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EFFICIENT SECRETS: THE CRAFT OF COALITION MANAGEMENT

*Jonathan Boston and Andrew Ladley**

The mixed member proportional (MMP) electoral system in New Zealand has thus far produced coalition governments (and mainly minority coalitions at that). The argument of this paper is that Cabinet might still be the "buckle that binds",¹ but coalitions are the stitching and glue to hold the belt together. The multi-party coalition and support arrangements in New Zealand between 1996 and 2005 are the subject of this article. The discussion reveals five phases and models in coalitions, each influenced by the political opportunities and constraints of the time, and by experience. The argument is that multi-party executives require new understanding if old structures are to work effectively. In New Zealand, coalitions and their management are the latest developments of the "efficient secret" of Cabinet government. The careful crafting of people, systems and processes, formal and informal, is now critical to the role of the executive in a parliamentary system – and to political survival.

The efficient secret of the English Constitution may be described as the close union, the nearly complete fusion of the executive and legislative powers ... [The cabinet] is an executive which can annihilate the legislature as well as an executive which is the nominee of the legislature ...²

* Jonathan Boston is Professor of Public Policy and Deputy Director of the Institute of Policy Studies (IPS) in the School of Government at Victoria University of Wellington; Andrew Ladley is the Director of the IPS, but from 1999–2003 he was a participant in some of the processes that are the subject of this paper, as Chief of Staff and Coalition Manager in the Office of the Deputy Prime Minister, Hon Jim Anderton. This inside view can be seen in comments which are otherwise unreferenced and, if still current, by necessity somewhat obscure in details (for example, below n 51). Interviews relevant to this paper (concerning the coalitions of the 1990s) were conducted in the late 1990s by Nicola White, then a contract researcher working with Jonathan Boston as part of the Political Change Project funded by the Foundation of Research Science and Technology. Other interviews were undertaken in 2000 by Jonathan Boston. Some brief quotes in this paper are from those interviews and are held on file by him.

1 See Elizabeth McLeay "Buckle, Board, Team or Network? Understanding Cabinet?" (2006) 4 NZJPIL 37.

2 Walter Bagehot *The English Constitution* (Oxford University Press, Oxford, 2001) 8–9.

I INTRODUCTION

Writing in 1867, Walter Bagehot identified Cabinet as the "efficient secret"³ of how the monarchy was democratised in the British parliamentary system. In the century thereafter, it became clear that political parties had become the efficient secret by which government could survive (and indeed dominate) an otherwise precarious parliamentary existence. Speaking of New Zealand in 2006, we suggest that the craft of coalition management is now inseparable from how the political executive works. Cabinet might still be "a hyphen which joins, a buckle which fastens",⁴ but coalitions are the stitching and glue to hold the belt together.

The constitutional essence of Westminster-derived parliamentary systems is that the political executive is formed out of elected members and remains in office only so long as it retains the confidence of a majority of members of the House of Representatives. Conversely, the political executive can bring about the early dissolution of the House that formed it. In principle, therefore, a Cabinet is at once perpetually vulnerable, but also strong. As regards the former, one might logically expect constant political instability (as in some Pacific Island parliaments). But in many parliamentary systems, practical stability historically developed via political parties marshalling the numbers and building hierarchies of durable leadership. In post World War II New Zealand up until 1996, first-past-the-post voting favoured the overwhelming dominance of two parties (Labour and National). With one party securing a majority of seats on election night, political stability across the life of a parliamentary term was assumed. But that stability also meant virtually complete control by one party of both the Cabinet and the House,⁵ and a disgruntled electorate voted by referendum in 1993 to introduce the mixed member proportional (MMP) electoral system for the general election in 1996. By design, proportional representation was extremely unlikely to see one party win a majority of seats and very likely to see many small parties represented in the House and, as predicted, no party has won a majority of seats in any of the four general elections under MMP: 1996, 1999, 2002 and 2005. With an executive perpetually vulnerable, political instability was a significant risk, but the pragmatic response from all political parties has been to seek stability in Cabinet and Parliament by multi-party coalition and support arrangements. These are the subject of this paper.

3 See Bagehot, above n 2; Gary Cox *The Efficient Secret: The Cabinet and the Development of Political Parties in Victorian England* (2 ed, Cambridge University Press, Cambridge, 2005); Maurice Duverger *Political Parties: Their Organization and Activity in the Modern State* (Methuen, London, 1954).

4 Bagehot, above n 2, 10.

5 Or, in the words of a distinguished law professor and later prime minister, the dominance of the ruling party amounted to unbridled power. See Geoffrey Palmer *Unbridled Power?: An Interpretation of New Zealand's Constitution and Government* (Oxford University Press, Wellington, 1979).

The simple argument is based on considerable factual detail (principally from the last 10 years in New Zealand),⁶ set out here both for the record and to underpin the increased complexity of Cabinet government. The paper also draws on comparative lessons about coalition management. We proceed first by outlining the extra dimension that coalitions bring to Cabinet government. This lays the basis for explaining the key challenges for coalitions and the main contextual factors that affect how they fare. Next, we outline the key systems and processes that coalitions have adopted. The particular problem of managing intra-coalition dissent is then examined, before some comments on legislative support arrangements, the complex 2005 governmental arrangements and concluding remarks.

II COALITIONS ADD TO THE COMPLEXITY OF CABINET GOVERNMENT

Managing government is hard at the best of times. Ministers and ministries may become, in the jargon, silos – operating across a spectrum from disregarding to competing against to contradicting each other. This requires systems for coordinating and evaluating policy and for resolving disputes and disagreements – all within a normative framework that includes constitutional convention, hard law, parliamentary process and political practice. Perhaps no one should assume too high a degree of coherence in the Cabinet process. In a democracy, how representatives respond to often contradictory interests is part of a contestable flux. Further, even if objectives are coherent, delivery may not be. Cause and effect in politics, policy, law and bureaucracy is not linear, and reality includes the daily mix of personal ambition, factions, party intrigue, bargaining, opinion polls and survival based on counting the numbers (every day in the House and with the eyes always on the next election).

6 The following recent coalitions in NZ are within the scope of our discussion in this paper:

- 1995–96: two small coalitions with the ruling National Party, one with the Right of Centre Party from September 1994 until August 1995 and the other with the United New Zealand Party from February 1996 until December 1996 (although these were prior to the introduction of MMP for the 1996 general election, they were clearly precipitated by small party formation breaking away from the major parties in the lead-up to proportional representation);
- 1996–98: the National–NZ First (NZF) coalition (Jim Bolger/Jenny Shipley–Winston Peters);
- 1998–99: the National-led coalition with a variety of MPs after the break-up of NZF, led by Jenny Shipley;
- 1999–2002: the Labour–Alliance coalition (Helen Clark–Jim Anderton), including the period between March 2002 and the general election of July 2002 when the Alliance fractured, but remained in government;
- 2002–05: the Labour–Progressive coalition (Helen Clark–Jim Anderton, including support arrangements with United Future (UF), the Greens, and, on occasion, NZF);
- 2005–present: the Labour–Progressive coalition led by Helen Clark and Jim Anderton, with executive participation arrangements from UF and NZF and a legislative support arrangement with executive overtones from the Greens.

That complexity applies to all governments, including where single parties dominate the legislature (and hence the executive). But a new dimension of complexity results where two or more parties are in coalition,⁷ and especially if the combination lacks a parliamentary majority.⁸ In part, this is simple multiplication: more identities, relationships, ambitions, autonomies, bargaining and policies to manage. But there is another dimension, because when multi-party coalitions become the norm, the focus of government-in-office versus government-in-waiting has an overlay of manager-of-coalition versus manager-in-waiting. Opposition parliamentary politics (in New Zealand at least) is mostly about trying to show why the government (in any form) should be replaced – either immediately, or at the next election. The coalition overlay concerns what partners might be part of change and how any new combination will be managed. In the struggle to form a majority, parliamentary Darwinism will ensure the survival of the fittest coalition-builder/manager.

III CHALLENGES

In the substantial literature on coalitions, particularly from Europe, an enduring theme is this complexity of government and particularly the risk of inter-party dissent.⁹ In addition to all the ordinary problems of single-party government, coalitions confront two particular challenges: the identity dilemma and the added complexity of key parliamentary and Cabinet relationships.

7 Michael Thies "Keeping Tabs on Partners: The Logic of Delegation in Coalition Governments" (2001) 43 *AJPS* 580.

8 The condition for survival in a parliamentary system – a parliamentary majority – can of course be achieved in two broad ways: an executive coalition in which the governing parties have a majority in their own right, or through a legislative support arrangement in which a minority executive secures the stable, medium-term support of another party (or parties) on matters of confidence and on legislative initiatives. Both of these might in ordinary use be called coalitions – but in this paper, we use *coalition* to refer to *executive* arrangements for forming a government (whether majority or minority), and *support* to refer to *legislative* arrangements to secure majorities in the House for the government. But there is no reason in principle why these two cannot be mixed – as happened in 2005 in New Zealand. See Part VIII The October 2005 Coalition and Support Arrangements.

9 See for example Jonathan Boston *Governing under Proportional Representation: Lessons from Europe* (Institute of Policy Studies, Wellington, 1998) [Boston *Governing under Proportional Representation: Lessons from Europe*]; Moshe Maor "Intra-Party Conflict and Coalitional Behaviour in Denmark and Norway: The Case of 'Highly Institutionalized' Parties" (1992) 15 *Scandinavian Political Studies* 99; Wolfgang Müller and Kaare Strøm (eds) *Koalitionsregierungen in Westeuropa. Bildung, Arbeitsweise und Beendigung* (Signum Verlag, Wien, 1997); Hanne Marthe Narud "Electoral Competition and Coalition Bargaining in Multiparty Systems" (1996) 8 *Journal of Theoretical Politics* 499; Hilmar Rommetvedt "Norwegian Coalition Government and the Management of Party Relations" (1994) 17 *Scandinavian Political Studies* 239; Kaare Strøm *Minority Government and Majority Rule* (Cambridge University Press, Cambridge, 1990).

