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**A Study in Democracy—
Candidate Selection for the Parliament of the
Commonwealth of Australia**

**Gary Thomas Johns BEc MA
School of Political Science and International Studies
University of Queensland**

A Thesis Submitted for the Degree of Doctor of Philosophy

Statement of Originality

The work presented in the thesis, A Study in Democracy—Candidate Selection for the Parliament of the Commonwealth of Australia, is, to the best of my knowledge and belief, original and my own work, except as acknowledged in the text. The material in the thesis has not been submitted, either in part or in whole, for a degree at this or any other university.

A handwritten signature in black ink, appearing to read 'Gary Johns', with a long horizontal flourish extending to the right.

Gary Johns
May 2001

Acknowledgements

Researching and writing this thesis has been a very stimulating and enjoyable experience. It follows a long career in politics, both as a backroom player and as a member of parliament. My research skills had atrophied since my last thesis. Moreover, for many years my reading rarely extended beyond the newspapers and the party or the cabinet brief. My primary methods of communication and persuasion were the press release, the 10 seconds of radio 'sound-bite' and the similarly brief television 'talking-heads'.

The thesis has afforded me to the opportunity to rekindle the skills of research and academic writing and to read more widely. The major benefit, for both the readers, and me will hopefully be a study that contributes to a better understanding of the role and performance of Australian parties. Applying some theoretical constructs to the data has helped to make sense of a fascinating and reasonably important area of Australian democracy.

In this venture, Dr. Ian Ward, my supervisor, has guided me with great skill and care. Many thanks indeed for your work. Thanks also to Professor Colin Hughes for reading an early draft of part of the thesis during Ian's absence on sabbatical. Thanks also to Professor Paul Boreham, head of the School, who no doubt was a little surprised to receive a call in late 1995 from a then Minister of the Commonwealth government inquiring about a doctorate.

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Abstract

There is a strong case to insist that the major Australian political parties have an obligation to the electorate to select their candidates for public office democratically. That obligation may arise if the Australian party system demonstrates restricted electoral competition and if the Australian political parties are, in some ways, public property. Competition between candidates representing political parties is usually regarded as a central feature of a liberal democracy. Where competition *between* parties fails to provide the public with an effective choice of candidates, the real competition between candidates is displaced to a competition for party endorsement *within* particular parties. If the real political competition occurs within the parties, it may be argued that the same standards of democratic practice as apply in general elections, should apply to the parties. They may even have an obligation to submit their selection processes to external scrutiny.

If the major Australian parties are, however, wholly private associations, it may be difficult to insist on the imposition of public standards of performance. There may be risks to the freedom of association currently enjoyed by the parties, should external standards apply. A compromise is to provide for external scrutiny of the parties, without insisting on particular standards of behaviour.

These arguments rely on an analysis of electoral competition in Australia, of the status of Australian parties and of the current performance of the parties in the selection of candidates. Each of these is analysed and the evidence is presented. An improved democratic performance on the part of the parties may improve competition between the parties and preserve the greatest strength of the present party system—its stability.

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Abbreviations and Terms

Australian Democrats: ‘Democrats’ in the text and illustrations, ‘AD’ in references.

Australian Labor Party: ‘Labor’ in the text and illustrations, ‘ALP’ in references.

Country Liberal Party: ‘CLP’ in the text, illustrations and references.

Liberal Party of Australia: ‘Liberal’ in the text and illustrations, ‘LPA’ in references.

National Party of Australia: ‘National’ in the text and illustrations, ‘NPA’ in references.

Each party has a national or federal constitution, but membership is organised on a State and Territory basis. The term ‘division’ is used to distinguish each party on a State or Territory basis. The term ‘branch’ refers to local membership groups within each division.

The States and Territories are described in full in the text and illustrations, except for New South Wales (NSW), Australian Capital Territory (ACT) and the Northern

Territory (NT). In the references additional abbreviations are, Victoria (V), Queensland (Q), Western Australia (WA), South Australia (SA) and Tasmania (T).

Chapter 1

The Party Monopoly on Members of Parliament

Seven hundred and three men and women were elected to the Australian House of Representatives in the period between 1941 and 1998. Of these, only seven were not nominees of a major political party.¹ In 1941, the Australian Labor Party formed a government in its own right during the sixteenth Parliament and in the ensuing twenty-three Parliaments only the Australian Labor Party or the Liberal Party of Australia in coalition with the National (Country) Party of Australia has governed Australia. No Member of Parliament who was not a member of these three parties has ever been a part of the thirty-one Ministries formed during the period. The situation in Australia's second chamber, the Senate, is marginally different in as much as a larger number of non-party candidates and a larger number of representatives of minor parties were elected. The electoral system for the House of Representatives consists of single-member constituencies and requires an absolute majority of the constituency for election. The Senate electoral system is a multi-member constituency requiring a quota of only one seventh of the constituency for election.² The Australian combination of electoral systems has helped to achieve a stable party duopoly in the House of Representatives, where governments are formed and representation by other parties and individuals in the Senate, where there is scope for a considerable degree of review of government actions. The system's price, however, appears to be a monopoly by the major parties over the vital role of the gatekeepers to Parliament. That no new party has held government since 1941, despite the fact that hundreds of new parties have been formed in that period,³ suggests that there is an insurmountable barrier to new entrants. Some argue that the solution lies beyond the two-party

¹ Excludes those who resigned from their party while in parliament, and those who subsequently stood as an independent. Department of the Parliamentary Library, 1999. *Parliamentary Handbook of the Commonwealth of Australia*, 28th edition. Canberra: Department of the Parliamentary Library. 586ff.

² For a regular half-Senate election. In the event of a double dissolution, all seats are contested and the quota is one thirteenth.

³ Jaensch, D and D.S. Mathieson, 1998. *A Plague on Both Your Houses: Minor Parties in Australia*. Sydney: Allen and Unwin.

system,⁴ a change to the electoral system and the encouragement of a diversity of minor parties. The prospects for such change seem remote and if they did occur, may produce a less favourable outcome. Perhaps there is a remedy to the major party monopoly that preserves the stability of the system and enhances the competition between the parties.

Electoral Stability and Enhanced Competition

Bartolini and Mair's⁵ discussion of the history of European electorates over the last century develops the theme of two contradictory tendencies—electoral stability and electoral volatility. They argue that both of these elements are present where there is a healthy competition between parties, but within a given set of rules and with steady allegiances to the major parties. The Downsian⁶ concept of the competition for political space suggests that parties will expand or contract the scope of their membership or policies to respond successfully to the electorate. In a closed political 'space', the number of parties and the breadth of their appeal will satisfy a majority of the electorate at equilibrium. The simple economic theory of democracy has little regard for parties as institutions in their own right. They are assumed mere ciphers for the electorate's demands. Critics of party-based representative democracy suggest that a democratic equilibrium may not be reached as the market dictates. Parties are associations of individuals who are to some extent autonomous actors in the political landscape.⁷ Parties may successfully conspire to close competition from other sources, so the 'equilibrium' may in fact be an oligopoly.⁸ Further, even in the liberal democracy⁹ neither everyone nor every view is heard, especially minority opinion. Nor does it guarantee a level of participation by the electorate beyond that of spectator. Then again, party competition may be unstable, of which the volatile Italian party system is a clear example.

⁴ Marsh, I. 1995. *Beyond the Two Party System: Political Representation, Economic Competitiveness and Australian Politics*. Melbourne: Cambridge University Press.

⁵ Bartolini, S. and P. Mair, 1990. *Identity, Competition and Electoral Availability: The Stabilisation of European Electorates 1885–1985*. Cambridge: Cambridge University Press, 4ff.

⁶ Downs, A. 1957. *An Economic Theory of Democracy*. New York: Harper and Row.

⁷ Panebianco, A. 1988. *Political Parties: Organisations and Power*. New York: Cambridge University Press, 273.

⁸ Katz, R. S. and P. Mair, 1995. 'Changing Models of Party Organization and Party Democracy: the Emergence of the Cartel Party.' *Party Politics* 1(1): 5–28.

Australia has achieved political and electoral stability based on a particular form of competition between the major parties. Although it does not offer the opportunities for participation which instruments for direct democracy provide,¹⁰ it has shown an ability to account for the needs and demands of minorities,¹¹ and it does not suffer the volatility or instability of some systems. When the present offers so much, the possible gains from reforming the current level of party competition should not be overstated. The very fact that political parties are the most successful organisations at having people elected for public office should not be dismissed lightly. Perhaps they are good at their job. At the very least, their success does mean that the competition for the right to wear the party label is as much a part of the democratic process as the election itself. In practice, there is no other way to enter Parliament than by the endorsement of a major party. The tendency to oligarchy manifested in the lack of new parties in government and the major parties' monopoly on entry to Parliament are strong grounds for investigation. If a few powerful individuals control the major parties, the participative base of the entire electoral system may be very narrow indeed.

The particular contribution that parties make to democracy is their ability to produce binding agreements between elected representatives. Such agreements enable the electorate to choose between the policies on offer in the knowledge that the prospects for their delivery are realistic. Furthermore, the parties succeed or fail based on their policy offers and their delivery. The ability to aggregate voter demands and formulate policy into binding agreements substitutes for the probable alternative—a trade among 'independent' representatives in the policy of interest groups, which outcome may be neither predictable nor apparent to voters. Under these conditions, voters do not have a sound basis for choosing candidates in the next round of elections. They

⁹ Carter, A. and G. Stokes, 1998. 'Introduction.' In *Liberal Democracy and its Critics*, eds. A. Carter, and G. Stokes. Cambridge: Polity Press.

¹⁰ Williams, G. and G. Chin, 2000. 'The Failure of Citizens' Initiated Referenda Proposals in Australia: New Directions for Popular Participation?' *Australian Journal of Political Science* 35(1): 27–48.

¹¹ The most significant Federal rights-orientated legislation lies in the area of anti-discrimination legislation. Commonwealth legislation includes the *Racial Discrimination Act 1975* (Cwlth), the *Sex Discrimination Act 1984* (Cwlth) and the *Disability Discrimination Act 1992* (Cwlth). These Acts operate throughout Australia and are enforced, to the extent possible given the separation of powers in the Australian Constitution, by the Human Rights and Equal Opportunity Commission (Act 1986). There are equivalent statutes in each State.

cannot be sure of what they will receive from the candidate they choose. The party as an institution is able to deliver choice to the electorate because the career advancement of party politicians rests on their performing in that institution as a team player, albeit as a fierce competitor within the team. As the Hon. Leo McLeay MHR rather candidly stated, 'You got in the queue and you got rewarded ... that's how they kept the political party together'.¹² The competition for power within parties is thus intimately connected to, and is an essential part of, the competitive party system.

Internal party democracy may be one way of compensating for the parties' monopoly over the selection of Members of Parliament. In his analysis of the issue, Ware asks, 'would internal democracy in parties provide for more, or less, effective competition between them?'¹³ The answer is conditional on the degree of democracy achieved within the party. Competition between parties may be weakened if parties become so internally democratic that they cannot reach agreement in a practical and cost-effective way. Less effective parties make for less effective competition. Conversely, where power is held by very few, the scope of any agreements may be narrow and the extent of scrutiny by, and accountability to, members is less. Ware¹⁴ argues that internal party democracy will not destabilise party competition if the parties remain essentially undisturbed in their ability to operate collectively, but competition may be enhanced where the contest for the right to represent the party is more open and accountable, at least among party activists.

Assessing the Major Parties

The rationale for assessing the competition for power within Australia's major political parties is based on three aspects of political parties. The first concerns the *party system* and requires evidence of a lack of competition between the parties. The monopoly by the major parties over the selection of candidates for Parliament consists of, a duopoly by the Labor and the Coalition parties in the House of Representatives, and the prominence in the Senate of the only other major party, the Australian Democrats. The competition is restricted to certain players only. The second,

¹² Cumming, F. 1991. *Mates: Five Champions of the Labor Right*. Sydney: Allen and Unwin, 242.

