promise afresh – on its merits – without any feeling of being obliged to honour it or being committed to it. It should then consider what is best to do in the circumstances of the case and to do it if it is practicable and fair.\(^{49}\)

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

> The rigid adoption of policy simply as a matter of political commitment to a section of the local government electorate and without regard to the purpose for which the statutory powers are given by itself demonstrates a breach of the fiduciary duty. That duty is owed not simply to all electors, but to the whole

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\(^{49}\) *Bromley v Greater London Council*, n 48 at 777 per Denning MR.
body of ratepayers, including a large and important number who have no voice at all in electing local councillors.\textsuperscript{50}

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

What would be objectionable would be a provision that a member had forthwith to resign his membership of the council if, in the absence of a conscience situation, he intended to vote contrary to group policy. This would fetter his discretion and make him a mere delegate of the majority of the group.\textsuperscript{51}

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

\textsuperscript{50} Bromley v Greater London Council, n 48 at 793 per Oliver LJ.
\textsuperscript{51} R v Waltham, n 48 per Donaldson MR at 261.
discipline and unanimity as a legitimate consideration in choosing how to vote. As the majority in *R v Waltham* found:

I can see no reason why a councillor should not vote in favour of a resolution contrary to his own intellectual assessment of the merits, taken in isolation, in order to secure unanimity of vote, provided he retains an unfettered discretion in the council chamber. There is nothing, in my view, morally or legally culpable in voting in support of a majority which he has considered, and rejected, his arguments providing he considers all the available options and that considers that the maintenance of such unanimity is of greater value to the ratepayers than insistence upon his own view.\textsuperscript{52}

Party loyalty, party unanimity, party policy, were all relevant considerations for the individual councillor. The vote becomes unlawful only when the councillor allows these considerations or any other outside influences so to dominate to exclude other considerations which are required for a balanced judgment. If, by blindly toeing the party line, the councillor deprives himself of any real choice or the exercise of any real discretion, then his vote can be impugned and any resolution supported by his vote potentially flawed.\textsuperscript{53}

**New Zealand: Enforcing Party Discipline**

The tension between parliamentarians’ independence and election on a party platform caused particular difficulties in New Zealand after the transition to multi-member proportional representation and the introduction of party list voting, which entrenched the role of parties (not individual parliamentarians) as the unit of interest aggregation. As Stockley (2004: 134) notes, since the introduction of the reforms in 1996, it has been presumed that parliamentarians will vote with their party unless they advise otherwise. In what could be considered a type of insurance policy, several parties in New Zealand require candidates to ratify their commitment to the party cause. Labour candidates must sign a pledge to ‘vote on all questions in accordance with the decisions of

\textsuperscript{52} R v Waltham, n 48 at 264-5 per Stocker LJ.

\textsuperscript{53} R v Waltham, n 48 at 265 per Russel LJ.
the Caucus of the Parliamentary Labour Party’ (Labour Party Constitution 2002) and Alliance candidates must pledge to resign their seat in parliament if they leave the party.

In 1997, the Alliance’s pledge was tested by the New Zealand Parliament’s Privileges Committee after party list parliamentarian Alamein Kopu decided to leave the party but refused to resign her seat. In ruling the pledge to be unenforceable on the ground of public policy, the Committee upheld the common law’s refusal to regulate the decisions of parliamentarians, or uphold any document that purports to do so. However, in this instance, the Committee was faced with the added difficulty of reconciling its decision with the fact that the actions of a parliamentarian in leaving the party through which he/she was elected would destroy the proportionality of the New Zealand Parliament. The Committee considered this predicament, but held that in the absence of any statutory intention to the contrary, the principle of freedom and independence should prevail over that of proportionality:

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

To counter this predicament and contrary to the common law tradition of representation, the New Zealand Parliament passed the Electoral (Integrity) Amendment Act 2001 (NZ). Under this Act, an MP who notifies the Speaker of having resigned from his/her party is also deemed to have resigned from the Parliament. Section 55D of the Electoral Act 1993 (NZ) also contains a provision to declare

54 Question of Privilege: Contention as to Resignation of Mrs Alamein Kopu MP, McGrath JJ, 10 September 1997, p. 5.
a seat vacant if the Parliamentary Leader of a party serves notice on the Speaker that he/she ‘reasonably believes that the MP has acted in a way that has distorted, and is likely to continue to distort’ party proportionality in the Parliament (Stockley 2004: 134). However, the MP must be given prior notice and an opportunity to respond, and two-thirds of the party’s MPs must agree with the serving of the notice.

The implications of this legislation for party organisation are significant and diverge considerably from the traditional position of the common law. With the intent of maintaining proportionality within the parliament, the Act formalises and institutionalises party discipline, holding MPs legally accountable to their parties and the Parliament with significant sanctions. This arguably strengthens intra-party democracy if individual parliamentarians are not able to diverge from democratically formulated policy positions. Their actions do not necessarily have to amount to crossing the floor: ‘if there is a cumulative number of particular actions or continuing pattern of conduct designed to embarrass the political party, to harm its reputation not only in Parliament but also with those who voted for it’ then the leader can form a reasonable belief that proportionality is distorted and request a seat be declared vacant (Gendall J *Huata v Prebble and Shirley* (High Court, Auckland, Civ 70/4/03, 19 February 2004)). The legislation can stop rebel MPs from hijacking policy decided by the party. It cannot, however, serve this function if all MPs agree on a policy position (as it is the MPs who initiate and approve the notice, not the party members). Doubts are also raised as to the legislation’s effect on free speech and debate within the party. In light of *Huata v Prebble*, there is concern that the legislation may be used as a threat to silence dissenting opinion from parliamentarians. Further, as party discipline has been institutionalised in New Zealand, there is even greater pressure for party decisions to be made in a democratic fashion.
Nonetheless, this legislation is more notable for its theoretical rather than practical applications, as there has been little attempt to enforce it. The legislation was not invoked in the defections of Jim Anderton from the Alliance in 2002 and Tariana Turia from Labour in 2004 (Miller 2005: 125). The legislation was also subject to a sunset clause and expired in September 2005. However, the New Zealand Parliament is currently considering reinstating the provisions of the Act to ensure continued proportionality in parliamentary representation.  

Conclusion

There is no doubt that in all democracies surveyed, political parties have become formalised actors in the political process. Although their constitutional absence is a reminder of parties’ traditional role in civil society, they are now subject to significant statutory regulation as ‘public entities’. However, this regulation as the product of legislative instruments, remains nonchalant towards the issue of intra-party democracy, regulating parties’ intersection with the operation of the broader electoral system rather than their internal organisation. Law in the United Kingdom, Canada or Australia does not prescribe democratic internal decision-making. New Zealand is the exception, where democratic candidate selection is required and party discipline has been enforced in the parliamentary arena. Nonetheless, developments in the common law, which are in many ways beyond the control of legislators, indicate support for intra-party democracy as a desirable form of party organisation - party constitutions and rules have been interpreted in such a way so as to uphold it. The attitude of the judiciary indicates that parties’ internal activities are viewed as highly significant, and consequently their internal decision-making procedures should operate in a fair and transparent manner.

\[55\] Electoral (Integrity) Amendment Bill 2006.
References