The first is particularly well-known and is sometimes called the unity–distinctiveness dilemma: Governments that fracture tend to get punished at the polls – but so do parties that lose their identity. Hence, each coalition party needs at once to:

- forge a reasonably unified government with an appropriate measure of collective responsibility (to demonstrate effectiveness and keep electoral support away from contending coalitions); and
- maintain ideological and policy distinctiveness (to mobilise party activists and protect its electoral base).

Put differently, in single-party governments, the electoral incentives generally drive ministers to co-operate with each other and distinguish themselves from the Opposition. But in multi-party governments, the same incentives require the partners to both co-operate with and compete against each other – as well as to distinguish themselves from the Opposition. As we will see, this dilemma is particularly evident in all the coalitions in recent history in New Zealand.

The second challenge is that key parliamentary and Cabinet relationships become significantly more complicated with more than one party in government.¹⁰ In single-party governments, the key constitutional relationships (for example, between the parliamentary caucus and the Cabinet, and between the prime minister and individual ministers) are internalised to one party. Under coalition government, such matters must of course be managed between parties. And while parties should be able to monitor their Cabinet ministers, they enjoy no direct power over ministers from other parties.¹¹ Similarly, even the prime minister (who is usually the leader of the largest party in the coalition) may have less direct power because matters often have to be agreed between party leaders, including the making of Cabinet appointments and the maintenance of collective responsibility. All this complexity has potential consequences for the constitutional role of the Governor-General in appointing the prime minister and in acting on the advice of that person. For this reason, a statement was made in the lead-up to the first MMP elections by the then Governor-

10 In the literature, this is sometimes called an agency issue, where the relationships between MPs and a Cabinet are regarded as being akin to those of principal-agent; see Thies, above n 7. But although a caucus (or Parliament as a whole) can make or unmake leaders and governments by withdrawing support, this is not to say that Cabinet is their agent (just as MPs are not agents for voters). There is more currency in characterising the public service as agents of ministers, and a substantial literature on agency theory has developed. Even here, however, the use of the term is debatable. Although we draw on these fields, in this paper we refer instead to the key relationships, rather than agency.

11 But MPs of one party are not entirely powerless, of course, over the leadership of another party in coalition. Unhappiness with a coalition partner (especially if electoral disaster looms) may be a critical factor in forcing change in one's own party leadership, and hence in pulling down the entire coalition – as happened with the change of leadership in the National Party in late 1997, when Prime Minister Jim Bolger was replaced by Jenny Shipley, and the coalition with Winston Peters subsequently collapsed. On the general issues of delegation, see Thies, above n 7, 580.

General (Sir Michael Hardie-Boyes), asking that party leaders make clear public statements about who they would support in the House so that the Governor-General would not be left in any doubt. Discussing the Governor-General's role further is beyond the scope of this paper;¹² the point here is that the political executive's key relationships are more complex and challenging when party lines have to be crossed and negotiated.

IV CHALLENGES ARE SHAPED BY CONTEXT

How the challenges of identity and complexity in coalitions are managed is also affected by the context. From a multitude of possibilities, the comparative literature suggests that five factors are of particular note:

- ideological connectedness;
- party cohesion;
- the relative numerical sizes of the coalition partners (including whether they constitute a majority in the House);
- electoral support (including changing fortunes of current opinion polling); and
- the skill and trust of leadership.

The balance of factors at the beginning of a coalition will be reflected in the initial agreements that found the arrangement, but they are not static. Thus, at the onset of a coalition, a party might start off confidently in coalition but then fall apart in disarray due to low polling or internal factionalism. Similarly, a minor party might begin a coalition fiercely stressing political distinctiveness, but if political circumstances change (due to a security crisis, for example), this would favour coalition unity rather than party-distinction. The contextual factors for a coalition, and their changes, thus produce different management issues across a term of office. We can illustrate these factors with brief comments on New Zealand's coalitions since the mid-1990s.¹³

12 See for example Alison Quentin-Baxter "Implications for the Governor-General" in Alan Simpson (ed) *The Constitutional Implications of MMP* (School of Political Science and International Relations, Victoria University of Wellington, 1998) 96 and following.

13 Putting aside the two small 1995–1996 coalitions with National in the run-up to the introduction of MMP (see above n 6), the post-MMP numbers were:

- 1996: National 44, NZF 17 (that is, about 5:2). After the collapse of this coalition, Prime Minister Shipley governed with a makeshift majority of defectors from NZF, which split over the coalition break-up; with support from ACT and United (both outside the government); and a deserter from the Alliance, Alamein Kopu, and saw out the full term. Just before the November 1999 election, the figures were: National 44, Mauri Pacific 5 and 2 independents (Peter McCardle and Tuariki Delamere) (51 in the government). Another 10 supporting votes in the House took the total to 61, a majority of 2 in the 120 member House: ACT (8 seats), United (1 seat) and Mana Wahine (1 seat);

As regards ideology, all were reasonably well connected, at least when the coalitions started. Also, the coalitions generally had a secure parliamentary majority, either by virtue of holding a clear majority of seats (as in the case of the National–New Zealand First (NZF) coalition in 1996), or through support from one or more of the other parliamentary parties.

In relation to relative numbers between the partners, size is important to coalition management. All coalitions since the mid-1990s involved one of the two major parties, working with one or more smaller parties. National had two and a half times the NZF numbers in the coalition of 1996–98, but otherwise there has been a much more substantial difference in party numbers in the House, with the larger party thus dominant in the House and Cabinet.

At a ratio of about 5:2, the smaller party in the 1996–98 National–NZF coalition could still expect representation at all Cabinet committees and a strong influence on policy. After NZF disintegrated in 1998, National totally dominated the remnants. The 1999–2002 Labour–Alliance coalition, even at a ratio of 5:1, also had quorum rules requiring representation by at least one member of both parties on every Cabinet committee and a strong role for the minor party in policy making. But its successor, the 2002–05 Labour–Progressive coalition, had a ratio of 26:1 and only one Progressive Cabinet member. There was thus no prospect of the smaller partner staying on top of the entire spectrum of government business. In such circumstances, coalition management was completely different from its predecessor, even though the Clark–Anderton leadership remained the same.

As the changing numbers indicate, the coalitions fared somewhat less well in relation to internal party cohesion. The NZF caucus during the 1996–98 coalition with National appeared ill-disciplined and factionalised. Arguably, much the same might be said of the National caucus once it became clear from opinion polls that the public disapproved of *both* parties for going into coalition. Faced with the likelihood of defeat in the 1999 general election, the National party replaced its leader Jim Bolger as sitting prime minister (less than half way through his third term). The factionalisms in both parties thus caused considerable difficulties for the respective party leaderships and bedevilled coalition management. National MPs' attempts to rescue themselves from defeat perhaps hastened exactly that and the 1999 election swept the party from office, almost destroyed NZF (which lost 11 of the 17 seats won in 1996, with Winston Peters barely winning his seat), and wiped from politics the "flotsam coalition" of other coalition/support parties that had been formed mid-term to support National.

-
- 1999: Labour 49, Alliance 10 (that is, 5:1), with support on confidence and supply from the Greens (7 seats);
 - 2002: Labour 52, Progressive 2 (that is, 26:1), with support on confidence and supply from the Greens (9 seats) and UF (8 seats) at different times. Labour later lost a seat when Tariana Turia resigned to form the Māori Party;
 - 2005: Labour 50, Progressive 1, NZF 7, UF 3, Greens 6.

It was always likely, therefore, that the 1999 election would produce a reaction to the instability of the previous National-led coalitions. Thus, the Alliance entered office with Labour as an apparently cohesive, well-disciplined party (or, more accurately, alliance of smaller parties), but just two years later was itself factionalised. Several factors contributed to this, including policy differences, leadership ambitions, poor polling (again) and differences on how to differentiate from the dominance of Labour as the bigger party in the coalition (the unity–distinctiveness dilemma). These problems eventually fractured the party, resulting in the formation of the Progressive Party to contest the 2002 election.

Perceptions of public support (or the lack of it) have influenced leadership decisions in all the coalitions since the mid-1990s. Commonly, the smaller parties in the various coalitions appear to have been at greatest risk of declining public support and consequential oblivion at the next election (for example, Mauri Pacific in 1999) or of losing significant support in office with a consequential loss of seats (for example, NZF in 1999 and the Alliance in 2002). Although the major parties have consistently fared better, it has not all been plain sailing. From 1996–98, National was plainly at significant risk of losing the 1999 election if the coalition continued, which is why a sitting prime minister was dumped. By contrast, Labour managed to improve and then retain its electoral support after the 1999 coalition in the 2002 and 2005 elections. The contrasting political fortunes of smaller and larger parties have influenced coalition relationships in a number of respects, including that:

- smaller parties appear increasingly more determined to secure significant policy concessions and greater room to disagree;
- coalition instability may increase (for example, the demise of the National–NZF coalition in 1998 and the Alliance's factionalism that resulted in the early election in 2002); and
- both the larger and the smaller parties are more likely to keep their options open in terms of future coalition partnerships.

Trust and co-operation between party leaders has also varied in coalitions since the mid-1990s. Bolger and Peters, and then Clark and Anderton, had to overcome a legacy of animosity and conflict to establish close and cordial working relationships. Both Anderton and Peters had previously been senior members of their new coalition partners before breaking away to form new parties. Their shared history meant that, amongst leaders at least, there was a detailed knowledge of policy views, temperaments and working methods. In 1996, Bolger and Peters appeared to have personally buried the hatchet, although it quickly became clear that there were few close relationships at other levels of the coalition. The 1996 coalition agreement had set out an entire policy programme in detail and it was not long before there were clashes between the letter of the agreement and the more complicated business of government that required flexibility and working relationships.

The 1996 coalition survived a major crisis by both leaders agreeing to the dismissal of NZF Associate Health Minister, Neil Kirton, who had clashed with his National counterpart, Bill English, but after Shipley replaced Bolger as Prime Minister, few relationship threads appeared available to

stitch the coalition together. The result was at times open hostility between Shipley and Peters. In the House, the disdain between them was palpable, not least to the Opposition. It was not long before the National–NZF coalition fell apart, leaving the new Prime Minister Shipley to cobble together some relationships from the flotsam to maintain a parliamentary majority for the rest of the term of the Parliament, thus avoiding an early election.