¹³ Ware, A. 1979. *The Logic of Party Democracy*. London: Macmillan, 9.

¹⁴ Ware, 1979. *The Logic of Party Democracy*, 31.

concerns *party status* and requires evidence of the ownership of the parties and the rights that such ownership generates. In other words, who has the right to scrutinise the actions of parties? If parties are purely private associations, the right of scrutiny presumably falls exclusively to the party members. Nevertheless, the parties may fail to represent their members in any meaningful way if the members have no say in the affairs of the association. In which case, it may be possible to raise the prospect of external scrutiny of the internal affairs of the parties. If the parties receive public funds or rely heavily on a historical legacy for their success against new parties, the rights of the wider electorate to scrutinise parties may be clearly justified. The third element concerns *party integrity*. It relies on the successful rationale for the scrutiny of parties. Party integrity refers to the way in which parties, as free associations of individuals, behave in their role of candidate selection. The concept of the status of a party as a private association will be used to guide the discussion on the issue of scrutiny. It has a normative element, which is the rationale for choosing a particular standard of behaviour. The concept of a party as an association of free individuals has an empirical element, which is the measurement of the performance of the parties. The three elements, *system*, *status* and *integrity*, combine to generate three essential questions. Is democratic preselection by political parties essential for democracy? If so, how is party democracy to be defined and who is to judge the rules and the performance of the parties?

There is a *prima facie* case that a particular form of party monopoly exists over the selection of Australian Members of Parliament. As a result, part of the competition between the parties actually takes place within the parties. It is beyond the direct reach of the electorate. The democratic chain linking the electorate and the parties and government does not rest entirely on inter-party democracy. To some extent, it rests on the legitimacy of the parties to undertake the task of governing. Part of that legitimacy, in particular producing political leaders, rests on the integrity of the parties. Their integrity may well be called into question if they no longer consist of the number or type of activists upon which their reputations are built, or if they no longer fund themselves. They may no longer be the parties upon which their reputation and role were based.

The remarkable part of the process of representation by parties is that, while parties consist of activists who almost never represent all elements of the electorate, parties in competition with each other may well between them represent the electorate. The Labor party¹⁵ will tend to represent the wage and salary earners of the city, the Liberal party¹⁶ the self-employed of the city, the National party¹⁷ the interests of primary producers and the regions and so on. The Australian Democrats, the only other party of any influence, represents those middle-class voters with a tendency to have 'post-materialist' values, such as the protection of the environment and human rights.¹⁸ The original political cleavages in Australia along class lines were a major force in the establishment of the three major parties. To some extent, the Democrats are proof that these lines are beginning to blur. Similarly, the major parties at least maintained a presence in the electorate. Certain classes of people joined, they funded their own activities or at least sought funds from supporters. The three major Australian parties have largely each suffered a decline in membership either in absolute terms or relative to their vote in recent years. Bean¹⁹ estimates that the parties' membership in 1967 was 250,000 or 4% of the electorate and in 1996 was 235,000 or 2% of the electorate. Considering the Labor party, Ward reports, '[I]n 1939, 53 in every 1,000 Australians was an ALP member: now [1990] less than three in every 1,000 is'.²⁰ Since 1984, the parties have received public funding for federal elections. The funding constitutes around one third of the entire funds available to them.²¹ In addition, there is

¹⁵ Childe, V.G. 1964. *How Labour Governs: A Study of Workers' Representation in Australia*. 2nd ed. London: Melbourne University Press. Crisp, L.F. 1978. *The Australian Federal Labour Party, 1901-1951*. Sydney: Hale & Iremonger.

¹⁶ West, K. 1968. *The Australian Liberal Party*. Melbourne: Longmans. Simms, M. 1982. *A Liberal Nation: The Liberal Party and Australian Politics*. Sydney: Hale and Iremonger.

¹⁷ Ellis, U. 1963. *A History of the Australian Country Party*. Melbourne: Melbourne University Press. Costar, B. and D. Woodward, eds. 1985. *Country to National: Australian Rural Politics and Beyond*. Sydney: Allen and Unwin.

¹⁸ Warhurst, J. 1997. ed. *Keeping the Bastards Honest: The Australian Democrats First Twenty Years*. Sydney: Allen and Unwin.

¹⁹ Bean, C. 1997. 'Parties and Elections.' In *New Developments in Australian Politics*, eds. B. Galligan et al. Melbourne: Macmillan, 110. See also Nelson, H. and L. Watson, 1969. 'Party Organisation.' In *Australian Politics: A Second Reader*, ed. H. Mayer. Melbourne: Cheshire, 286. Stewart, G. and I. Ward, 1996. *Politics One*. 2nd ed. Melbourne: Macmillan, 150.

²⁰ Ward, I. 1991. 'The Changing Organisational Nature of Australia's Political Parties.' *The Journal of Commonwealth and Comparative Politics* 29(2): 156.

²¹ Private conversation with Gary Gray, ALP National Secretary, March 1997. See also Horvarth, S. 1999. *The ALP and LPA are Evolving into Cartel Parties*. Honours Thesis, Department of Government, University of Queensland, 56. Horvarth calculates that election funding between 1994 and 1997 constituted 19.3% and 14.9% respectively of Australian Labor Party and the Liberal Party of Australia declared receipts.

evidence²² to suggest both a long-term decline in the level of partisan attachment to the parties and a long-term decline in their share of the vote. The vote share by the three major parties averaged 97% for the 1949 and 1951 elections, and 82.8% for the 1996 and 1998 elections.²³ Despite the decline in the vote, their hold over the share of the Members elected remains very solid. Nevertheless, the forces that helped create the parties are no longer as distinct and powerful as they were.

The parties would argue that they perform important roles in recruiting and training prospective Members and in aggregating public preferences, and in this way meet their obligations to the electorate. It could be argued that elements of the Australian system, such as compulsory voting and public funding, create an additional obligation on the parties to select their candidates in a democratic manner. Parties are, of course, bound in the broadest sense to perform their important task to the satisfaction of the public and do so in return for the public's vote. A great deal of this 'contract' between the voter and the party is taken on trust. If significant elements of the legitimacy of political parties are no longer present, then the system may be somewhat hollow, in a sense 'running on empty'. Australian parties are less present in the electorate, less representative of the old class-based cleavages, less self-supported than was once the case. The three major parties are corporate entities with a label based on a significant historical presence and performance, and consequently have an enormous head start on any other rivals. What is more, the electorate are paying for the privilege. The parties still have obligations to their membership and to the electorate, but their obligations to the electorate may require that they perform their obligation to their members in a particular way—namely, that they are internally democratic.

A fundamental element of a liberal democracy is not simply the competition between parties, but the competition between parties as free associations of activists. One element of free association is the ability of members to influence the decisions of the group, which implies a degree of democracy. A breach of the principles of free association would, by implication, be a breach of the wider democracy. Parties do not

²² McAllister, I. and C. Bean, 1996. *Long Term Electoral Trends and the 1996 Election*. 1–24. Unpublished.

²³ Department of Parliamentary Library, 1998–99. 'House of Representatives Elections: Australia 1949–1998.' In *Federal Elections Results 1949–1998*. Research Paper no. 8. Parliament of Australia. <http://www.aph.gov.au/library/pubs/rp/1998-99/99rp08.htm#Major>

operate on a basis of universal suffrage, they may choose whom they want to belong, and this is fundamental to their freedom of association. As de Tocqueville²⁴ observed, '[i]n democratic countries, the science of association is the mother of science; the progress of all the rest depends upon the progress it has made'. An association that allows members to belong who have no idea why they joined, or no idea even that they are members,²⁵ brings into question the integrity of the association. An association that restricts the rights of members to the extent that the competition for power is entirely unequal would also stretch the bounds of integrity.²⁶

Who is to remedy unethical behaviour, like signing-up members without their knowledge or consent, in a political party? In a private association, it is clearly the association itself. The parties' defence against outside scrutiny as a remedy for unethical behaviour is to argue that those dissatisfied with the organisation are free to voice their opinion or to leave. If sufficient members leave, then the organisation is weakened and may be punished electorally for its behaviour. The limits of tolerance of bad behaviour in a party may vary enormously. The well-educated middle-class members may be more able to articulate their demands, they may have the time and resources to pursue them. A poorly educated and poor worker or farmer may be more likely to defer to those presumed to govern on their behalf. No simple or single set of rules or norms would hope to satisfy the different propensities for members to be offended sufficiently to protest at the actions of their leaders, or indeed their fellow members. Nevertheless, private associations are by definition self-governing and, in that sense, the only rules that count are the ones that sustain the organisation in the political milieu in which they operate. Clearly, in the first instance, the membership must scrutinise the actions of their own associations. Failure to so do may have adverse electoral consequences and in this sense, the electorate is the final arbiter of party behaviour. The influence of a voter in a single-member constituency, however,

²⁴ de Tocqueville, A. [1840] 1953. *Democracy in America*. New York: Alfred A. Knopf, vol. II, 110.

²⁵ Hon Andrew Thompson MHR, LPA NSW, requested a police investigation after learning that a woman in one of his branches in the seat of Wentworth had been enrolled without her knowledge. *Sydney Morning Herald*, 27 May 2000.

²⁶ The Queensland Liberal party president was reported to be moving for an early preselection contest in Moncrieff, triggered by the retirement of long-time incumbent Hon Kathy Sullivan MHR, LPA Q. The result would deny eligibility to vote to a number of recently joined members. Sullivan remarked, 'It would be a great pity if the powers-to-be were to make arrangements for preselection that appear to favour one potential candidate over others.' *The Courier-Mail*, 31 May 2000.

is highly constrained. The choice is largely to vote for the party nominee or the opposition, take it or leave it.

Where an organisation lacks integrity because it contains those who have no idea why they joined, or where the rules are so uncompetitive that they allow a few to run it for their own purposes, members are entitled to 'blow the whistle' on such behaviour. Non-members, though, have no right to interfere in such an association. There is a special burden, however, where such organisations furnish candidates for public office. Furthermore, where a lack of integrity is coupled with a loss of the status of private association, such as when a political party receives public funds, the claim of the wider electorate to scrutinise the means by which candidates are chosen for public office is strengthened. Who should scrutinise the actions of the parties under the circumstances where political parties are as much public property as private?

If internal party democracy is a possible remedy for the monopoly of Australia's major parties over the selection of candidates for parliament, and if there are grounds for investigating the behaviour of the parties, the question is, do Australia's major political parties use democratic processes to select their candidates for public office? The dismissive attitude of the leadership of one of Australia's newest parties to its members suggests not. David Ettridge, former national director of One Nation (registered as a private company), publicly defended the allegation that his party is undemocratic by stating 'there are times when people use democracy to destroy'.²⁷ To some extent, there has been a working assumption that the major parties internal processes, in particular the selection of candidates for public office, are by and large democratic.²⁸ Then again, some see them as highly suspect organisations upon which to base a democracy, precisely because of their internal behaviour.²⁹ The issue is to test if the major parties have achieved what One Nation has not, and what Michels' 'Iron Law of Oligarchy'³⁰ suggests they cannot—a degree of accountability by the party leaders to the membership.

²⁷ *The Australian*, 4 July 1998.

²⁸ Overacker, L. 1968. *Australian Parties in a Changing Society: 1945–67*. Melbourne: Cheshire, 305ff.

²⁹ Jaensch, D. 1994a. *Power Politics: Australia's Party System*. Sydney: Allen and Unwin., 244.