The 1996 and 1999 coalitions show how context shaped the dynamics of coalition government during the early years of MMP. In managing the changing circumstances, the party leaders had relatively little experience in coalition building, inter-party negotiations and managing minority governments.¹⁴ There had, of course, been attempts to learn from experience abroad. Public servants, politicians and academics had conferred with counterparts in other multi-party systems, especially in continental Europe. Domestically, the ground was being prepared, including changes to Standing Orders, clarification of the role of the Governor-General in appointing a prime minister and through an influential series of discussions at the Institute of Policy Studies in 1994 and 1995 that brought broader understanding to key actors of what would happen under proportional representation. After 1996, there was a particularly strong set of lessons from experience. The difficulties encountered during the 1996–98 National–NZF coalition shaped the thinking of the leadership of Labour and the Alliance in 1999; the 1999–2002 coalition brought its own dramatic lessons – not least to the Greens (which survived) and to the Alliance (which did not) – and the current 2005 coalition arrangements show that the learning process has continued.

All the contextual factors are thus relevant, but the last – leadership – focuses the discussion on management. Here, the point is that leadership concerns not only personalities in charge, but building and maintaining the processes and systems that navigate the challenges.¹⁵

V THE PRACTICE OF COALITION MANAGEMENT

The experience from multi-party governments abroad is well documented, revealing a variety of management techniques, both formal and informal, to enhance effectiveness.¹⁶ To some degree the particular approaches depend on the experience, preferences and management styles of the respective party leaders (especially the prime minister). However, other relevant factors include the laws, constitutional conventions and political traditions, the number and relative size of the

14 Ironically, Jim Anderton, having forged five smaller parties into the Alliance, had perhaps the most experience, but that grouping of parties faced major difficulties. As a party of the political left, some of its principal attacks had been on Labour. Moving from Opposition to Government, and in coalition with its erstwhile principal rival for the left, proved challenging.

15 See Peter Egardt "Policy and Decision Making in Coalition Systems: The Swedish Experience" (Paper prepared for the Second SIGMA Meeting of Senior Officials from Centres of Government, Warsaw, 27–28 February 1997).

16 Ben Seyd *Coalition Government in Britain: Lessons from Overseas* (The Constitution Unit, School of Public Policy, University College, London, 2002).

respective governing parties, the relationship between the legislature and the executive, the nature of the Cabinet system, the system of public administration (including the policy role played by central agencies like the Department of the Prime Minister and Cabinet or the Ministry of Finance) and the role of ministerial advisers. In statutory terms, a key change made after the 1996–99 coalition was the introduction of anti-defection legislation to provide that any MP who ceased to be a parliamentary member of the political party for which he or she was elected would automatically vacate his or her seat.¹⁷ The legislation automatically expired in September 2005, but has since been reintroduced as a Bill as part of the 2005 coalition arrangements.¹⁸ Space prevents detailed discussion of this legislation, but it suffices here to note that the goal was to provide predictability to voters, the House and particularly to coalitions by reducing the incentives for MPs to defect from the parties for which they were elected (and hence join other parties or coalition arrangements) during the life of a Parliament. Certainly, the absence of the statute allowed the defections that caused the collapse of the 1996 coalition, and its presence after 2000 was a key part of the framework within which MPs operated until 2005. In that time, only one opposition MP (Donna Awatere Huata) left the parliamentary party for which she was elected and lost her seat accordingly. The reintroduction of the legislation might thus be taken as a clear signal that, at least amongst some parties, anti-defection legislation remains critical to the effective operation of the party system in Parliament.¹⁹

Turning to how the executive is managed in practical terms, the comparative literature suggests that three related areas are of most importance:

- the Cabinet system (including Cabinet committees and related processes);
- ministerial mechanisms; and
- non-ministerial mechanisms (for example, political advisers).

The first two are relatively formal processes that involve the government machinery of Cabinet, ministers and officials, but non-ministerial mechanisms are blending into the formal processes. Where this involves ministerial advisers, the trend illustrated in this paper (and comparative experience) suggests that their importance is likely to grow, but there are also informal networks, friendships, common policy or ethical convictions, shared educational, ethnic or religious backgrounds and so on. A web of relationships between ministers, backbench MPs, political advisors, press officers and other political actors is difficult to map, but is clearly vital to building

17 Electoral Integrity Act 2000.

18 Electoral (Integrity) Amendment Bill 2005.

19 See also Rein Taagepera and Matthew Soberg Shugart *Seats and Votes: The Effects and Determinants of Electoral Systems* (Yale University Press, New Haven, 1989); Sarah Miskin "Politician Overboard: Jumping the Party Ship" (Research Paper 4, Information and Research Services, Canberra, 2003); Alan McRobie "Hopping Mad" (17 March 2001) *The New Zealand Listener* 24.

and maintaining trust and ensuring that there are good lines of communication in a coalition. Such a web, of course, does not come from nowhere. Like diplomacy, good coalition management builds networks, deepens contacts and broadens understandings. We turn now to consider how the coalitions in New Zealand have used the mechanisms.

A Cabinet Systems and Processes

In parliamentary democracies, the Cabinet system has well-developed yet flexible structures, rules and conventions as the main formal mechanisms for coalition management. Cabinets vary a good deal internationally, for example, in size and structure, the relative power and constitutional role of the prime minister, the role of committees in the decision-making process, the degree of ministerial autonomy and the nature of ministerial advisory systems. Notwithstanding such differences, a number of relatively standard practices and procedures are employed to accommodate the distinctive needs of coalition governments. Of these, the following four warrant highlighting.²⁰

1 Membership of the Cabinet and its processes

The issues here include proportional or other allocation between the parties of portfolios and representation on working groups and Cabinet committees (and sub-committees) – obviously, a rule that requires a quorum of membership is more demanding than one that merely mandates or expects consultation on specified policy areas.

2 Consultation

A range of systems are deployed to ensure consultation between the parties on particular matters before decisions are taken formally at the Cabinet level (for example, pairing arrangements under which each minister is required to consult with a nominated minister in the other party or parties before putting forward a decision on any issue of significance, and processes for talking with parties outside of government to ensure support in the legislature).

3 Shared decision-making

Going further than consultation systems, portfolio responsibilities may be allocated in a pooled (or paired) manner²¹ specifically to facilitate inter-party decision-making, monitoring and checking, for instance, by appointing junior ministers from one party to serve under senior ministers from another party or by appointing two ministers from different parties to work together within related portfolios. Both consultation and shared decision-making systems underpin how the conventions of collective responsibility are managed, including spelling out what should happen if there is disagreement, or even explicit agreement to disagree.

20 Boston *Governing under Proportional Representation: Lessons from Europe*, above n 9.

21 Seyd, above n 16, 88.

4 *Branding*

The key issues of party identity are not only relevant to formal disagreements and the doctrine of collective responsibility, but also to the ordinary day-to-day business of claiming credit as a party for matters that are done by the coalition. A range of rules might facilitate this, including, for example, the allocation of specific areas of significant responsibility to parties so that they are able to make progress in that area and achieve some party distinctiveness, and even rules about which party logos are used on press announcements and the names by which government members refer to each other (and to the coalition).²²

These examples are not, of course, mutually exclusive and any arrangement might deploy them all in varying degrees and combinations.

In New Zealand, the advent of coalition government in the mid-1990s has not altered the fundamental characteristics of the Cabinet system.²³ The Cabinet has continued to serve as the crucial forum for high-level and formal decision-making within each of the various coalition governments. The system of government and its link to the public sector rely on this process. New Zealand's Cabinet system is sufficiently well-developed, robust and flexible to accommodate a wide range of political contexts and leadership styles, but this does not mean that Cabinet is the sole arena for information sharing, inter-party consultations and the brokering of deals. The formal systems need to blend with the informal.

Simple examples make the point, such as changes to the operation of the Cabinet system to accommodate the way that any particular combination in the executive wishes to run Cabinet. Thus there have been numerous Cabinet Office Circulars and some amendments to the *Cabinet Manual 2001* providing authoritative guidance on the principles, procedures and values of Cabinet government under coalition.²⁴ Most of these changes have been in keeping with the pattern evident in other multi-party democracies, as summarised above.

B *The Allocation of Portfolios*

As in many coalitions elsewhere, it has been relatively common since the mid-1990s for prime ministers to adopt a pooled approach to portfolio allocation. That is to say, they have appointed associate ministers from one party to serve under a senior (that is, responsible) minister from

22 For example, a coalition might discuss rules on names such as the "Labour–Progressive Coalition", or the "Labour-led government" and so on, and the same sort of discussion can be held about individual ministers (for example, constantly calling a person a "Y Party Minister of Police", rather than just the Minister of Police).

23 Elizabeth McLeay "Cabinet" in Raymond Miller (ed) *New Zealand Government and Politics* (Oxford University Press, Auckland, 2001).

24 Elizabeth McLeay "What is the Constitutional Status of the New Zealand Cabinet Office Manual?" (1999) 10 PLR 11.

another party or, alternatively, two ministers from different parties have been appointed to work together within related portfolio areas. Of the seven ministers who held positions as associate ministers at the start of the National–NZF coalition, four served under ministers from the other party. In most cases, the associates were from NZF (no doubt reflecting the relative inexperience of the ministers in question).

When the Labour–Alliance Cabinet was formed in late 1999, no fewer than 16 of the 25 ministers held associate roles, with many having multiple responsibilities as associate ministers. Altogether, therefore, there were some 32 associate positions. Under this regime, each of the ministers from the smaller party was a full minister in her or his own right in some portfolios,²⁵ and, in addition, four of the five Alliance ministers served as an associate to a Labour party minister – the only exception was Alliance party leader Jim Anderton, who had 2 Labour associate ministers.²⁶ As a result, all of the Alliance ministers were coupled in one way or another to at least one Labour Cabinet minister. As might be expected, the allocation of associate minister roles reflected the policy interests of the respective parties. Less obviously, any coalition has to weigh responsibility against risk. Giving any portfolio to an inexperienced minister is a significant exposure to a constantly-probing Opposition.

A model under which ministers of different parties share responsibilities in the same portfolio area can serve multiple goals, including to:

- ensure each party in a coalition good access to information from the public service in politically important or sensitive portfolios;
- encourage collegiality and build trust between the parties;
- facilitate input from each coalition partner in the formulation and development of new policy initiatives;
- assist less experienced ministers; and
- enable each party to monitor the performance of ministers from the other party.