Like all private associations, it is clear that the major parties have a responsibility to their membership. A breach of faith with the membership of a party constitutes a break in the democratic link between the electorate and the leaders selected by the party. The limits to the amount of internal democracy are easily recognised, each party member cannot expect to have a vote on each decision of cabinet, or all parts of the party platform or the selection of every candidate. The cost of providing the opportunity for each member deciding each issue would be so great as to diminish the purpose of the association. The same cost of decision-making applies to the wider electorate; not every elector can be involved in each decision of government. Rules and procedures have been established by the major parties for the fair conduct of public elections. From these publicly acceptable rules it should be possible to construct some tests of fair process and measures of competitive party preselections. To paraphrase Schattschneider,³¹ preselection of candidates not only provides a vantage point from which to observe the competition for power within parties, it also provides a vantage point to observe the integrity of the competition.

There has been no reported attempt to assess the democratic integrity of the internal practices of the major parties in Australia. Understanding the behaviour of the parties requires an audit of the rules and electoral structures governing the preselection of candidates for the Commonwealth Parliament for all of the major parties. This is a contribution to the further understanding of the behaviour of political parties and their impact on the political system. My study establishes some standards and measures of party democracy using formal and measurable criteria. It incorporates evidence from interviews to confirm the efficacy of the approach. It is argued that the parties are obligated to their members and to the wider electorate to choose candidates for public office by fair means. Any failure invites debate about a form of external scrutiny of the parties. Such scrutiny may have some positive consequences in modifying some of the practices of the parties, although it risks interference with the parties' freedom of association. It may be possible to have a public scrutiny of the parties' rules as a further tool in the democratic process and avoid the more formal exercise of legal scrutiny of the parties as occurs in some other democracies.

³⁰ Michels, R. [1915] 1958. *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy*. Trans. E. and C. Paul. Glencoe, Illinois: Free Press, 393.

³¹ Schattschneider, E. 1942. *Party Government*. New York: Holt, Rinehart and Winston, 64.

Outline of the Thesis

The object of the discussion in Chapter 2 is to decide whether democratic preselection is essential for democracy. A number of arguments are raised in support of the proposition that the major political parties should conduct themselves in a democratic fashion. These include: the closed nature of the party system and historical barriers to entry to other parties and individuals; the semi-public nature of the parties; the claim by the parties to be democratic; and the heightened awareness of the rights of members and their new-found access to legal remedies. Once the grounds for party democracy are established, it remains to test whether the parties are democratic.

In Chapter 3, a framework is established to test the integrity of the preselection processes of the parties. The concept of integrity is developed as a broad test of democratic practice because the processes within the parties are fundamentally different to those experienced in the electorate at large. Intra-party activity occurs within the confines of a free and private association, and the special constraints of association need to be taken into account when designing measures of democratic integrity. The research is designed to audit the processes of preselection used by the parties, which serve as gatekeepers to the Commonwealth parliament. The audit takes into account the constraints of the parties' needs to operate in a practical and efficient manner. The audit is based on certain democratic principles derived from public elections and uses the rules of the parties as the data. It suggests that the rules are a powerful tool of analysis of the formal and the informal elements of preselection.

In Chapter 4, the results of the audit of the rules and procedures of the parties are reported. The audit is designed to measure the competitive nature of the candidate selection panels and the fairness of various election processes. The audit produces results which form the basis of a discussion of the weaknesses in the many different systems of preselection present in the major Australian parties, and suggests that there are ranges of areas in the parties' performance that are undemocratic.

The object of the discussion in Chapter 5 is to capture the totality of the integrity of association of the parties. It uses evidence from a number of case studies, as well as

the party rules. In particular, it analyses the ways in which candidates and groups within parties seek to gain advantage in a preselection and the impact that these ways have on competition, fair processes and the free association of members of the parties. It seeks to extend the analysis beyond the formal rules and the formal processes, and suggests that a different democratic ethos is at work in different parties.

The first five chapters establish the need for the scrutiny of party democracy. They design various tests of democracy and report the results of the tests. The audit establishes that in various ways the parties' processes are undemocratic. The consequence of this result is the need to decide who should make good the inadequacies. It is essential first to enquire whether the parties intend to provide for a fair contest, and if so, why and how, as the results of the audit suggests, they fail.

In Chapter 6, an analysis of the parties' recent record of self-scrutiny is reported. The constant struggle for advantage within the parties is intimately bound up with that of the need to establish fair rules of play. This area of party management is central to establish their bona fides as democratic organisations. The analysis reveals that the parties expend a considerable amount of energy to keep the competition fair. This is an important insight because, to some extent, it belies the results of the audit. It restores some faith in the concept of the parties as competent private associations able to provide for a fair contest for political power.

Political parties are not, however, the sole determinants of their own destiny. Chapter 7 presents a survey of the extent of external scrutiny of Australian parties, in comparison with some other nations. The survey notes fundamental differences in the degree of external scrutiny of political parties in different democracies. These differences are, to some extent, a reflection of the trust that the society has placed in political parties to fulfil their task. The less trusted the parties, the less private they are and the more they are subject to external scrutiny. The survey of the private status of Australian parties reveals that while they are among the least constrained or scrutinised, there is an increased likelihood of internal party disputes being settled in the courts.

The discussion in Chapter 8 seeks to reach some policy conclusions from the audit of the parties, the survey of their competence as managers of their own affairs and the

extent to which the legal world is moving to change their freedom to do as they please. The implications for each policy option are set out. The preference is for a policy of the public registration of rules. The object is to maintain the tension that exists in the current mix of private and public scrutiny, with a view to placing a premium on party democracy and preserving the right of parties to manage their own affairs within certain confines.

Chapter 2

Is Democratic Preselection Essential for Democracy?

Michels' dictum, that '[t]he mass will never rule except *in abstracto*',¹ is a reminder that democracy can be taken too literally. Even participatory democrats² acknowledge that someone has to organise politics and that that role has frequently fallen to political parties. Parliamentary politics in Australia, as elsewhere,³ are almost inconceivable without political parties, such are their dominance of political life. To the extent that elections provide electors with a meaningful choice⁴ between alternative policies and programs for government, political parties play a crucial role. The parties organise elections, assemble policies on which electors make their judgements and select candidates from whom the electorate choose their representatives for public office. Parties also counteract majority recycling, which can lead to endless reformulations of coalitions among various interests,⁵ they provide the principal counter to special interest groups on behalf of the general interest⁶ and to populist politics,⁷ and they enjoy a near monopoly of the recruitment and guidance of members of parliament.

¹ Michels 1958, *Political Parties*, 419.

² Pateman, C. 1970. *Participation and Democratic Theory*. Cambridge: Cambridge University Press, 42. Bachrach, P. 1969. *The Theory of Democratic Elitism: A Critique*. London: University of London Press, 100.

³ Lipset, S. 2000. 'The Indispensability of Political Parties.' *Journal of Democracy* 11(1): 48–55.

⁴ Budge, I. and H. Keman, 1990. *Parties and Democracy: Coalition Formation and Government Functioning in Twenty States*. Oxford: Oxford University Press, 203.

⁵ Brennan, G. 1995. 'Australia's Parliamentary Democracy: One Cheer for the Status Quo.' *Policy (Centre for Independent Studies)* Autumn: 20.

⁶ Ware, A. 1988. *Citizens, Parties and the State*. Princeton: Princeton University Press, 56.

⁷ Lipow, A. and P. Seyd, 1996. 'The Politics of Anti-partyism.' *Parliamentary Affairs* 49(2): 283.

A minimum requirement for the achievement of a representative democracy is political competition,⁸ a common element of which is competition between political parties. There are theoretical grounds to argue that democratic internal processes of political parties are not a necessary requirement of a representative democracy. The Downsian economic theory of democracy requires, among other things, that there be a sufficient number of parties in the competition, that the parties are free associations and that there are no substantial barriers to entry for new parties.⁹ These assumptions, however, are readily overturned where there is evidence that the competition between the parties for votes may be 'oligopolistic'¹⁰ or 'closed',¹¹ or if parties are conceived as 'public utilities',¹² or are a 'service organised by the state'¹³ where the result is a closed competition for votes among semi-public parties. If parties are closely aligned to, or dependent on the state, or if their presence in the electorate or their organisational vitality¹⁴ has diminished, or if parties see it as vital to their legitimacy to provide a democratic forum for their members, then the simple economic theory of democracy seems inadequate to account for political competition. These are important issues as 'the greater the legitimacy, authority and power of established party elites, the greater the time available for the vital bargaining and compromise which allows democracies to solve problems in an orderly and peaceful fashion with the largest possible degree of general consent'.¹⁵ It would be an exaggeration to suggest that a healthy set of parties and a healthy party system are tantamount to a healthy democracy, but because the role of parties is so central to the way democracy operates in Australia, neither can these elements of the parties be ignored.

The importance of party democracy for the wider democracy, particularly the preselection of candidates, can be explored in three dimensions. The party *system*, which entails the analysis of the amount of competition between the parties; the *status*

⁸ Railton, P. 1983. 'Judicial Review, Elites and Democracy.' In *Liberal Democracy*, eds. J. Pennock and J. Chapman. New York: New York University Press, 155.

⁹ Ware, 1979. *The Logic of Party Democracy*, 35.

¹⁰ Ware, 1979. *The Logic of Party Democracy*, 51.

¹¹ Mair, P. 1997. *Party System Change: Approaches and Interpretations*. Oxford: Clarendon Press, 211.

¹² Ware, 1979. *The Logic of Party Democracy*, 171.

¹³ Mair, P. with R. Katz, 1997. 'Party Organisation, Party Democracy, and the Emergence of the Cartel Party.' In *Party System Change: Approaches and Interpretations*. P. Mair. Oxford: Clarendon Press, 115.

¹⁴ Webb, P. D. 1995. 'Are British Political Parties in Decline?' *Party Politics* 1(3): 302.

of parties, which entails an analysis of the role that parties play in society; and the *integrity* of the parties, which entails an analysis of their competence to fulfil their role. The first two are explored in this chapter and provide the essential rationale for party democracy in Australia's major parties. The third is explored in subsequent chapters.

The Party System

Does the Australian party system show sufficient competition to exclude the need for parties to be internally democratic? Mair¹⁶ suggests three tests of electoral competition between parties to form governments. Each of these tests: the extent to which there is alternation of parties in government, the extent of change in the governing 'formula', that is, the innovation or familiarity in the combination of parties which form government, and the entrance to government of new parties, are used to analyse the Australian party system.

There are three conceivable patterns of alternation of parties in government. There is wholesale change of parties which then form government, a partial alternation so that some of the parties form and re-form in a different combination to form government, or no alternation at all. Australia has exhibited either wholesale alternation in government or non-alternation across the entire modern period. The three major parties—the Labor party or the Liberal party with its coalition partner the National (Country) party—have formed every federal government since 1941. For a significant period, however, there was no alternation in government, with the Liberal/Country parties ruling from 1949 until 1972. There was a less extensive period of Labor governments, from 1983 until 1996. For nearly 60 years the same two groups have been present, and for a long period there was no alternation at all. If the test is alternation of parties in government, then competition for government throughout the period has been constrained.

¹⁵ Budge, I., I. Crewe and D. Farlie, eds. 1976. *Party Identification and Beyond: Representations of Voting and Party Competition*. London: John Wiley and Sons, 3.

¹⁶ Mair, 1997. *Party System Change*, 206.

There has been no new governing formula in the sense of a new combination of parties in the period. Labor or the Coalition has governed alone on each occasion, which suggests that there has been no innovation in the system. Apart from name changes for the Country party, which became National Country in 1975 and National party in 1982, the successful parties have been unchanged and have been entirely familiar. Only in the Senate, where governments are not formed, has there been some innovation. Since the introduction of proportional representation in 1949,¹⁷ a government Senate majority has been rare. The Democratic Labour Party (DLP) held the balance of power in the Senate for much of the period 1955 to 1974.¹⁸ The Australian Democrats have, since 1981, held the balance of power and taken over from the DLP as the party with which the government and opposition have had to deal on most occasions in order to pass, amend or reject legislation. Innovation has been at the level of negotiation over legislation and has never been at the level of joint caucus or party machinery arrangements.

One reason for the apparent lack of innovation in the system is that while the major parties 'represent the cleavage structure of the formative period'¹⁹ they do so only in the sense of their historical origins. The shift from representing their ideological and class origins became clear as the ideological distance between the parties narrowed during the era of the Whitlam Labor governments of 1972-74²⁰ and the Labor ascendancy of 1983-96.²¹ This argument is often as much a critique by the Left of its preferred party (Labor) 'selling out' to an allegedly conservative agenda, as it is an argument about the narrowing of the ideological gap between the parties. The Left critique is an accusation that the Labor party label, in particular, is no longer accurate. It imposes a large historical burden on Labor and, by implication, the other major parties, and implies that they should either return to earlier stances or change their name. Either course would risk electoral defeat. It is just as plausible to suggest that

¹⁷ Department of the Parliamentary Library, 1993. *Parliamentary Handbook of the Commonwealth of Australia*. 26th Edition. Canberra: AGPS, 492.

¹⁸ Department of Parliamentary Library, 1996-97. *Federal Elections 1996*. Background Paper No. 6, Canberra: Parliamentary Research Service, 83.

¹⁹ Jaensch, D. 1994a. *Power Politics*, 71.

²⁰ Catley, R. and B. McFarlane, 1974. *From Tweedledum to Tweedledee: The New Labor Government in Australia: A Critique of its Social Model*. Sydney: ANZ Book Company. Catley has since recanted his ideological position of the time. See his, 2000. 'The Knowledge of the World is the Enemy of God.' *Quadrant* 366(5): 15.

²¹ Maddox, G. 1990. *The Hawke Government and Labor Tradition*. Ringwood: Penguin Books.
Jaensch, D. 1989. *The Hawke-Keating Hijack: the ALP in Transition*. Sydney: Allen and Unwin.

the ideological gap narrowed with the overwhelming acceptance in the electorate of the legitimacy of the free market and the welfare state. In the climate of the constraints of the acceptable parameters for successful electoral prospects, the parties' recent policies arise as much from electoral positioning as ideological differences. In other words, although they may have started out as ideological, the parties are office-seeking. This flexibility has allowed them to ward-off newcomers and survive electorally, despite the policy ground shifting beneath them.

The labels of the major parties in Australia are historical brand names, both in the sense that the parties have been in existence for a great many years, and because a very large proportion of the electorate is loyal to the major parties. As McAllister notes, '[v]iewed comparatively, the levels of partisanship in Australia are exceptional, and set it apart from many (sic) other advanced industrial democracy'.²² The premium that the label provides the preselected candidate is considerable. In a sense, a party lives off its inheritance, at least among some of the voters, and the judgement of the voters at any given election rarely destroys the premium of the party label. The long-term trend in polling²³ suggests that, while there is still strong support for the major parties, the party loyalists are in decline. The implication of this trend is that at some point the party labels may begin to lose their holding power over the electorate. At present, however, the electoral system and brand loyalty conspire to leave the major parties in a commanding position. A vital role of parties is to endorse candidates by awarding their label to one person and not another. A poor choice may have adverse electoral consequences and in turn diminish the value of the label. An inability to reach a decision amicably may also prove damaging.²⁴ The very history of the parties and the stability of the loyalty of voters raise a significant barrier to entry for new rivals. Only rarely, in systems that are comparable with Australia, is a label destroyed by current policy choices. An example was the Progressive Conservatives in Canada in 1993,²⁵ when voters broke the 'cartel' of the major Canadian parties. Party democracy arises in the shared ownership by party members of the track record as

²² McAllister, I. 1997. 'Australia.' In *Passages To Power: Legislative Recruitment in Advanced Democracies*, ed. P. Norris. Cambridge: Cambridge University Press, 17.

²³ McAllister and Bean, 1996. *Long Term Electoral Trends*.

²⁴ The 1996 loss of the National party seat of Murray to the Liberal party following the retirement of former Deputy Leader Bruce Lloyd was blamed on a preselection row. Malcolm Fearn, State Director of the NPA V. Interview, 30 April 1998.

well as the promise of the future performance of the party. So in terms of the lack of innovation in the party system and its implications for party democracy, the right of scrutiny that is suggested by the 'ideological sleight of hand' argument rests with party members as much as the electorate.

Mair's third test is whether there have been new entrants to the party competition. No new parties have crossed the threshold of federal government in Australia in the modern era. The Democratic Labour Party, the Australian Democrats, the Greens and One Nation—each of which has held (or holds) seats in the parliament—have not held executive office. They have only succeeded, by and large, in having members elected to the Senate. Myriad smaller parties have failed to gain any representation at all.²⁶ Australia's system of single-member electorates and preferential voting²⁷ has ensured that all but one of 148 Members elected to the 39th House of Representatives was a party nominee. Electoral and party stability in Australia ensure that the outcome of the competition between the parties for the majority of seats is predictable.²⁸ The percentage of seats with 60% or more of the preferred vote was 54% in 1955²⁹ and 40% in 1998, though the percentage of seats considered safe for the major parties based on them never having been lost was 55%.³⁰

In a single-member electorate system, the cost to the partisan voter of overturning a candidate is considerable. An alternative candidate from the same party does not usually appear on the ballot. There are cases where the party supporters in the electorate have not supported the party's choice of candidate. For example, following the retirement of Prime Minister Bob Hawke in 1992, Labor lost the safe seat of Wills to an Independent. The Labor candidate was considered in Labor party circles³¹ to be an important factor in that loss and the following election. There are cases where party supporters in the electorate have supported a disendorsed sitting member, as was

²⁵ MacIvor, H. 1996. 'Do Canadian Political Parties Form a Political Cartel?' *Canadian Journal of Political Science* 29(2): 320.

²⁶ Jaensch and Mathieson, 1998. *A Plague on Both your Houses*.

²⁷ Pauline Hanson (One Nation) would have won the seat of Blair at the 1998 election on a first-past-the-post system.

²⁸ Mackerras, M. 1996. *General Election, 2 March 1996: Statistical Analysis of the Results*. 1–24. Unpublished, 2.

²⁹ Jaensch, D. 1994a. *Power Politics*, 103.

³⁰ Australian Electoral Commission, 1998a. *Electoral Atlas: House of Representatives—Electoral Status Two Party Preferred*. <http://www.aec.gov.au/pubs/atlas/summary/stat2.htm>

³¹ Observation by the author who was MHR for Petrie and involved in the campaign.

the case in the recent spate of independent victories in Western Australia (Rocher, Filing and Campbell in the 1996 Federal election), but largely the defeat of an endorsed candidate in a safe electorate is rare indeed. The party supporters' veto over an unacceptable party choice for member is an instrument so rarely used and so blunt as to be an ineffective tool to regulate the parties. Gaining a major party label virtually ensures a candidate election in a safe seat, and by implication transfers electoral competition from between parties to within parties. The electorate takes an endorsed candidate on trust. In a sense, the electorate chooses half the parliament and half is chosen by the party and confirmed by the electorate. Even in the Senate, where the proportional representation system allows new parties a chance to be elected, it also assures the major parties 66% of the safe positions. For example, at the half Senate election the quota per Senator in a state is 14.3% of the vote. The two major parties (Labor and Coalition) are assured of two seats because each is unlikely to receive less than 28.6% of the first preference vote. This guarantees four of six seats. While the electorate is free to choose Senate candidates from a party list, nearly 95% of voters at 1998 election³² followed the party list exactly.³³ Where the party provides the electors with a choice of candidates, it seems that the issue of how the candidates came to be on the list in a particular order still arises.

Party Status

The status of parties refers to the ownership and control of parties and the role they play in society, their relationship with the state and with civil society. Whether they are owned and controlled by their members or whether the public have rights of scrutiny over their affairs has a significant bearing on whether they should, especially in the circumstances of an oligarchic form of party competition, be internally democratic. These issues have implications for their legitimacy as private associations of individuals, including their freedom from the scrutiny of those outside the parties. McAllister³⁴ argues that in Australia 'political parties have gone to some lengths to

³² Australian Electoral Commission, 1998b. *1998 Election Results: Use of Group Voting Tickets*. http://www.aec.gov.au/results/1998/tally_room/senate/group_voting.htm

³³ Voters may either indicate their preference by marking the ballot paper in each square. However, as the number of candidates is frequently quite large, voters most often choose the option of marking only one square in a way that indicates that they wish to follow their party's preferred list of preferences.

³⁴ McAllister, I. 1992. *Political Behaviour: Citizens, Parties and Elites in Australia*. Melbourne: Longman Cheshire, 203.

ensure the openness of their recruitment procedures'. This assertion needs to be tested, as the issue of 'openness' or competitiveness is central to the issue of democracy. But is it a question for the public or for members of political associations? Does the legitimacy of parties have a bearing on their internal behaviour, or does their public performance alone suffice? To some extent the answer lies in the nature of the association of the parties.

The incentive for parties to be internally democratic may vary with their purpose, depending on whether, for example, they are vote-, office- or policy-seeking.³⁵ Such is the electoral success of the major Australian parties that a case could be made that they are 'office-maximising' and regard internal democracy as a low priority. The evidence that they clearly intend to select candidates democratically contradicts such a conclusion. For example, the NSW division of the Liberal party produces a guide 'to ... inform and educate the public on how the Liberal Party operates...'³⁶ At the 1997 Queensland State Conference of the Labor party, Senator John Hogg stated, 'One of the roles of the Rules Committee is to clean up the rorts that people keep thinking up'.³⁷ Clearly, the parties regard the business of internal democracy seriously and, presumably, they do so in order to satisfy not only the needs of their members but also to convince the electorate at large that they are good political citizens.

Mair's discussion of the history of the organisation of political parties in the Western democracies³⁸ indicates that parties have re-invented themselves numerous times. Typically, though not exclusively, parties emerged as elite or cadre organisations representing the interests of a small class, often of property owners, and, to use Duverger's delightful description, consisted of a 'grouping of notabilities for the preparation of elections'.³⁹ The demise of the property franchise and the institution of universal suffrage together with the emergence of an industrialised workforce created the conditions for a transition to mass parties based on the class structure of the society they represented. Typical was the French Socialist Party whose aim, according

³⁵ Strom, K. 1990. 'A Behavioural Theory of Competitive Political Parties.' *American Journal of Political Science* 34(2): 577. Harmel, R. and K. Janda, 1994. 'An Integrated Theory of Party Goals and Party Change.' *Journal of Theoretical Politics* 6(3): 260.

³⁶ LPA NSW, 1998. *Selection Guide*, Woolloomooloo: NSW Division, 3.

³⁷ Note made by author, 8 June 1997.

³⁸ Mair with Katz, 1997. 'Party Organisation', 93ff.

to Duverger, was 'the political education of the working class, at picking out from it an elite.... The members therefore are the very substance of the party'.⁴⁰ A critical distinction between an elite and a cadre party is the nature, not just the number of the membership. Duverger suggests, 'if we define a member [of a political party] as one who signs an undertaking and thereafter regularly pays his subscription, then cadre parties have no members'.⁴¹

The sentimental attachment to the mass party, '[w]e may yet come to regret the passing...of the class-mass party...'⁴² was to an extent based on the notion of ownership by the members, particularly the members of a social class. As Bartolini⁴³ argued, however, the role of the mass parties was, by World War Two, somewhat overestimated. They had, largely by that time emerged, in Kirchheimer's terminology, as catch-all parties no longer exclusively tied to a firm ideological line. Further, many continued to develop as electoral-professional parties in Europe, and in Australia⁴⁴ with essentially parliamentary membership and head office organisers.⁴⁵ An element of the electoral-professional incarnation is the substitution of the work of the membership with the capital and knowledge of non-party professionals. The substitution effect is even more pronounced in the latest incarnation, the cartel party, where the need for capital is satisfied by the state, and decreasingly by the membership. The cartel theory, although much contested,⁴⁶ is allied to the critique that the parties' traditional role of providing a link between the society and the state⁴⁷ has changed. The dependence of parties on the state raises the issue of the nature of the parties as private associations. The significant changes in the parties are reflected

³⁹ Duverger, M. 1959. *Political Parties: Their Organisation and Activity in the Modern State*. Trans. B. and R. North. 2nd Eng. ed. London: Methuen, 64.