25 Jim Anderton was Minister for Economic Development and Minister for Industry and Regional Development (with Pete Hodgson as Associate Minister for these portfolios, and Parekura Horomia as Associate Minister for Māori Affairs (Economic Development)); Sandra Lee was Minister of Local Government and Minister of Conservation, with no Associate Minister from Labour; Matt Robson was Minister for Corrections and for Courts (with Tariana Turia as Associate Minister for Corrections); Laila Harré was Minister of Women's Affairs and Minister for Youth Affairs; and Phillida Bunkle was Minister of Customs.

26 Sandra Lee served initially under Dover Samuels (and then Parakura Horomia) as one of three Associate Ministers of Māori Affairs; Matt Robson was given associate roles under Phil Goff in Justice and Foreign Affairs; and Laila Harré was made Associate Minister of Commerce under Paul Swain and Associate Minister of Labour under Margaret Wilson. Likewise, three Labour ministers – Pete Hodgson, Dover Samuels and Tariana Turia – served under Alliance ministers.

According to participants in and observers of the New Zealand arrangements since the mid-1990s, the strategy of sharing portfolio responsibilities between ministers of different parties appears to have worked tolerably well – with a few notable exceptions.

In the case of the 1996–98 National–NZF coalition, the most significant pairing arrangement in terms of coalition management was the approach adopted in the finance portfolio. This portfolio had never previously been split in New Zealand (although it had been a common practice for many years for associate or deputy ministers to be appointed from the same party). Internationally, by contrast, it is relatively common for Cabinets to contain two senior economics ministers (for example, Australia, Denmark and Germany). However, in such cases there are usually two separate departments. All those interviewed maintained that giving both parties direct access to Treasury advice had greatly assisted the smooth operation of the coalition (at least until the middle of 1998) and ensured a higher level of co-operation and trust than might otherwise have been the case. To some degree the success of the arrangement reflected the willingness of Winston Peters and Bill Birch to work together in a collaborative fashion, but it was also the product of a detailed and carefully crafted protocol agreed to at the outset of the new administration. Under this protocol, there was a clear delineation of responsibilities between the two ministers and a specific requirement that all papers going from the Treasury to one minister had to be copied to the other. This latter provision reflected the strong commitment within the coalition to information sharing, both in the interests of effective policy coordination and in order to minimise surprises. At another level, of course, the very need for such protocols highlights the lack of trust that can afflict the relationships between coalition partners.

If the joint appointments worked reasonably well in areas like finance and education, the same was not true of the health portfolio. In this instance, a significant conflict developed between Bill English (the Minister of Health) and Neil Kirton (a new NZF MP and the Associate Health Minister). The conflict had its roots in different temperaments, policy convictions, interpretations of the coalition agreement and, above all, Kirton's view that his associate role carried more or less equivalent status and authority to that of English.²⁷ The issues soon became public, with Kirton openly disagreeing with policy on health matters. The difficulties were only resolved when Kirton was dismissed from all ministerial and associate responsibilities. Prime Minister Bolger made it

27 According to the Cabinet Office *Cabinet Manual 2001* (Wellington, 2001) para 2.32:

The control of a portfolio always rests with the "portfolio" or "principal" Minister. When an Associate Minister is appointed to support a portfolio Minister, the principal Minister must provide a formal letter clearly setting out the role of the Associate Minister in the portfolio, any delegated responsibilities, and relevant working arrangements.

Likewise, paragraph 2.34 states that: "Associate Ministers should take particular care to avoid making public statements or taking initiatives of any sort without the knowledge and approval of their portfolio Minister".

clear that the decision had been jointly arrived at by himself and Winston Peters, his coalition partner and Deputy Prime Minister. The debacle highlights that the success of pairing arrangements depends on good understandings of the basics of how Cabinet works and indeed the purposes of the coalition, a working level of trust between the ministers and an acceptance by the associate minister of the nature of the role.

On the whole, the associating of ministers operated relatively successfully during the Labour–Alliance ministry of 1999–2002. Inevitably, there were tensions, but there were no public dramas between the respective ministers and associates. Indeed, across the gradual break-up of the Alliance in the nine months before the general election of late July 2002, the Cabinet arrangements, including the associate relationships, kept functioning smoothly.

C Consultation Arrangements

It was apparent during the transition to MMP that coalition government would need methodical consultation and information sharing between the relevant parties. Equally, where a government lacked a formal parliamentary majority, significant consultation would have to be undertaken with one or more non-government parties (particularly in relation to legislative matters). As a result, the existing administrative systems were adapted during 1994 and 1995 to include additional consultation stages, and ministers (in the various National-led governments) became accustomed to briefing other parties on their proposals. With the exception of the period of majority government in the National–NZF coalition from late 1996 to mid-1998, consultation with non-government parties has remained a critical part of the new MMP environment and there have been regular revisions of the guidelines to accommodate relationships with support parties.

A Cabinet Office Circular in May 1997 set out the consultation that was expected on significant policy issues, legislation and major government appointments.²⁸ Most of the requirements were unchanged from those instituted during the early to mid-1990s, but there were minor variations to meet the needs of the then National–NZF coalition. Under the 1997 guidelines, ministers were required to ensure that appropriate briefings and consultations took place before matters came to Cabinet.

To facilitate this consultative process, spokespersons from each party were designated by their respective leaders to cover each portfolio area. Under the National–NZF coalition, the relevant spokespersons were usually ministers, but in the case of NZF, backbenchers also undertook these roles. This, of course, reflected the significant imbalance in the size of the two parties and the desire to avoid placing excessive burdens on the relatively small number of NZF ministers. One of the

28 Cabinet Office Circular "Coalition Agreement: New Requirements for Cabinet Submissions and CAB 100 Form" (16 May 1997) CO 97/6.

difficulties in using backbenchers as spokespersons was that their access to Cabinet papers (including working drafts) was significantly more restricted than for those within the ministry. At times, this hampered the quality of the consultative process.

Under the 1999–2002 Labour–Alliance government, all ministers were paired with a coalition consultation minister from the other party to deal with designated policy areas. Backbench MPs were not formally included in this consultation regime, although in the case of the Alliance they were regularly engaged in Cabinet draft papers on policies where they were known to have a strong policy or spokesperson interest (such as Liz Gordon in education and social welfare matters). Because of the imbalance of numbers, most Alliance ministers performed multiple consultation roles: in late 2001, for instance, Jim Anderton was formally the Alliance's consultation minister for no fewer than 44 portfolios, including many of the major ones such as Education, Health, Finance, Internal Affairs and State Services. Under these arrangements, ministers were expected, to quote a Cabinet Office Circular, to "put before the consultation ministers the sorts of issues on which they themselves would wish to be consulted, taking into account the coalition government's 'no surprises' policy". Furthermore, when submitting papers to the Cabinet or a Cabinet committee, "ministers must specify which consultation minister they have consulted". The circular also required that ministerial offices and departments refrain from implementing "Cabinet decisions that are still subject to the outcome of consultation between the coalition parties, or with government caucuses or other parliamentary parties".²⁹

To give effect to such requirements, some portfolio ministers held regular meetings with their consultation minister in the other party to discuss emerging issues. In some areas (for example, paid parental leave), the consultation might involve ministers from both parties meeting in high session over the detailed wording of draft cabinet proposals, but in the Labour–Alliance coalition of 1999–2002, at least, much of the relevant consultation was conducted by advisers in ministerial offices. Ministers were typically too busy on their own portfolios to undertake detailed negotiations on a wide range of other issues. Where it became evident that there were disagreements on significant policy issues between portfolio and consultation ministers, the consultation procedures required that the matter be brought to the attention of the prime minister's chief of staff and/or the deputy prime minister's chief of staff.³⁰ These senior advisers would typically discuss the issues, consult as appropriate and seek solutions. They might also prepare a brief memo outlining the nature of the disagreement and proposing solutions. Commonly, unless agreement was reached in advance (or, sometimes, at the meeting itself), the discussion at Cabinet or Cabinet committee level would simply be deferred.

29 Cabinet Office Circular "Coalition Consultation Procedures" (20 April 2001) CO 01/3, para 15.

30 Cabinet Office Circular "Coalition Consultation Procedures" (13 April 2000) CO 00/4, Appendix 1, para 3.

The Cabinet Office thus responded flexibly to coalition government, institutionalising formal processes, including Cabinet Office Circulars requiring signatures and boxes to be ticked stating who was consulted before the paper was accepted for a committee, or for Cabinet itself. But these institutionalised processes often depended on less formal mechanisms to solve problems.

All the politicians with recent experience of coalitions who were interviewed commented that consultation requirements were taken seriously. As one might expect, some ministers (and their offices) were busier than others and the processes adopted did not always comply with the agreed requirements on all issues.

Consultation arrangements of this nature are, of course, hugely time-consuming, all the more so if the government lacks a parliamentary majority or if the coalition is under heavy strain. During the National–NZF government, consultation arrangements were placed under mounting pressure and became more complex as internal conflicts within both of the coalition parties deepened. Indeed, as time went on, it became necessary for National ministers to consult each of the NZF factions, or even individual MPs, before they could be confident that a legislative proposal would receive the necessary support in the House.

A broad expectation has developed that negotiations between the coalition partners are an essentially political matter that should be conducted by politicians or their political advisers, not by public servants. Departmental officials, however, play an active role in preparing the relevant documentation, identifying areas of disagreement, consulting with ministerial advisers and briefing their minister (or ministers) on the issues. They may also attend meetings between the consultation ministers, but normally do not play a significant role in brokering agreements.

In any coalition government, a significant part of the burden of consultation is thus borne by party leaders and their respective offices. The strain is generally greatest for the leader or leaders of the junior coalition party (or parties) because they have fewer colleagues to cover the policy terrain and negotiate deals. This has resulted in potentially extremely significant roles for the key advisers of party leaders (sometimes designated as Chiefs of Staff).

D Cabinet Committees

It was an agreed practice under the National–NZF and Labour–Alliance coalitions for all Cabinet committees to include members of each of the parties represented in the government.³¹ This approach has had the effect during the periods in question of increasing somewhat the average size of Cabinet committees.

31 *Cabinet Manual 2001*, above n 27, para 3.63.

It was not, of course, practical for a similar rule to be applied to coalitions with very few members from the smaller party.³² In three of these instances, there was only one representative of the smaller party within the whole ministry (including the Cabinet), and in the case of the 1998–99 flotsam coalition between National and Independent, the four non-National ministers did not operate as a united political force. Under the 2002–05 Labour–Progressive coalition, Anderton as sole Cabinet minister for the Progressives had the right to attend any (or all) Cabinet committees, but there was typically only time to attend those directly related to portfolio responsibilities or important for other reasons, such as appointments or security matters.

The Cabinet system of decisions by consensus has long meant that the silence of a minister at a committee was effectively assent and thereafter the principles of collective responsibility would apply (as modified by coalition agreements). Experience since the mid-1990s suggests that the speak-now-or-hold-your-peace rule is still true under coalition government, but also that there is more room for re-visiting issues, generally by agreement and with clear notice. For example, in the 1999–2002 Labour–Alliance coalition, each coalition group of ministers would meet separately to work through the Cabinet agenda on the Monday morning before Cabinet began (typically at 10.30am). At the pre-cab meeting, coalition ministers sometimes discovered (or understood) what one of their colleagues (or their advisers) had agreed to in the consultation process or at a Cabinet committee. Hurried shuttling might follow to seek agreed changes to recommendations or to defer the matter for further discussion (see the "no surprises" principle set out in the coalition agreements of 1999, 2002 and 2005), but skirmishes had to be chosen carefully and their frequency declined as the decision-making system of government cranked into high production. Ministers were simply too busy to fight too many issues on the executive factory line. Compromise was a constant, reflecting the aphorism of politics being the art of the possible.

Apart from second-guessing within Cabinet itself, under multi-party arrangements there appears to be a greater (but still small) risk that backbench MPs in one or the other party could reject policy deals reached in the executive. A former head of the Department of the Prime Minister and Cabinet, Simon Murdoch, noted of the 1996–99 process:³³

In any Coalition environment the step from Cabinet Committee to Cabinet is a critical one: increasing time is taken to double-check backbench attitudes via Caucus consultation. The Prime Minister naturally expects a robust and fail safe set of "all-on-board" tests to be carried out before taking the train out of the station.

32 That is, National-Right-of-Centre (1994), National–United (1996), National–Independent (1998–99) and Labour–Progressive (2002–05, 2005–) coalitions.

33 Ginny Sullivan (ed) "Governing Under MMP: The Constitutional and Policy Challenges" (IPS Policy Paper 1, Wellington, 1999) 15, 18.

From 1999 onwards at least, the CAB 100 forms at the back of all Cabinet papers (which contain the check list of what consultation has taken place and what is still to come) suggest that matters would only be the subject of some discussion within coalition caucuses after going through Cabinet – and even then, the discussion would be based on the general principles, not on the Cabinet papers themselves. On rare occasions, consultation with individual backbenchers might be done in advance, particularly with smaller parties where a spokesperson might not be in the executive, or if a coalition or support arrangement has identified the issue as one which will go through that sequence. Political flashpoints (such as the foreshore and seabed legislation) can also provide exceptions where caucus members can and do buck the whip, but non-executive members in the parliamentary membership of coalition partners usually have enough to do in defending their party and the government in the House (especially in select committees), without fighting rearguard battles over their executive colleagues' deliberations. Two powerful drivers ensure this support: the almost universal backbench ambition to climb the party ladder and cross into the executive; and the need to protect the government against the Opposition.

Where legislation is involved, a different process is emerging relating to discussions with other parties in the House to ensure support and this is discussed further below. The point here is that, in general, the Leader of the House only allows legislation to be introduced where majority support is already lined up. Gaining this support has required steadily opening up the consultation process to include non-coalition members. Over time, it is likely that significant bargaining might follow, adding yet further complexity to the Cabinet–Parliamentary nexus.

E Other Ministerial Coordination Mechanisms

Coalitions in multi-party systems typically supplement Cabinet processes and consultative requirements with other arrangements, often of a relatively informal nature, to improve information sharing, consensus building and conflict resolution.³⁴ Such mechanisms include:

- the establishment of a high-level coalition management committee, consisting of senior parliamentarians and the wider party leadership, to handle major inter-party conflicts;
- regular meetings (sometimes daily) of the leaders of the coalition parties;
- regular meetings between individual ministers and the caucus committees (and/or government members of parliamentary committees) operating in their portfolio area;
- the formation of ad hoc groups of ministers to tackle particular issues on a multi-party basis; and
- regular meetings (usually weekly) of the respective parties' caucuses.

34 Boston *Governing under Proportional Representation: Lessons from Europe*, above n 9.

Unsurprisingly, mechanisms of this nature have become common features of New Zealand coalitions since the mid-1990s. For instance, the National–NZF agreement provided for the establishment of two inter-party committees outside the Cabinet system: a Coalition Management Committee and a Coalition Dispute Committee.³⁵

The Management Committee met regularly and was chaired by Wyatt Creech, a senior National minister with informal responsibility for coalition management. No departmental officials attended the meetings, and it was serviced instead by a secretariat from the offices of the prime minister and deputy prime minister. Increasingly, that secretariat took on a range of political management tasks for the coalition.

During the early period of the coalition, the Management Committee operated relatively smoothly, with a good working relationship between the members. However, as previously mentioned, internal ructions in both coalition parties (the leadership change in National at the end of 1997 and the increasing divisions within NZF in early to mid-1998) began to dent the atmosphere of openness and trust. One former member commented that a coalition management system of this kind relies upon effective internal party discipline – those representing their party at a meeting of this level need to be able to commit a caucus as a whole to a course of action. If they cannot, as was increasingly the case for NZF during the winter of 1998, then inter-party management becomes difficult.

The Dispute Committee was to meet only if a fundamental dispute arose, bringing together the leaders, deputies and presidents of each party to "negotiate in good faith to resolve the dispute".³⁶ As the National–NZF coalition began to disintegrate in August 1998, the parties convened a meeting of this Committee, but to no avail. By this stage, the coalition was all but over and notice to end it was formally given after this meeting. The events of August 1998 pose a broader question about the utility of establishing a special committee or instituting specific procedures to deal with fundamental disputes. If a coalition has broken down, no committee meeting is likely to save it. In politics, disputes only become fundamental if the parties want them to be.

As might be expected, the 1999 coalition agreement between Labour and the Alliance made no provision for a Coalition Dispute Committee. It did, however, make explicit mention of a Coalition Management Committee, as a standing committee comprised of up to eight people: the two party leaders, the two deputy leaders, the two senior whips and two people from the wider party organisation, nominated by the respective party leader. It would be chaired by the prime minister and be responsible, amongst other things, for "dispute resolution and strategic political management

35 Cabinet Office Circular "National/New Zealand First Government: Coalition Agreement and Initial Administrative Arrangements" (19 December 1996) CO 96/19.

36 New Zealand National Party "Coalition Agreement with the New Zealand First Party" (11 December 1996) para 13.3.

of the coalition".³⁷ As matters transpired, the Committee met only once during the 1999–2002 parliamentary term, in early 2000. That meeting showed all the participants concerned that the Committee was not an appropriate vehicle to manage the coalition – it had been overtaken by other systems.

Joint meetings of the government caucuses have been arranged from time to time under recent coalitions. For instance, between 1999 and 2002, joint caucuses were held immediately before the Budget was introduced. Thus, in keeping with international practice, joint caucuses have not been a prominent feature of coalition management in New Zealand, as the governing parties strive to preserve their separate identities and prefer to debate issues of policy and strategy on their own. Also, the experience to date suggests that such joint meetings as were held achieved little. Nick Smith, a senior National MP, noted:

The moment you bring two caucuses together, the confidence on which the caucus culture depends is lost ... The few attempts that were made to bring the National and New Zealand First caucuses together, there was never that essential culture of trust that is needed to have frank and free debate.

Ron Mark, a senior NZF MP, made the same point in relation to the occasions when ministers briefed MPs from the two government caucuses during 1997 and 1998:

Sometimes there were briefing sessions that put you in an embarrassing position where you couldn't grill your own minister because you didn't want to embarrass them in front of your coalition partner ... In that respect, such joint caucus briefings were too restrictive. They were a pointless exercise.

F Non-Ministerial Coordination Mechanisms

As noted, the enormous demands on ministers make it impossible for them to manage complex inter-party relationships and negotiate deals on the substance or timing of proposed reforms without assistance. Internationally, it has been relatively common for much of the day-to-day burden of coalition management to be borne by non-departmental advisers within ministerial offices. A notable example occurred in Ireland during the mid-1990s when each minister had a designated programme manager (in addition to one or more special advisers). As the name suggests, the individuals in question had, amongst other things, a responsibility for ensuring that the government's programme (as reflected in the respective inter-party agreements reached in early 1993 and late 1994) was appropriately interpreted and successfully implemented.

A rather different approach to coalition management was adopted in Sweden under the four-party centre–right coalition between 1991 and 1994. In this instance, a well-resourced and high-powered coordination staff (of about 25 people) was established in the Office of the Prime Minister.

37 Labour Party "Coalition Agreement with the Alliance Party" (6 December 1999).

Each of the four parties appointed a senior official and a small team of advisers to serve in the Office. The senior officials in question were granted the right to attend the political meetings of the Cabinet and were thus able to assist with the development, negotiation and coordination of the coalition's agenda at the highest levels.

In New Zealand, there has been no attempt to imitate particular overseas models of sub-ministerial coalition management. Instead, a number of different strategies have been adopted depending on the preferences of the particular coalitions and their respective party leaders. For instance, under the National–NZF administration much of the backroom glue for keeping the coalition together was provided by seconded departmental officials, especially those in the office of the Treasurer (such as Dr Mary-Anne Thompson) and the Department of the Prime Minister and Cabinet. Political advisers within the Prime Minister's Office, particularly Rob Eaddy under Bolger and Doug Martin under Shipley, were few in number, but pivotal.