⁴⁰ Duverger, 1959. *Political Parties*, 63.

⁴¹ Duverger, 1959. *Political Parties*, 64.

⁴² Kirchheimer, O. 1966. 'The Transformation of the Western European Party Systems.' In *Political Parties and Political Development*, eds. J. LaPalombara and M. Weiner. Princeton: Princeton University Press, 200.

⁴³ Bartolini, S. 1983. 'The Membership of Mass Parties: The Social Democrat Experience 1889–1978.' In *Western European Party Systems: Continuity and Change*, eds. H. Daalder and P. Mair. California: Sage.

⁴⁴ Panebianco, 1988. *Political Parties*, 273. Ward, 1991. 'The Changing Organisational Nature', 153.

⁴⁵ Webb, 1995. 'Are British Political Parties in Decline?', 311.

⁴⁶ Katz and Mair, 1995. 'Changing Models of Party Organization', 5–28. Ware, A. 1995. 'Party Systems in the 1990's: A Decade of Transformation?' *Government and Opposition* 30(3): 312–26. MacIvor, 1996. 'Do Canadian Political Parties Form a Political Cartel?', 317. Koole, R. 1996. 'Cadre, Catch-All or Cartel? A Comment on the Notion of the Cartel Party.' *Party Politics* 2(4): 507–23.

⁴⁷ Katz, R. 1990. 'Party as Linkage: A Vestigial Function?' *European Journal of Political Research* 18: 158.

in the major Australian parties. Each has passed through one or more of these stages. None can any longer lay claim to an exclusive ideology, or to represent a class to the exclusion of other classes, or to be supported by a large membership or not to be losing their strong support base in the electorate or not to be run by professionals⁴⁸ or not to be beholden to state funding. Each is less able to stand alone as an exclusively private organisation with deep roots in the community. These matters raise significant doubts about the autonomy of the parties and their right to govern their own affairs, or least to govern them without some overseeing.

Mair's argument that 'the state ... has become unquestionably important for the survival of political parties, both in terms of the legitimacy which public office confers, as well as in terms of the resources and capacities which are either offered by or regulated by the state'⁴⁹ moves beyond the old distinction of the party in the electorate and the party in government. It suggests that the parties may have an obligation to the state—that is, that they may have shifted from being autonomous private actors to being public property. At the same time, in a study of factors affecting candidate selection, Gallagher concludes that party behaviour is not absolutely determined by their environment: 'parties do have some autonomy'⁵⁰ which suggests that they are not mere ciphers for their supporters in the electorate. If parties have a life of their own, it is likely that their autonomy is enhanced where they are 'a state sponsored service to the electorate'.⁵¹ This view appears to sustain Sartori's⁵² thesis: 'parties formulate policies in order to win elections, rather than win elections to formulate policies,' that parties are able to operate somewhat independently of their electoral base and exhibit some control over their environment. With the advent of public funding, such independence may well be enhanced since Sartori made his conclusions on the behaviour of parties. This means that the party leadership may be free from the members' control and in possession of considerable public funds to be used for election purposes, but operate as if they have no particular obligation to the public, which is their benefactor.

⁴⁸ Ward, 1991. 'The Changing Organisational Nature', 170.

⁴⁹ Mair, 1997. *Party System Change*, 140.

⁵⁰ Gallagher, M. and M. Marsh, eds. 1988. *Candidate Selection in Comparative Perspective: the Secret Garden of Politics*. London: Sage, 265.

⁵¹ Katz and Mair, 1995. 'Changing Models of Party Organization', 22.

⁵² Sartori, G. 1976. *Parties and Party Systems: A Framework for Analysis*. Vol. 1, New York: Cambridge University Press, 325.

The Australian parties, as largely were those in the UK and the USA⁵³ for example, were founded as private associations. The Labor party grew out of the desire of the trade union movement for political representation and has a local branch structure for the participation of members.⁵⁴ The Liberal party was formed by the parliamentary leader Robert Menzies, with the intention of building a mass-based party of the middle classes, following the failure of the essentially cadre United Australia party.⁵⁵ It also has a local branch structure for the participation of members. The Country (National) party was formed from and for the protection of rural producer interests.⁵⁶ It now has the most extensive local membership of the major parties in at least three States. The Australian Democrats were formed by former Liberal party minister Don Chipp⁵⁷, has a modest branch structure and is the only one of the major parties to allow for the direct election by members of the parliamentary leadership.

The stability of the electorate coupled with the electoral system has provided the parties with a significant buffer against new entrants. However, the state always had a hand in their success. Australia has one of the most highly regulated electoral systems in the world, with the 'Australian' ballot (the secret ballot controlled by the state) and compulsory voting⁵⁸ which is in effect compulsory exhaustive preferential voting.⁵⁹ The declining strength of presence in the electorate, however, whether through ideological convergence or declining partisanship⁶⁰ in the electorate, has left the parties with weaker bases in the electorate. At the same time as this declining presence, the technology of electioneering has required more for funds for campaigns.⁶¹ The shift to electronic electioneering may have even enhanced the decline in membership as the most common role of members as foot soldiers during

⁵³ Ostrogorski, M. [1902] 1964. *Democracy and the Organisation of Political Parties: Volume 1: England*. Garden City: Anchor Books, 62. Ostrogorski, M. [1902] 1964. *Democracy and the Organisation of Political Parties: Volume 2: The United States*. Garden City: Anchor Books, 3.

⁵⁴ McKinlay, B. 1979. *A Documentary History of the Australian Labour Movement 1850–1975*. Melbourne: Drummond, 5.

⁵⁵ Starr, G. 1980. *The Liberal Party of Australia*. Melbourne: Drummond/Heinemann, 75.

⁵⁶ Aitkin, D. 1972. *The Country Party in NSW: A Study of Organisation and Survival*. Canberra: ANU Press.

⁵⁷ Warhurst, 1997. *Keeping the Bastards Honest*, 51.

⁵⁸ Introduced in 1925. Gow, N. 1971. 'The Introduction of Compulsory Voting in the Australian Commonwealth.' *Politics* 6(2): 201.

⁵⁹ Johns, G. 1998. 'Does Compulsory Voting Distort Electoral Outcomes?' *Agenda* 5: 367.

⁶⁰ McAllister and Bean, 1996. *Long Term Electoral Trends*, 4.

⁶¹ Ward, I. 1991. 'The Changing Organisational Nature', 159.

election campaigns declined. The reliance on the state for funds was driven by the new technology of electioneering, but it was enhanced by the fact that there was no culture of large private-sector donations in return for state largesse such as private sector contracts⁶² in Australia. Further, there were few spoils of office so that patronage was not a large factor, especially as the welfare state played a more powerful role in looking after people than may once have been the case in the old patronage system, even though some remnants remain in the ethnic base of the Labor party.⁶³ The parties came to rely on the state for cash to run campaigns. Public election funding and party labelling on the ballot paper were introduced for Commonwealth elections in 1984⁶⁴ and have made the parties both dependent on the state but also independent of their members. The parties created laws suited to their own needs. At the same time they are reluctant to open themselves to any scrutiny when it comes to the selection of candidates. The use of public power by the parties is asymmetric; public assistance does not beget public scrutiny.

With their transformation in the last half-century or so, are parties uniformly, and in all aspects, either private or public? For example, a party may remain a private association despite receiving state support, or it may become public because of it. A party may become public and receive little or no state support. Public support implies public ownership but it may not give the public a legal right to scrutinise the parties other than in the strict terms in which moneys are dispersed for election purposes. Then again, a legal system may provide a right of scrutiny to the public because of public funding or it may simply allow members of parties a right to a hearing in a court of law, in which case matters internal to the party can become public knowledge.

⁶² Johns, G. 1996. 'Divided Loyalties: Party and Conscience.' In *Accountability and Corruption: Public Sector Ethics*, eds. G. Clark E. Prior Jonson and W. Caldow. Sydney: Allen and Unwin, 76. The extent to which private sector donations played a part was severely curtailed as noted above when Labor forced disclosure of donations, which in turn made the conservative parties more willing to accept public funding.

⁶³ Zappala, G. 1997. *Four Weddings a Funeral and a Family Reunion: Ethnicity and Representation in Australian Politics*, Department of the Parliamentary Library: Commonwealth of Australia, 120 and 165. Allan, L. 2000. 'Ethnic Recruitment or Ethnic Branch Stacking?: Factionalism and Ethnicity in the ALP.' *People and Place* 8(1): 29.

⁶⁴ Both introduced in 1984, see *Commonwealth Electoral Act* 1918.

Because of the registration of Australian parties for public election funds⁶⁵ and, in some instances, incorporation under state legislation,⁶⁶ internal party disputes have been opened to the legal process. Legal intervention could have a democratic impact by transferring power from the leaders to the members. It could make the parties vulnerable to a level of scrutiny inconsistent with their successful competition for power. To date, statutory and judicial intervention in Australian parties have been limited and may well remain so despite recent changes to party status and despite calls for public intervention.⁶⁷ Nevertheless, the recent successful actions by Ralph Clarke MHA in the Supreme Court in South Australia⁶⁸ have had a considerable impact on the dispute-resolution procedures of the Labor party nationally, and probably the other parties as well. In this way the internal disputes of private associations become public knowledge and exposure is a powerful weapon for asserting the rights of members, and often completely at odds with the experience of those who run parties. An electorate may decide to make its parties subject to external scrutiny, thereby in effect making them public entities, or it may choose to leave them as private associations. Where private disputes can be aired in public and be subject to determination by courts of law, a society, which may make no conscious decision to do so, may nevertheless find its parties becoming public entities.

The parties' relationship to civil society and to the state, as well as their private or public status, may be a reflection, perhaps even a consequence of, competition from interest and single-issue groups. To a degree, the parties have been in retreat, overtaken by new ways of organising politics.⁶⁹ Katz and Mair⁷⁰ report that, in

⁶⁵ Federal registration entitles a political party to receive election funding for its endorsed candidates who obtain at least 4% of the formal first preference votes. Each State or Territory branch or division of the party regardless of whether they are separately registered or not, are required to comply with the funding and disclosure provisions of the *Commonwealth Electoral Act*. Parties are subject to routine compliance audits by the AEC. Australian Electoral Commission, 2000a. *Federal Registration of Political Parties 1999*. Section 6. http://www.aec.gov.au/disclosure/federal_registration/main.htm

⁶⁶ Sievers, A.S. and R. Baxt, 1984. 'The Rights of Members of an Un-Incorporated Association.' *Company and Securities Law Journal* 2(1): 3-12.

⁶⁷ Senator Andrew Murray, AD Q, wants the Australian Electoral Commission to conduct the ballots for party preselection. See his 1998 submission to Senate Finance and Public Administration Committee on Electoral and Referendum Bill (No.2), June. In the wake of the Criminal Justice Commission Inquiry into electoral fraud, Premier of Queensland Peter Beattie has sought to convince the ALP Q of the need for the AEC to conduct party preselections. *The Courier-Mail*, 3 December 2000.

⁶⁸ *Clarke v ALP (SA Branch)*, Hurley & Ors & Brown. SASC 365 (2 September 1999). *Clarke v ALP (SA Branch)*, Hurley & Ors & Brown. SASC 415 (24 September 1999).

⁶⁹ Though not so much as was predicted by many, for example, Lawson, K. and P. Merkl, 1988. *When Parties Fail: Emerging Alternative Organisations*. Princeton: Princeton University Press.