Under the 1999–2002 Labour–Alliance administration, a somewhat bigger role was played by political advisers in ministerial offices. Central to this process were the chiefs of staff of the prime minister and deputy prime minister. Both academics by background, they worked together prior to the 1999 election in developing understandings over how a coalition might operate depending on the election results – and prepared the ground for the swift completion of coalition arrangements and inauguration of the new government after the election. The two advisers subsequently co-operated to implement the coalition arrangements.

Given the strong prime ministerial leadership of Helen Clark, the role of her chief of staff was pivotal to the management of the government – and indeed this remains the case,³⁸ but constant and effective coalition negotiation on Cabinet papers and proposed policies was also done by other advisers (including press officers) attached to other ministers. Their roles depended more on the issues at hand. Every so often, the teams of advisers from Labour and the Alliance met for a joint session to review progress and discuss particular problems. Ministers' press secretaries also gathered reasonably regularly, often on a Monday while Cabinet was in session. As one might expect, there were numerous other opportunities for discussion each week between pairs or groups of ministerial advisers as they dealt with issues or bumped into each other in the corridors. There were also reasonably regular scheduled meetings between Labour and Green Party advisers and occasionally ministers and Green MPs. By agreement all round, the relationship with the Greens was entirely managed by Labour, rather than jointly.

38 This is not the paper to elaborate on the importance of Heather Simpson as the Prime Minister's Chief of Staff from 1999 to the present, other than to note that she was central to the negotiation and management of the coalition arrangements of 1999, 2002 and 2005 and has maintained a comprehensive overview of government on behalf of the Prime Minister.

As regards coalition management, the stronger role of advisers arguably marks an important difference between the first two coalitions under MMP (that is, 1996–99 and 1999–2002). The formal systems, seen in Cabinet appointments, consultation arrangements and Cabinet processes, look reasonably similar, but the 1996 coalition agreement attempted to negotiate in advance almost an entire programme of government (across some 67 pages) whereas the 1999 arrangements, in contrast, covered just over one page, agreed a few headline policy areas (for example, growth, sustainability and reducing inequality) and then envisaged a coalition that would build policy en route working in good faith with no surprises. In 1996, the relationship focus was on leaders and ministers. In contrast, the 1999 coalition partners brought substantially more advisers alongside ministers. Funding such facilitation from within ministerial budgets is thus clearly an important part of the development of coalitions.

Standing back from the particulars – and putting aside their detailed policy input for the moment – ministerial staff appear to play at least three crucial roles in coalition management:

- ensuring that they are sufficiently on top of the issues and that they maintain good lines of communication with relevant players, so that risks have been identified and addressed and ministers are not taken by surprise;
- bearing some of the strain of sorting out disputes within a coalition, thus enabling ministers to focus on their job; and
- helping to ensure that the various understandings between the parties are observed; broken agreements breed mistrust that can quickly sour relationships.

VI MANAGING INTER-PARTY DISSENT

As noted earlier, all coalition governments face the challenge of managing internal dissent and maintaining adequate discipline – and surviving the next election. In political terms, the problem is essentially one of ensuring an individual party's electoral popularity, whilst also trying to ensure the coalition as a whole is not defeated. In constitutional terms, the issue is the doctrine of collective Cabinet responsibility as a distinctive feature of most parliamentary democracies³⁹ in a context where each coalition partner has electoral incentives to differentiate itself. This can either be to claim responsibility for major party achievements, or to avoid responsibility for decisions that may be unpopular (at least with the core vote for one's own party) and that may have been driven primarily by the other party in the coalition.

39 Michael Laver and Kenneth A Shepsle "Cabinet Government in Theoretical Perspective" in Michael Laver and Kenneth A Shepsle (eds) *Cabinet Ministers and Parliamentary Government* (Cambridge University Press, Cambridge, 1994) 285, 298–300.

The international experience suggests that the problem of coalition discipline has generated three distinct solutions:⁴⁰

- tight discipline with little or no opportunity for party differentiation (this is the norm in most multi-party systems, including Austria, Denmark, Germany, Ireland and Norway);
- scope for open disagreement between the parties in a few, explicitly agreed cases (for example, in Norway, the three parties that formed the centre-right coalition in 1983 agreed to disagree over abortion; six years later the same three parties endorsed the right of each party to adopt its own position on Norwegian membership of the European Community – known colloquially as the suicide paragraph – within a year, the coalition had been replaced by a pro-Europe minority Labour government);⁴¹ and
- a looser form of coalition discipline (in Finland, for instance, it has been common for the governing parties to agree only to take a united stance on those policies that are explicitly mentioned in the coalition agreement – on all other matters the parties reserve the right to adopt different positions, although in practice there are powerful political incentives to reach consensus).

In New Zealand, there are examples of both the first and second models, but also evidence of innovative approaches – especially in the 2005 arrangements.⁴² The second model was adopted in early 1996 by the National–United coalition. United was explicitly permitted to support named legislative initiatives, notwithstanding National's opposition. By contrast, the later National–NZF coalition imposed a regime of very tight discipline. In fact, the coalition agreement signed in December 1996 not only demanded unanimity on all government legislation, but also required the two parties to oppose policies or legislation (for example, in the form of a Member's Bill) initiated by Opposition parties "unless or until the consent in writing has been obtained by both parties to the Coalition".⁴³ Such arrangements, of course, can generate considerable intra-party and inter-party strains.

40 Kaare Strøm and Wolfgang Müller "Coalition Government in Parliamentary Democracies" (Paper prepared for the International Conference on Opportunities and Dilemmas of Parliamentary Leadership, Slovenia, Ljubljana, 6–9 July 1998).

41 Rommetvedt, above n 9, 244.

42 See Jonathan Boston "An Unusual Government: Coalition Politics and Inter-party Arrangements Following the 2005 General Election" (Paper prepared for the 2005 Post-Election Conference, Wellington, 2 December 2005) and Part VIII The October 2005 Coalition and Support Arrangements.

43 New Zealand National Party "Coalition Agreement with the New Zealand First Party" (11 December 1996) para 4.2(a).

Until the 2005 arrangements, the closest New Zealand came to the third approach to coalition discipline occurred under the National-led government between mid-1998 and late 1999. During this period there were a number of cases where the doctrine of collective responsibility was deliberately and openly breached by Independent or Mauri Pacific ministers.⁴⁴ The problem for National in these circumstances was that it had only a very slender parliamentary majority. It could thus not afford to alienate any of the Independent or Mauri Pacific ministers by imposing sanctions. Equally, because the former NZF ministers who remained within the government did not all unite under a common party umbrella, coalition discipline could not be enforced via intra-party sanctions.

Labour and the Alliance, having witnessed the difficulties experienced by the various coalitions between 1996 and 1999, decided to develop a different model – one that would not only provide sufficient flexibility to enable an element of party differentiation, but would also be consistent with the need for united and responsible government. The parties rejected the second model, namely a pre-agreed list of issues over which different policy positions would be tolerated. Such an approach, it was argued, was too inflexible and did not provide for unexpected contingencies. Instead, provision was made in the coalition agreement for each party to have the right to designate certain issues as being of "importance to the party's political identity".⁴⁵ In this event, the parties would be able, for instance, to take different positions on legislation, including proposing amendments to a government Bill. At the same time, the coalition agreement declared that the government would "operate within the convention of collective Cabinet responsibility"⁴⁶ and that differentiation on particular issues would not "detract from the overall acceptance that the two parties are taking joint responsibility for the actions of the government."⁴⁷

Where coalition government comprises only two parties and where these parties are highly unequal in size and influence, a party distinction provision of the kind negotiated by Labour and the Alliance appears primarily to be for the benefit of the junior partner. Indeed, it was recognised in late 1999 that while both parties had the right to ask for the party distinction provision to be invoked, only the Alliance was likely to do so; also, that regular use could seriously threaten the unity and credibility of the government.

44 Marie Shroff "The Role of the Secretary of the Cabinet: The View from the Beehive" (Occasional Paper 5, New Zealand Centre for Public Law, Wellington, 2001).

45 Labour Party "Coalition Agreement with the Alliance Party" (6 December 1999).

46 Labour Party "Coalition Agreement with the Alliance Party" (6 December 1999).

47 Labour Party "Coalition Agreement with the Alliance Party" (6 December 1999).

Following the formation of the Labour–Alliance government, the wording of the section on collective responsibility within the *Cabinet Manual 2001* was amended to give expression to the party distinction provision in the coalition agreement and now includes the following paragraphs:⁴⁸

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

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

The result was arguably a significant step towards more flexibility in coalition management and clear recognition that notions of collective responsibility were changing to meet new political circumstances. Still, the wording has held on to some of the older notions of the convention by:

- restating the obligations of implementation *after* any "agree to disagree" processes have been completed;
- stressing that the process is only available to parties and not to individuals; and
- restating that outside of such processes, any public dissociation is unacceptable (the previous *Manual* had indicated that ministers had to resign).

In fact, the two parties in the 1999–2000 Labour–Alliance government formally differentiated on only one major issue: the agreement with Singapore on a Closer Economic Partnership (CEP). The arrangement that the Alliance would speak against the treaty was announced by the Prime Minister, along with her acceptance that this was an "agree to disagree" process and that it was not outside the convention of collective responsibility. Despite all the preparation, when the Alliance ministers spoke in the House against the treaty, there were loud calls from the Opposition front bench for the Alliance ministers to resign. This had been expected and a relaxed response had been agreed. In the theatre of parliamentary debate, the calls were laughed at by government members and the Prime Minister and Deputy Prime Minister made a point of talking calmly and smilingly to each other. The Opposition got the message: the coalition was stable; resignation was off the agenda. The vote was overwhelmingly approved with the Opposition's support and the treaty duly ratified. The coalition had openly changed the convention, but had the government faced parliamentary defeat on the issue, one assumes a rather different course of action would have been

48 *Cabinet Manual 2001*, above n 27, paras 3.23–3.24.

followed. Differentiation was invoked on a number of other occasions, but in each instance the issues were minor and attracted little media comment or controversy.