Europe, people have been leaving parties. In Australia, the total number of members of the four major parties is around 100,000 and as a proportion of the voting population has been falling for several decades.⁷¹ It may not be that the number of people who are politically active is in decline, but rather that they are finding other ways in which to become politically active.⁷² Perhaps this is because some associations, political parties included, 'have simply failed to meet the needs of a better-educated, more discriminating public and have paid the price'.⁷³ New forms of activity are beginning to take the place of the old. In some respects, there is a revolution of political activity occurring. Non-government organisations provide citizens with vehicles for the exercise of 'private initiative in pursuit of public purposes'. Their growth in recent times has been such as to constitute a 'global associational revolution', reflecting 'new enthusiasms on the part of citizens to engage more directly in public problem-solving'.⁷⁴

For example, interest groups are now so prominent in Australia that the Australian Bureau of Statistics has categorised them as an industry. Groups include organisations mainly engaged in promoting the interests of employers or self-employed persons, employees and other community interests. They include business and professional organisations, chambers of commerce, industrial or trade unions, consumer associations, automobile associations as well as political parties. At 30 June 1996, there were 3,737 organisations employing more than 47,000 persons in the interest groups industry. In addition, there were more than 100,000 persons working in the industry on a volunteer basis.⁷⁵ Clearly, the scale of interest-group politics dwarfs that of party politics.

To some extent the apparent trend of a decline in parties' membership relative to population may be no more than a reflection of a more general decline in volunteer

⁷⁰ Katz, R. and P. Mair, 1992. 'The Membership of European parties in European Democracies 1960–1990.' *European Journal of Political Research* 22: 329.

⁷¹ Stewart and Ward 1996, *Politics One* 120, 150.

⁷² Richardson, J. 1995. 'Interest Groups and Representation.' *Australian Journal of Political Science* 30: 61.

⁷³ Rich, P. 1999. 'American Voluntarism, Social Capitalism, and Political Culture.' *The Annals of the American Academy of Political and Social Science* 565: 15.

⁷⁴ Salamon, L. and H. Anheier, 1996. *The Non-Profit Sector: A New Global Force*. Working Paper 21, Baltimore: Johns Hopkins University Institute for Policy Studies.

⁷⁵ Australian Bureau of Statistics, *Interest Groups, Australia, 1995–96* (8639.0).

activity across the entire volunteer sector in Australia.⁷⁶ Political parties alone do not hold the key to a healthy democracy. As Putnam⁷⁷ has claimed, a rich ‘civic culture’ is a prerequisite for a strong democratic political system and for continuing economic prosperity, especially as it appears that people who belong to non-profit associations are far more likely to participate in the political process.⁷⁸

Conclusion

The diminution in the private status of parties suggests the question, to what extent should the parties any longer be the arbiters of their own destiny? Panebianco’s view on the future of electoral-professional parties, operating as they are in a political environment ‘which is far less respectful and subordinate to political elites,’ was that they may well be a ‘transitory and comparatively short-lived phenomenon’.⁷⁹ The evidence in Australia is that the major parties have made the transition from private to semi-public status with very little loss of electoral success. Their future prospects appear reasonably assured, except for the prospect that they may face more intense scrutiny of their internal behaviour. Moreover, they may even welcome it.

While the Australian parties have chosen to remain private organisations, they have, when it suited their purposes, slowly inched their way along the road toward public status. In doing so, they placed themselves in a position where it is difficult to see them as other than public organisations with a responsibility not only to their membership but also to the electorate. Their reliance on the state has created the position where the status of the parties in Australia has changed from exclusively private to semi-public. Whether the parties will seek to re-balance their freedom to act, derived from their historic status as private and successful associations, with their new dependence on the state is another matter. They may seek to prove their internal democratic credentials as a means of appealing to voters at a time when the voters are less than enamoured with the parties. The anti-politician threat to the major parties

⁷⁶ Lyons, M. 1999. ‘Special Article—Australia’s Nonprofit Sector.’ *ABS Australia Now: A Statistical Profile (YearBook Australia)* <http://www.abs.gov.au/websitedbs/OpenView>.

⁷⁷ Putnam, R. 1993. *Making Democracy Work: Civic Traditions in Modern Italy*. Princeton: Princeton University Press, 172.

⁷⁸ Verba S., K. Schlozman and H. Brady, 1996. *Voice and Equality, Civic Volunteerism in American Politics*. Cambridge: Harvard University Press.

⁷⁹ Panebianco, 1988. *Political Parties*, 273.

noted in Katz and Mair's⁸⁰ analysis was demonstrated at the 1998 Australian Federal election with a new 'anti-politician' party, One Nation, receiving almost 10% of the national vote. The extraordinary allegations, revealed in the Shepherdson Inquiry⁸¹ (Queensland Criminal Justice Commission), of electoral fraud by Labor party members for preselection purposes, may mean that the internal democracy of parties will always be assumed to be a public issue.

The four major Australian parties are all clearly membership-based. Each party's rules specify that the means of entry to the party and the right to vote in a preselection be by way of payment of dues. Each major party, however, has developed into a professional machine with head offices and organisers and receives donations from non-members. Each receives public funds and is to some extent reliant on the state. In these regards, the parties are in the hands of their membership, but have a degree of freedom from the membership by way of professional advice and non-member sources of funds. The implications of this mixed progeny for the issue of internal democracy and its scrutiny are that irrespective of the degree of competition between the parties, the parties' status has changed to the point where their history—ideological, mass-based, a large presence in the electorate and self supporting—belies their current role. The present parties are brand names with a nominal presence in the electorate where the market for political activism has shifted to interest groups and where they are supported by the state. Their new status is semi-public and the lack of competition between the parties means that, while they should be beholden to the public both electorally and in a more direct proprietorial manner, they may in fact be beholden neither to their membership nor to the electorate. The means to address the deficit is to ensure that their selection procedures are democratic both in the eyes of the electorate and the membership.

The heightened awareness of the rights of members and their new-found access to legal remedies means that it is more likely that there will be demands for democratic processes. This combined with the intention of the parties to be democratic, means that assessing the performance of the parties would, if for no other group, be a valuable exercise for the membership. More broadly, assessing the democratic

⁸⁰ Katz and Mair, 1995. 'Changing Models', 24.

⁸¹ At the time of writing, the Inquiry has not reported its findings.

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performance of the parties would be a valuable exercise not only for the parties and the membership, but also for the electorate at large. The next task is to devise suitable measures of their performance.

Chapter 3

Measuring Party Democracy

Previous studies of Australian preselections have tended to describe the formal rules alone¹ or, as part of a broader study of party processes, describe the preselection system.² Only two have analysed the preselection system in operation³ with a view to making judgements on the nature of the party processes. One reason for this paucity of study may be the difficulties in gaining access to the sort of information that could explain party behaviour. Another may be disagreement on what aspects of preselection are important. 'When there are good numbers of acceptable people offering, and when factional fixes do not corrupt the process to favour mediocrity, the actual mechanical arrangements are not of vital importance ... [since] responsible party members acting independently will usually take their fundamental purpose [choosing a candidate for Parliament] very seriously'.⁴ This statement has some validity, but it also raises more questions than it answers. Is it responsible to choose the candidate who is likely to be most loyal in a crisis or the one who decides an issue on the merits? Should all of the members vote in a plebiscite or just delegates? Should a powerful central body that claims to act in the best interests of the party be able to overturn other views? What are the best interests of the party? What is acting independently, and independently of whom? What is a factional fix? In fact, all other things being equal, many of the critical elements of the preselection contest are precisely the ones assumed away.

¹ Gould, F. 1969. 'Pre-selecting the Candidates.' In *Australian Politics: A Second Reader*, ed. H. Mayer. Melbourne: Cheshire.

² Parkin, A and J. Warhurst eds., 1983. *Machine Politics in the Australian Labor Party*. Sydney: George Allen and Unwin. Warhurst, J. and A. Parkin, eds. 1999. *The Machine: Labor Confronts the Future*. Sydney: Allen and Unwin. Jaensch, D. 1994b. *The Liberals*. Sydney: Allen and Unwin. Costar, B. 1996. 'The Future of the National Party.' In *The Paradox of Parties: Australian Political Parties*, ed. M. Simms. Sydney: Allen and Unwin.

³ McAllister, I. 1992. *Political Behaviour*, 211ff. Simms, M. 1994. 'Party Structures and Pre-selection in Australia: Selectorates, Federalism and the "Ideal" Member of Parliament.' Paper presented at the 16th World Congress of the International Political Science Association, Berlin, Germany.

⁴ Graeme Starr, former director LPA NSW, in the *Australian Financial Review*, 20 February 1995.

The recruitment of candidates by political parties 'raises significant normative concerns about how the process should operate according to rival conceptions of democracy, and empirical issues about how the process does operate in practice'.⁵ The normative issues are in fact three-fold. The threshold normative issue, whether the major parties in Australia should select candidates democratically, has been determined. They should do so. Pomper has explored the second normative issue of rival conceptions of democracy.⁶ He makes the point that a particular party may promote a particular set of democratic values. Parties will pursue goals that may not lend themselves equally to a similar pursuit of internal democracy.⁷ It is essential to allow that there is no ideal party type, and therefore no ideal set of democratic rules. Some studies of candidate selection concentrate solely on 'the appropriate division of power between party leaders and grass roots members'⁸ or 'the extent to which party members ... are able to govern the decisions of their party'⁹ in their pursuit of democratic rules. However, there is more to democracy than simply this division of power. Taking a broader concept, the competition for power in a liberal democracy assumes that competition should provide for a real contest. It also requires that the contest should take place within guidelines considered fair and agreed to by the competitors. The challenge in measuring party democracy is to find a standard of democracy which is sufficiently robust not to be unduly restrictive or naïve in its conception, nor so bland as to overturn the threshold assumption that the process should indeed be democratic. The remaining normative issue is how the process should operate within the confines of a private association. When a contest takes place within the bounds of a private association, the freedom of association of members must be respected. Certain conditions, such as the right of an association to set its own rules, and to resolve its own disputes, satisfy the freedom of association.

⁵ Norris, P. 1997. 'Introduction: Theories of Recruitment.' In *Passages To Power: Legislative Recruitment in Advanced Democracies*, ed. P. Norris. Cambridge: Cambridge University Press, 8.

⁶ Pomper, G. 1992. *Passions and Interests: Political Party Concepts of American Democracy*. Kansas: University Press of Kansas, 131.

⁷ Strom, 1990. 'A Behavioural Theory', 577. Harmel and Janda, 1994. 'An Integrated Theory', 260.

⁸ Norris, 1997. 'Introduction', 8.

⁹ Gibson R. and R. Harmel 1998. 'Party Families and Democratic Performance: Extraparliamentary vs. Parliamentary Group Power.' *Political Studies* XLVI: 635.

What to Measure

Australian parties manage preselections without reference to any external body or set of rules, save for some recent, rare examples where disputes in the parties have come before the courts. As a result, there are no ready-made standards by which to judge the behaviour of the parties. There are, however, some obvious starting points. Where one or two powerful figures who are not responsive or responsible to the party members control preselection in a party,¹⁰ the contest will be uncompetitive because of a considerable structural imbalance in the distribution of power in a party. Where preselection ballots are rigged,¹¹ then the contest is clearly unfair. Where contests are won by the massive recruitment of new members, many of whom know nothing of the purposes for which they are recruited,¹² the result may exploit the integrity of the association. These problems of competition, fair processes and integrity of association are central to measuring party democracy. They arise in any contest involving the expression of preferences among members of an organisation. They are particularly important in a political party because where the contest for candidate selection is anti-competitive, or unethical, or breaches the integrity of a free association, the electorate may be denied the choice of voting for the duly elected party candidate.

These three examples of behaviour in the selection of candidates suggest three distinct areas of concern. The first is the competitive or anti-competitive structure of the panels of party members who preselect the candidates. The issue is whether there is a real contest among candidates for preselection. The second area of concern is whether the rules for the conduct of preselections provide for fair procedures, including procedures to appeal against the breach of a rule. The third area of concern is the integrity of the freedom of association of the membership, that is, whether or not the freedom of the association of members been preserved or exploited.

¹⁰ For example, according to Rod Sawford, this is the situation presently in the ALP SA. Interview 23 September 1997.

¹¹ Senator Hon Michael Beahan, ALP WA, has alleged that he was defeated in his 1994 preselection for the Senate because of a rigged ballot. The allegation is contained in his submission to the ALP National Executive, 31 March 1995. (Mimeo)

¹² 2,000 new members were signed up and had their membership fees paid on their behalf to the ALP SA, on Australia Day 1999. Reported in *The Australian* 23 July 1999, 6.

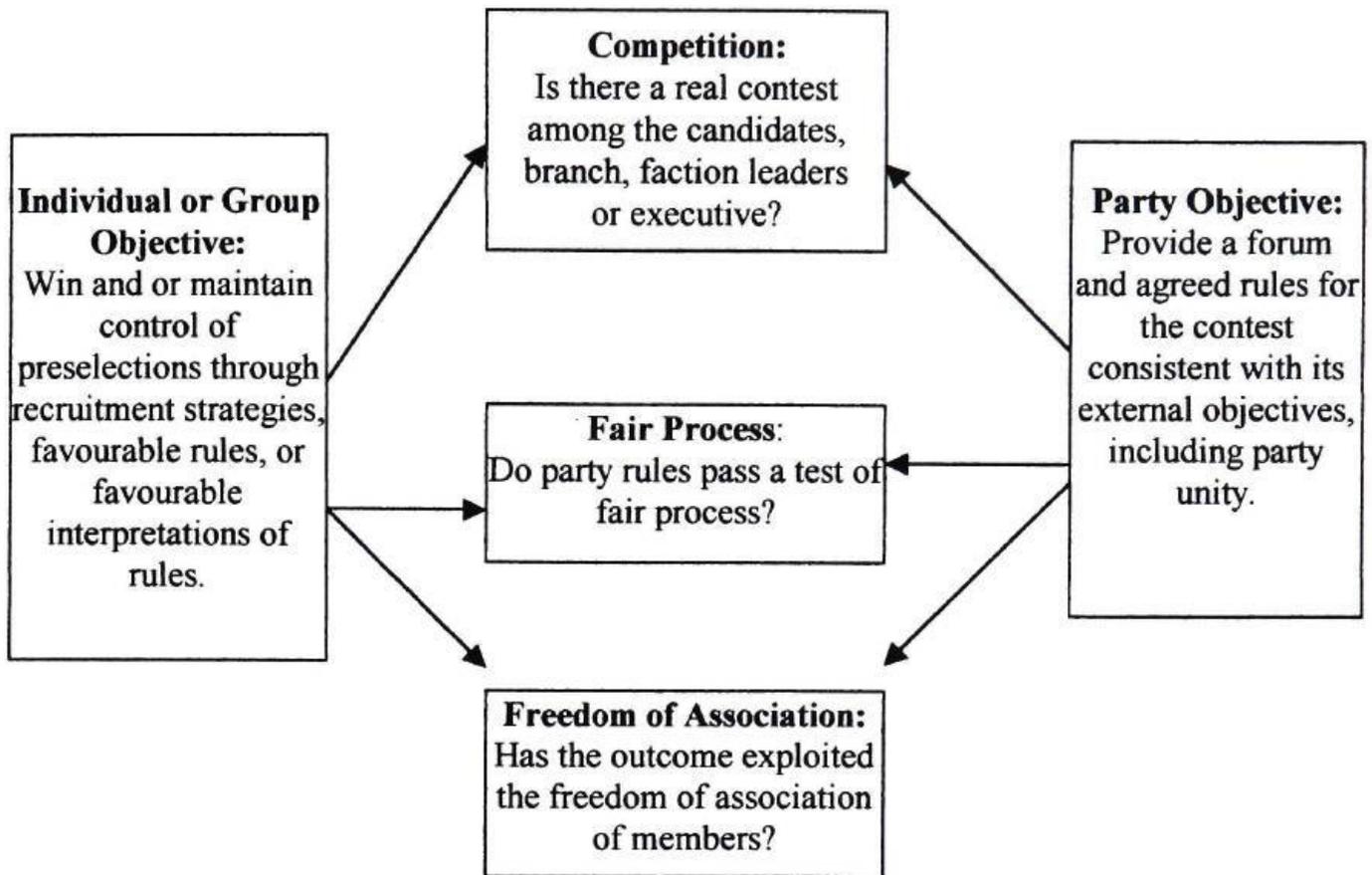
Measuring Party Democracy

The three concerns form the basis of three tests of democratic behaviour, and may be applied to the preselection of parliamentary candidates in the major Australian parties. In particular, the tests need to be applied in the context of the competing objectives and strategies of the candidates and of the parties. The competition for the party label takes many forms and is handled by the Australian parties and the candidates in different ways. Competitors, or groups of competitors, or factions, may seek to control the factors that will determine the outcome of a preselection. The way in which the contestants seek to control, exploit, or take advantage of elements of the contest can affect the outcome.

Measuring the integrity of the preselection process requires an understanding of the interplay of the desire of the preselection candidates to win preselection and of the party to win the election. What the preselection candidates need and what the party needs may not be the same. The imperative for the party managers is to conduct the contest in a manner that ensures the integrity of the organisation. Party managers will also be contestants, or support contestants from time to time, and this may increase the risk of undemocratic behaviour on the part of the managers. It does not, however, eliminate the party's need for survival. The result is a framework to measure the democratic integrity of party preselections from the perspective of the parties.

Diagram 3.1 sets out the three tests of democracy chosen for the measurement of the democratic integrity of the Australian parties. These are competition, fair process and freedom of association. These are placed within the competing objectives of the contestants and the party as a whole. That context recognises that there may be conflicting ideas about what constitutes a valid test of democratic integrity.

Diagram 3.1: Three Tests of the Democratic Integrity of Party Preselections



Source: Author.

How to Measure Democratic Performance

Measuring the performance of the parties in the three categories of behaviour needs to account for both the formal and informal processes of preselection. It needs also to recognise that behaviour may not be able to be observed directly. Perhaps only the results of a contest, such as who wins and who loses, may be observable. However, results may prove very little about the democratic performance.

Some measures of party democracy purport to measure whether the candidates selected for a given party, at a given time, are a true reflection of the desires of the party membership. This measure depends on a preconceived notion of outcome,

which in turn is based on a preferred model of legislative recruitment.¹³ A party may want to select people who are party loyalists, or it may want to select people who it thinks the electorate will prefer. It may want to select people who represent the key demographic qualities of the electorate. While the channels for recruitment into the parliamentary ranks need to be open, and are indeed a vital part of democracy, the outcome or make-up of the elite does not necessarily reflect on that openness.¹⁴ A party's membership is most unlikely to reflect the class composition or gender of the electorate. As Norris and Lovenduski¹⁵ found in a study of candidates in Britain, in addition to ambition and talent, the key determinants of the supply of candidates are 'time and a good income'. These characteristics accounted for the lack of women in parliament in Britain. The same applies to working-class men, those of non-English speaking background, the young and the old.

For a party's rank-and-file membership to select candidates who reflect the composition of the electorate requires the acceptance, and possibly the imposition, of a particular value judgement. For example, the Labor party in NSW has a rule to weight the vote of women candidates until they are elected in numbers that satisfy the party's goal of affirmative action. The difficulty with such a rule is that it is contingent on the values inherent in an affirmative action program; that the party should represent a particular demographic profile, and the party should compensate for a 'fault' which lies in the job of politics. The job requires of the contestants a great deal of time and a good income. From the point of view of establishing rules for democracy, this is a problem. Ranney's comment on his role in the US Democratic (Party) Reform Commission captures the point: 'We contended that requiring representation of biological characteristics was at odds with the commissioners' other objectives of open access and representation of preferences. The party could provide for a fair fight or it could provide for a guaranteed result, ... but it could not provide for both'.¹⁶ Clearly, an outcome measure of democracy is heavily contingent on a 'model of recruitment' argument and is not a robust or enduring measure of

¹³ Norris, P. and J. Lovenduski, 1993. 'If Only More Candidates Came Forward: Supply Side Explanations of Candidate Selection in Britain.' *British Journal of Political Science* 23: 373.

¹⁴ See discussion of elite recruitment, McAllister, 1992. *Political Behaviour*, chapter 9.

¹⁵ Norris and Lovenduski, 1993. 'If Only More Candidates Came Forward', 406.

democratic practice. Recording the parties' use of 'weighted' votes would be a valid measure of democracy only if the affirmative action values are accepted. An outcome measure of democracy is therefore not advisable; more universal measures are required.

In addition to the limitations of using results as a measure of democracy is the vexed issue of formal rules and informal behaviour. Obviously, a study of democratic practice needs to capture and measure the real behaviour, not simply the façade. One of the most enduring observations of political parties is Ostrogorski's, 'the procedures laid down by the rules for the selection of the candidate ... are simply a formality which just puts the finishing touch on the work of the wire-pullers'.¹⁷ Similarly, Appleton's case study of the internal behaviour of French parties begins with the proposition that 'a set of informal rules will emerge to circumvent the restraints upon behaviour [of party members] introduced by the formal rules, or prohibitions, of party organization'.¹⁸ It seems that informal procedures may provide the best guide to performance. Then again, Drucker observes that the practices of the British Labour party are embodied 'in written, often detailed, rules', whereas the Conservative party 'has proceeded until very recently on the basis of accepted practice rather than formal rules'.¹⁹ Drucker's observations have their parallel for the Australian parties. The Labor, Liberal and Democrats parties in Australia have highly sophisticated sets of rules, with the National party less prone to be rule-bound.

In some instances, the rules of a party may act as an accurate guide to behaviour, in other cases less so. Further, it is tantamount to a pre-judgement to assume that only the work of wire pullers is significant. The wire pullers may have won a fair contest and are getting on with the business of managing the party. The influence of the wire pullers may operate in a completely formal way, the rules may allow for it, they may even determine it.

¹⁶ Ranney, A. 1975. *Curing the Mischiefs of Faction: Party Reform in America*. Berkeley: University of California Press, 114.

¹⁷ Ostrogorski, 1964. Vol 1, 209.

¹⁸ Appleton, A. 1994. 'The Formal Versus Informal Rules of French Political Parties.' In *How Political Parties Work: Perspectives From Within*, ed. K. Lawson. Westport, CT: Praeger, 24.

Putnam²⁰ observes how mutual trust and rules are developed in a competitive and even poisonous atmosphere in political parties. This observation is important in two respects. The development of rules is as much a part of the measurement of democracy as is the participants' apparent desire to circumvent them. In the case of the advocates for affirmative action, despite no doubt a great deal of negotiation and debate over the concept, the instrument for implementing affirmative action was a rule. The rule carried into effect the policy. Rules may provide a good guide to behaviour. Second, the preselection process may be perfectly democratic but produce a career path for a winner, which lacks the appearance of democracy. There will be winners and losers. The membership of a party may exhibit a degree of party discipline, which also appears to be undemocratic. Some may agree to stand aside from a contest in return for support at a later ballot. This is not necessarily undemocratic.