When the party distinction provision was first mooted in 1999, concerns were expressed that it would undermine the doctrine of collective responsibility and in particular the unanimity principle. As indicated, the evidence does not support this view, but in any event, the unanimity principle was never applied with absolute consistency, even under single party governments. Most prime ministers tolerated their ministerial colleagues occasionally expressing views in public at variance, at least to a degree, with Cabinet decisions.⁴⁹ Likewise, there have been instances, both in New Zealand and elsewhere, where the Cabinet has allowed groups of ministers to oppose government policies, openly and explicitly. In 1997, for example, ministers within the National–NZF coalition were permitted to take different sides during the government-initiated referendum on compulsory superannuation, but whereas previously such departures from the unanimity principle were not subject to a systematic process, the party distinction provision provided an opportunity to ensure that any breaches of the principle only occurred in accordance with agreed, transparent procedures. Moreover, as Marie Shroff, then Cabinet Secretary, observed:⁵⁰

If Cabinet *agrees* to disagree, then the differentiation is arguably contained within the overall bounds of Cabinet collective responsibility, as the issues on which the parties may agree to disagree must themselves be collectively mandated.

Hence, while the party distinction provision clearly involves an evolution in the application of the doctrine of collective responsibility, it does not destroy it. On the contrary, flexibility has allowed the doctrine to survive in altered circumstances.

If the party distinction provision is constitutionally acceptable, does it actually help a junior coalition partner to preserve its identity and brand itself publicly? On the one hand, such a provision provides "wiggles room" within a coalition and thus has the potential to avoid internal discontent on high-profile issues where the coalition partners hold different policy positions. On the other hand, the political reality is that the provision can probably only be used infrequently and in circumstances where the major party has other means of securing support – certainly if the issue is one of high political salience. Accordingly, the political incentives to invoke the party distinction provision are not as great as might appear at first sight. In effect, this means that the use of such a provision will always be subject to automatic stabilisers.

Although the provision was not often publicly invoked by the two coalitions post-1999, it was not irrelevant. All Cabinets work by consensus (accepting that this often means that what the prime

49 Elizabeth McLeay *The Cabinet and Political Power in New Zealand* (Oxford University Press, Auckland, 1995) 198–199.

50 Shroff, above n 44, 20 (emphasis in the original).

minister and other key ministers really want, gets consensus). There were many occasions post-1999 where disagreements resulted in matters being held up until the issues were resolved.⁵¹

The party distinction provision is now surely an enduring feature of coalition government in New Zealand. In all such circumstances, the parties involved appear to calculate the political, policy and relationship risks and advantages, and dissent is often a bigger electoral risk than reward.

VII MANAGING LEGISLATIVE COALITIONS

Putting aside votes of confidence (which often have special arrangements), minority governments need support for legislation from one or more of the other parties represented in the legislature. International experience indicates that there is great variation in how this is done. Plainly, much depends on the strategic options available to the respective parties, the ideological distance between the minority administration and the various non-government parties and whether the government prefers to build an enduring legislative coalition with a support party (or parties) or construct jumping majorities on a case-by-case basis.

In some instances, a minority administration may negotiate a relatively formal, medium-term arrangement with a non-government party (or parties) under which the administration offers certain concessions in return for an agreed level of support for its proposed policy agenda. Occasionally, a support party may be so integrated into the policy-making process within government that it virtually becomes a coalition partner. A good example of this occurred in Sweden between 1995 and 1997 when the minority Social Democratic government developed a very close working relationship with the Centre party. This included the appointment of a senior official of the Centre party to serve within the Ministry of Finance, thereby enabling detailed participation by the Centre party in the day-to-day conduct of economic policy.⁵²

In other situations, a minority government may have much looser support arrangements or negotiate with different parties depending on the nature of the issue. Such an approach may be adopted either as a means of preserving the government's flexibility or because none of the opposition parties is willing to enter into a formal, medium-term working arrangement.

51 Examples are still politically relevant, and hence generalisations must suffice. In one particularly contentious example, an offer was made that the policy should proceed, but without the support of the minor coalition partner (that is, a public differentiation). Rather than take the political risks that would ensue, the policy was simply parked until agreement was reached. After months of delay, and key changes that improved the policy, it was agreed in Cabinet without differentiation, and then by the House, with little political fallout. Indeed, inside commentary from ministers indicated considerable relief that the policy had been held up as part of coalition discussions. Such a delay would have been politically impossible had the issue only been a matter of debate within a single party.

52 Boston *Governing under Proportional Representation: Lessons from Europe*, above n 9.

Regardless of the nature of the support arrangements negotiated by a minority administration, it is usual for relationships between the government and its legislative allies to be conducted at multiple levels. Hence, there will be regular (or semi-regular) meetings between the respective party leaders, ongoing contact between individual ministers (and their key advisers) and the relevant policy spokespersons of the support party (or parties) and consultations between MPs of the respective parties within parliamentary committees and other decision-making forums.

Since the electoral referendum in 1993, no New Zealand government has had more than a bare parliamentary majority and most have been minority administrations. Of the latter, there have been four distinct periods:

- the various National-led minority (single party and coalition) governments under Bolger during 1995 and 1996;⁵³
- the National-led minority government under Shipley between August 1998 and the 1999 election;
- the centre-left minority governments under Clark between 1999 and 2005; and
- the Clark-led minority government since 2005, which has operated in a context where there is no stable centre-left majority in Parliament.

The political dynamics, constraints and opportunities were different in each case. During the 1993–96 Parliament, there was a clear centre-right majority but much political turbulence, with significant numbers of National and Labour MPs leaving their parties to form new parties in the run up to the first MMP election. In these circumstances, National had little option but to build executive and legislative coalitions on a relatively ad hoc basis depending on the changing number, size and composition of the parliamentary parties.

Following the collapse of the National–NZF majority coalition in 1998, the Shipley-led administration faced a relatively complex parliamentary environment. Achieving anything during this period took time and negotiation. The common approach was for Cabinet ministers to reach tentative agreement on a particular course of action; this would then be followed by detailed negotiations with a wide range of individuals. Most of these negotiations had to be conducted personally by ministers, adding significantly to their workload. This was especially the case for the Leader of the House, Roger Sowry, and the Deputy Prime Minister, Wyatt Creech, who were given explicit responsibility for minority government management and the legislation programme.

53 See Jonathan Boston and others "Experimenting with Coalition Government: Preparing to Manage under Proportional Representation in New Zealand" (1997) 35 *Journal of Commonwealth and Comparative Politics* 108.

The strategic situation facing the 1999–2002 Labour–Alliance government was rather different – and certainly much less complicated. Instead of needing support from a number of different sources, the administration was able to rely in most cases on a single support party, the Greens. When the Labour–Alliance government was formed, the intention was to agree a protocol with the Greens to frame the relationship over the parliamentary term.⁵⁴ In fact, negotiations were conducted during mid-December involving representatives of Labour, the Alliance and the Greens, and a text was drafted. Further discussions were held early in 2000 and some new provisions were incorporated. The Greens had already publicly agreed to support the coalition government on matters of confidence and supply. The protocol proposed further co-operation in good faith to ensure stable and effective government and to support the coalition on all procedural motions in the House, unless specific notice to the contrary was given. In return, the coalition would consult the Greens on policy intentions and priorities, provide the party with the opportunity to contribute to policy development, and give serious consideration to the party's policy proposals.

In the event, the protocol was never signed.⁵⁵ One reason was annoyance on the part of both Labour and the Alliance at the perceived failure of the Greens during the first few months of the new government to abide by understandings, especially on confidentiality. However, the more important reason was that the Alliance was uncomfortable with the Greens achieving policy gains and political mileage in areas that the Alliance regarded as its turf, but for which it faced enormous difficulties in gaining recognition, even if agreement could be reached in the executive processes (the unity–distinction dilemma). It is instructive that Clark publicly expressed a willingness to sign the protocol, but Anderton as coalition partner was silent.

In preliminary discussions, the negotiators had agreed that they would abide by its basic terms irrespective of whether the document was formalised – thus, it became the understanding upon which the relationship between the coalition and the Greens was conducted during 2000–02. Accordingly, the Greens became the preferred partner to which the coalition turned in the first instance for parliamentary support. In return, they were given much greater access to the policy process (including draft legislation and Cabinet papers in areas of agreed interest) than other non-government parties and more opportunities to have their proposals considered. The centrepiece of this process was an invitation by Michael Cullen, as Minister of Finance, for the Greens to submit specific policy suggestions during the early stages of the budget process.⁵⁶ Regular ministerial briefings of Green MPs in particular policy areas were also instituted and the Labour party Senior Whip, Rick Barker, met with a representative of the Greens when Parliament was in session

54 Tim Bale and Christine Dann "Is the Grass Really Greener? The Rationale and Reality of Support Party Status: A New Zealand Case Study" (2002) 8 Party Politics 349.

55 See Bale and Dann, above n 54.

56 See Jonathan Boston and Stephen Church "The Budget Process in New Zealand: Has Proportional Representation Made a Difference?" (2002) 54 Political Science 21.

(generally before the meeting of the Business Committee) to discuss House business and any other matters of concern. Additionally, Cullen (in his role as Leader of the House) met with the Greens to discuss the government's legislative programme and to seek support on various parliamentary matters, such as the taking of urgency.

This is not to suggest that the relationship was easy. The Greens often felt ignored, and frustrated the government on many occasions by refusing to support certain important pieces of legislation (or particular amendments) or by opposing governmental efforts to speed up the legislative process (for example, by taking urgency).

When the Greens refused to back the government on key policy initiatives (such as superannuation or anti-defection legislation), Michael Cullen generally turned to NZF for support. However, during 2000 and 2001, the Greens only voted against government Bills at the third reading stage on five occasions, so the need to seek legislative support from other parties was not great.

The formation of the government in August 2002 gave rise to both a support agreement and a co-operation agreement. The first of these agreements, negotiated by the Labour–Progressive coalition with United Future (UF), was broadly similar to the earlier unsigned 1999 protocol with the Greens. It was, however, rather more exacting in the obligations that it placed on the government (for example, in relation to the nature and degree of consultation with UF over policy making) and contained some specific policy commitments. Another point worthy of note was the inclusion of provisions relating to collective responsibility:⁵⁷

Although United Future will not be bound by collective responsibility on government decisions, where there has been full participation in the development of a policy initiative, and that participation has led to an agreed position, it is expected that all parties to the agreement will publicly support the process and the outcome.

The origin of this provision was actually in the draft protocol previously negotiated with the Greens. Its purpose was two-fold. First, UF was keen to avoid situations of the kind that had arisen under previous governments, where hard won victories secured by a support party or the junior coalition partner were only grudgingly conceded in public by senior ministers, or damned with faint praise. Secondly, Labour wanted a more disciplined consultation process to minimise situations where UF was brought into a full-blown consultative process designed to achieve a negotiated outcome, but might then pull the rug from under the government at the last minute.

The 2002 co-operation agreement between the Labour–Progressive government and the Greens was also not unlike the Greens' 1999 support arrangement and was similar to the deal with UF. The crucial difference was the absence of any commitment from the Greens to provide support on

57 Labour-led Government "Support Agreement with United Future" (8 August 2002).

confidence and supply. Instead, the respective parties pledged themselves to a "constructive relationship based on good faith for this term of Parliament"⁵⁸ and to co-operating on "agreed areas of policy development and legislation in order to facilitate the implementation of a shared agenda".⁵⁹ Unlike the support agreement with UF, there was no explicit mention of the budget in the co-operation agreement (presumably because of the Greens' unwillingness to provide unconditional support on supply).

All the details of the coalition and support agreements shortly translated into official processes by Cabinet Office Circular.⁶⁰ This is perhaps the most distinctive illustration to date of the interlocking nature of coalition management, where political arrangements become public service management tools. It spelled out the agreements and then detailed how they were to be put into administrative action by the public service, operating under the authority of the Cabinet process. Explicit mention was made of how the coalition was to be managed.⁶¹

In the interests of maintaining an overview of consultation being undertaken, the overall management of consultation with support and co-operation parties will be the responsibility of the Prime Minister, supported by her Chief of Staff, Heather Simpson.

Guidance was also given to departments about how to manage relationships with the various parties with whom the executive had to work under the coalition and support arrangements.⁶²

The agreements of August 2002 may have had a lasting influence on the nature and pattern of inter-party relationships. As the 2005 arrangements showed, the decision to negotiate and sign separate support and co-operation agreements in 2002 set a precedent, with strong expectations that minority governments would in future negotiate a range of formal support agreements.

VIII THE OCTOBER 2005 COALITION AND SUPPORT ARRANGEMENTS

At the September 2005 general election, Labour won 50 seats, 11 short of a majority.⁶³ It had five parties with whom it could negotiate to form a government, but with the main opposition

58 Labour-led Government "Co-operation Agreement with the Green Party" (26 August 2002).

59 Labour-led Government "Co-operation Agreement with the Green Party" (26 August 2002).

60 Cabinet Office Circular "Coalition, Support and Co-operation Agreements: Administrative Arrangements" (3 September 2002) CO 02/11.

61 Cabinet Office Circular "Coalition, Support and Co-operation Agreements: Administrative Arrangements" (3 September 2002) CO 02/11, para 25.

62 Cabinet Office Circular "Coalition, Support and Co-operation Agreements: Administrative Arrangements" (3 September 2002) CO 02/11, paras 26–30.

63 See Election Results <<http://www.electionresults.govt.nz/partystatus.html>> (last accessed 24 April 2006): Labour Party 50, National Party 48; New Zealand First Party 7; Green Party 6; Māori Party 4; United Future New Zealand 3; ACT New Zealand 2; Jim Anderton's Progressive 1.

National Party winning 48 seats, it was theoretically possible for some combination of parties to support either Labour or National to form a government. Given political circumstances and previous public statements, it was a complex equation to balance. NZF (seven MPs) and UF (three MPs) had earlier made public statements indicating that they would negotiate first with the party that won the most seats, but that they explicitly would not want to co-operate with the Greens (six MPs) in a coalition arrangement. NZF had actually made commitments not to enter any coalition arrangement, but to support the party that won the most seats in votes of confidence. For its part, Labour had made public statements that its last preference in building a government would be with the Māori Party (four seats). After a few weeks, Labour negotiated a coalition arrangement with the Progressive Party, whose sole representative (Jim Anderton) remained in the Cabinet, and separate confidence and supply agreements with NZF and UF (with one minister from each party being in the executive, but outside of Cabinet). These arrangements gave a majority in the House of 61 seats on confidence and supply. Labour also negotiated a co-operation agreement with the Greens, giving them an additional six votes on most legislative matters.

The short coalition agreement between the Labour and Progressive parties noted the desire to continue to deliver ongoing stability in a coalition government and set out some broad policy objectives. Of particular relevance to this paper, the clause on distinctive political identity stated:⁶⁴

Both parties recognise the need for parties to be able to maintain distinctive political identities in government and Parliament. This applies particularly to the smaller party and during this term of Parliament we will further develop processes for:

- ensuring appropriate credit for and recognition of the policy achievements of the smaller party; and
- the expression of different views publicly and in Parliament.

This ambition was immediately put into action in the confidence and supply agreements with NZF and UF. These provided areas where detailed engagement with the policy process of government would take place, allocated a ministerial position to each party leader and in each agreement noted that the minor party:⁶⁵

[A]grees to fully respect the government position and be bound by Cabinet Manual provisions in respect of any areas within the portfolio responsibility of [the Minister] and to support all areas which are matters of confidence and supply. In other areas "agree to disagree" provisions will be applied as necessary.

The agreement with the Greens did not allocate any ministerial position, but indicated that in return for co-operation on key policy initiatives, the Greens would "not oppose"⁶⁶ confidence and

64 Labour Party "Coalition Agreement with the Progressive Party" (17 October 2005).

65 Labour-led Government "Confidence and Supply Agreement with New Zealand First" (17 October 2005).

66 Labour-led Government "Co-operation Agreement with the Green Party" (17 October 2005).

supply. The agreement also set out substantial policy areas in which there would be close engagement between the Greens and executive processes and then noted under the heading "Collective Responsibility", echoing the 1999 protocol and 2002 arrangements.⁶⁷

The Green Party will not be bound by collective responsibility on government decisions. Where the Green Party has participated in the development of a policy initiative, and that participation has led to an agreed position, it is expected that all parties to this agreement will publicly support the process and the outcome.

Following the agreements, the leaders of both NZF and UF made public statements along the lines that they were not really *in* government and had full rights to act as opposition MPs on matters outside their portfolios. These statements produced a flurry of commentary on the boundaries of collective responsibility and discussion about whether a minister outside of Cabinet was really in a coalition arrangement, or part of the executive, or just a MP with some executive roles, generally supporting the Government on confidence and supply and portfolio matters, but otherwise free to disagree.⁶⁸

At the time of writing, the detail of these agreements had not yet been translated into a Cabinet Office Circular, but several observations are possible. First, it is clear that the competing demands of party identity and government cohesion remain high on the agenda. This has seen development of the innovations on assembling and managing coalitions. For example, collective responsibility has again been pragmatically adapted. The arrangements envisage the novel notion of ministers outside of Cabinet being in government only in respect to their portfolios, but not actually in coalition or otherwise bound by collective responsibility.

Secondly, the use of support arrangements with parties in Parliament, but outside the executive, has been substantially extended. The Greens' arrangements arguably blur the distinction between executive and legislature, with close engagement now envisaged on detailed budget and policy matters, including virtually treating key areas of policy as Green Party initiatives for executive purposes.

Thirdly, how well all this works will no doubt be determined by the interplay of the key aspects of coalitions discussed above. The contextual factors will be important, including the respective polling of the parties as they head towards the election in 2008. Equally, how well the formal and informal processes work remains to be seen. They are in the process of being constructed, and by

67 Labour-led Government "Co-operation Agreement with the Green Party" (17 October 2005).

68 The public commentary included "The New Government Arrangements: Constitutional Outrage or Kiwi Pragmatic Innovation?" (Panel Discussion, Institute of Policy Studies, Wellington, 31 October 2005), see <<http://www.vuw.ac.nz/ips>> (last accessed 1 May 2006).

people who have done this before. In the end, the craft of coalition management will determine how this innovative combination of coalition, confidence and supply, and co-operation arrangements works.

IX CONCLUSION

Standing back from the particulars of coalition management in New Zealand since the mid-1990s, one can observe five phases and models. Each was influenced by the political opportunities and constraints of the time, and by experience. The first phase began during the transition years of 1994–96, as MPs sought to prepare for the forthcoming proportional system and consulted officials to draw from overseas experience. Some MPs defected, leaving ministers accustomed to the context of stable single-party majority governments with little option but to co-operate, share information and negotiate. A second phase began with the formation of the National–NZF majority government in late 1996, with its detailed and rather legalistic coalition agreement and an exacting set of procedures. The collapse of the National–NZF coalition (and defections from NZF) saw a third and brief phase of scrambling as the flotsam coalition was held together until the 1999 election. This phase was characterised by informal inter-party arrangements and ad hoc, one-to-one negotiations, reflecting the unusual nature of the parliamentary groupings that sustained 61 votes.

The fourth phase to date commenced with the 1999 formation of the Labour–Alliance coalition and continued under the subsequent 2002–05 Labour–Progressive coalition, but with other relationships with support parties. Drawing on previous experience and determined not to repeat the most obvious mistakes, the models of coalition management between 1999–2005 involved the umbrella of anti-defection legislation and, internally, a commitment to process – based on the search for consensus, an ethos of consultation (exemplified by the "no surprises" policy) and a preparedness to entertain the possibility of occasional public disagreements on important issues in the interests of preserving the distinctiveness and identity of each governing party. Even if these coalitions were somewhat better informed (and hence crafted) than their predecessors, intra-party conflicts, rather than inter-party ones, posed the greatest challenges between 1999–2002, prompting the mutually-agreed (between the coalition leaders) decision to call an early election in 2002.

The craft is particularly evident in the fifth and current phase, commencing with the October 2005 arrangements. These are different in degree, but are logical progressions drawing on previous experience – and tested exponents of the craft are at the helm. Time will tell, but there appears no immediate reason to believe there are fundamental design flaws or that the constitutional conventions cannot flexibly adjust. Experience and history suggest that the arrangements will work if the key actors want them to.

The detail presented has underpinned the argument that multi-party executives require new understanding if old structures are to work effectively. In New Zealand, coalitions and their

management are the latest developments of the efficient secret of Cabinet government. The careful crafting of people, systems and processes, formal and informal, is now critical to the role of the executive in a parliamentary system – and to political survival.