There are limits to the extent of internal party democracy.²¹ The need to balance forces in a party is never ending, as is the necessity for some centralisation of power for the purposes of practical management. Sometimes democratic reforms, for example, Tony Benn's at the 1981 Labour Conference in Britain²² and the post-1968 Democrat Convention in the USA, may ensure that the party serves different masters but it may not ensure a more democratic party. Political activity may not conform to an ideal outcome in the face of the need to accumulate power in few hands to better serve group interests. For example, general elections facilitate an accumulation of power in the hands of the few in order to serve the interests of the many. They are also governed by rules written to achieve, as near as possible, a fair contest for the accumulation of power. Rules will govern voting procedures and constitutional elements like the electoral system and number of legislative chambers. As unsatisfactory elements of competition or constitutional architecture are discovered, rules are changed. Rules therefore are not simply a static part of the game, concerned

¹⁹ Drucker, H. 1979. *Doctrine and Ethos in the Labour Party*. London: George Allen and Unwin, 2, 17.

²⁰ Putnam, 1993. *Making Democracy Work*, 166ff.

²¹ Ware, 1979. *The Logic*, 31.

²² Oliver, D. 1981. 'The Constitutional Implications of the Reforms of the Labour Party.' *Public Law Summer*, 151.

only with policing errant behaviour. In many respects, the contest over the rules *is* the game.

In many cases, formal rules establish the boundaries for informal behaviour. Members are the currency of preselection politics, so membership recruiting takes place among those who are most valuable, those who have been given special voting rights. A paucity of rules leaves a party open to improper practices and unable to respond adequately. A lax set of rules can lead to electorally costly disputes. In 1995, the National party lost a previously safe seat, partly because of a preselection dispute. The incident caused a senior member of the party to observe 'we're haunted by Murray, it revealed all of the fragilities of the scheme'.²³ Even in the non-rule bound National party, the limits of poor behaviour were reached and rule changes ensued. There are usually mechanisms, such as appeals and tribunals, for the resolution of disputes. Even where the rules for these mechanisms are vague there may come a time when the limits of informal negotiation based on either goodwill or the force of numbers are reached and rules have to be made or amended. The rules of the major parties may indicate the ways and means by which groups or individuals take advantage in a contest. Moreover, they may indicate the very grounds for maintaining group solidarity within a party. The starting point in measuring the parties' democratic behaviour should be the rules that the parties have themselves written.

As to the questions of wire pullers and how they operate, how can these things be measured? Appleton suggests that those who have a material advantage or status outside the party will use it to seek to determine the outcome inside the party. He implies that the result of a contest for party endorsement between candidates who bring with them outside influence is undemocratic. Such a judgement may not be warranted. Penalising a preselection candidate who, for example, has spent many years building a profile in a primary producers' group, or chamber of commerce or a trade union where these attributes would be welcome respectively in the National, Liberal and Labor parties would be positively harmful to the parties' prospects in the electorate. To regard an outside influence as inherently undemocratic is to assume

²³ Hon Peter McGauran MHR, NPA V. Interview, 19 November 1997.

that all candidates must be equally suitable or capable or novices. As with the outcome measure of performance, it is highly contingent on the values a party, or an observer, wishes to impose on the process. Michel's 'Iron law of oligarchy', which suggests that any concentration of power or exertion of influence is tantamount to anti-democratic behaviour needs to be tempered by the view that the accumulation of power is not synonymous with the subversion of democracy. The way in which power is accumulated and maintained, however, may be.

Appleton's search for a politics without informal advantage can become an endless search for fairness as equality. The rules themselves may allow for anti-competitive behaviour, for example, in the structure of the panel of party voters assembled for a preselection. Nevertheless, the degree of competition may be observed and measured in the advantages and disadvantages that the rules create. Anti-competitive behaviour may sometimes be in breach of the rules, so the parties' ability to resolve these matters becomes paramount. On the other hand, some activities may not breach the rules but call into question the integrity of the free association of the membership—for example, if a large number of outsiders are recruited to the party at short notice. The rules of the parties are not simply a rulebook of fair play and of agreed structures and processes. They are veritable archaeological sites of the battles to control the parties. The formal rules offer an enormously rich insight into what parties regard as a competitive panel, what they regard as fair rules, what constitutes a breach and what does not.

There is, no doubt, significant behaviour that cannot be observed through the rules. The 'wire-pullers' are alive and well in Australian parties. Mostly they are the senior officers or politicians in a party. In some parties they are known as heads of factions. Factions, where they exist in the Australian parties are groups of party members or of the parliamentary caucus whose primary allegiance to the group often outweighs that to the party as a whole. They are often more stable than mere shifting alliances. As McAllister's study of Australian party factionalism indicates, 'political competition in liberal democracies may be less a matter of competition between political parties than

of competition between organised groups within parties'.²⁴ Indeed, 'organised competition between party factions ... replaces intra-party rivalry, personal intrigue, and their ultimate consequence, party fragmentation'.²⁵ In fact, it may be that intra-party rivalry and intrigue are not so much replaced by the factions as channelled by them. As Neal Blewett observed of the Labor party, '[t]he young aspiring politician tended to be inducted early into a faction and within it he or she fashioned his or her political career'.²⁶ Factions are an example of a formalisation of practices of the accumulation of power in a party, but the existence of factions does not mean that they invented anti-competitive behaviour. Factions channel competition into narrow confines, in order that players may compete at the next highest level within the party. The proof of their influence on competition and fairness and integrity has to be assessed against the criteria set out for all contestants, factional or not.

McAllister's view on factionalism in the Australian party system is that they are 'political parties in miniature'.²⁷ Factions in parties, just as parties do within the electorate, seek to represent those of similar interest or background. The two parties, Labor and Liberal, which in their own right seek, or aspire to a majority of the parliament, incorporate factions. The factions are devices that enable broad parties to remain intact. Much of the work of the party is thus taken up in the negotiations between factions. The Labor party has formal factions,²⁸ the Liberal party has 'tendencies'.²⁹ The Labor factions are formal, not in the sense of being recognised by party rules, but in the sense that party members will join a faction, often pay a fee for the privilege and meet in absolute exclusion of any other faction or faction member. The source of formal Labor factionalism is the affiliation of trade unions. These are an example of a captive and organised membership where 'that organization may then

²⁴ McAllister, I. 1991. 'Party Adaptation and Factionalism within the Australian Party System.' *American Journal of Political Science* 35(1): 225.

²⁵ Bean, C. and I. McAllister, 1989. 'Factions and Tendencies in the Australian Political Party System.' *Politics* 24(2): 93.

²⁶ Blewett, N. 1999. *A Cabinet Diary: A Personal Record of the First Keating Government*. Adelaide: Wakefield Press, 66.

²⁷ McAllister, 1991. 'Party Adaptation and Factionalism', 209.

²⁸ Lloyd, C. and W. Swan, 1987. 'National Factions and the ALP.' *Politics* 22(1): 100–10, 22(2): 103–4.

²⁹ Senator-elect Brett Mason, LPA Q. Interview, 13 July 1998. Former Senator Christopher Puplick, LPA NSW. Interview, 8 December 1998.

be able to get the resources to support a lobby'.³⁰ Further, the ability of affiliated unions to have their entire delegation vote as a bloc is the very essence of their power. In this way, the affiliation rules are both the source of and the proof of their power. The other major parties have no equivalent organisations affiliated to their organisational wing and therefore no such base for factionalism.

The Liberal party 'tendencies' are popularly described as factions, more because of the dominance of debate in the media about the Labor party than any characteristics of the Liberal party. The Liberal party has fewer formal meetings and fewer formal conditions for membership of their groups than does Labor. Nevertheless, there are identifiable groups in all divisions of the Liberal party, but less so at the national or Federal caucus level. The Labor party's factions are ever-present, at national, divisional and caucus levels. There is no evidence in the literature or in news reports of the existence of factions or tendencies in the National party³¹ or the Democrats.³² The reason may be that these parties do not aspire to a majority position in the electorate, so the views of their membership may not be as broad as the Labor and Liberal parties. In addition, compared with the Labor and Liberal parliamentary caucuses, their numbers are small, perhaps too small to sustain factions. This is not to suggest there will not be, from time to time, a series of shifting alliances among party members.

Considering rules and factions together, the Labor party in each of its State divisions has the most sophisticated set of rules and the most formal membership of factions. The Liberal party has also sophisticated rules in its divisions, though less formal membership of factions. The National party has the least sophisticated set of rules and is free of factions. The Democrats have a sophisticated set of national rules and no formal factions. There is no clear relationship between rules and formality, at least as suggested by the presence of factions.

³⁰ Olson, M. 1971. *The Logic of Collective Action*. Massachusetts: Harvard University Press, 133.

³¹ Senator Hon Ron Boswell, NPA Q. Interview, 22 February 1999. Gary Nehl MHR, NPA NSW. Interview, 18 November 1997.

³² Senator John Woodley, AD Q. Interview, 14 December 1998.

The three tests of party democracy outlined in Diagram 3.1—competition, fair procedures and the integrity of the free association of the membership—will each contribute to the overall assessment of the performance of the parties. Further, the rules of the parties provide a clear basis for evaluating some aspects of the competition and the procedures in the parties. The rules may shed light on both the formal and informal aspects of behaviour. Additional aspects of behaviour, those where the rules do not provide a sufficient guide to behaviour, will be analysed by means of case studies of individuals involved in preselections. These matters are discussed below, in the section on method.

Competitive Selection Panels

The major Australian parties preselect their parliamentary candidates by using panels of party members. The party deems these members to be qualified to vote for the candidates. How they come to be chosen, the sections of the party they represent, and the way in which their votes are combined, constitute the formal structures that govern preselection. Ideally, a competitive selection panel will be a panel that consists of all members. However, this may be cumbersome and costly. A reasonable limit to competition should be determined by the rules of cost-efficient voting.³³ Cost-efficient voting suggests that the cost of decisions rises with the number of persons involved and the time taken to decide. The cost of decision-making needs to be balanced against the cost borne by those who disapprove of the decision, the losers. High costs result in the loss of members. Parties therefore need to establish the acceptable limits to competition, while preserving discipline and freedom of association—in Hirschman's renowned phrase, to find 'the elusive optimal mix of exit and voice'.³⁴ As unanimity is too expensive, some form of majority needs to be agreed in advance. Hirschman's analysis implies a self-correcting mechanism in the parties. A party that condones rough play will be punished by a loss of members. The purpose is not to judge the optimal mix of forces or to ponder the degree of

³³ Mercuro, N. and S.G. Medema, 1997. *Economics and the Law: from Posner to Post-modernism*. Princeton NJ: Princeton University Press, 88.

³⁴ Hirschman, A.O. 1970. *Exit, Voice, and Loyalty*. Massachusetts: Harvard University Press, 120.

provocation that may cause some members to leave. Democratic decision-making in a party does not require a perfectly dispersed voting process.

Furthermore, competition between members requires a reasonable 'expression of pressures from below',³⁵ that is, between members and leaders in the selection of candidates. In this instance, there should be some balance between the various formal elements of a party membership. For example, branch members in the constituency, branch members in other constituencies, affiliated unions, and members of the executive and so on. The test of reasonable competition within the confines of cost-efficient voting will be the weight of votes of various elements of the party present in the panels. The measure is designed to find anti-competitive panels. Such panels prevent a formal 'group' from expressing their opinion by way of voting and have a realistic chance of effecting an outcome favoured by them. Informal 'groups' and their impact on competition will be introduced at a later point in the analysis.

Although there are only four major parties, the federal nature of Australian politics means that each is comprised of State and Territory divisions, each with its own constitution and rules. In addition, each may be registered separately with the Australian Electoral Commission.³⁶ The two largest parties, the Labor party and the Liberal party³⁷ successfully stand candidates in each State and two Territories (16 cases), the Nationals run candidates successfully in predominantly rural areas in 3 States (3 cases) and the Democrats for the Senate only (1 case, national rules). The parties do not uniformly adopt a single type of selection panel. The design of the panels is the preserve of each party division. This means that each party in each division will have a different set of rules, in particular, rules that govern their panels. In Table 3.1, all of the panels used by the major Australian parties are listed. Gallagher and Marsh's³⁸ typology of selection panels is adapted and used to provide a guide to the types of panels, and the number of preselection contests which take place under each panel type is recorded.

³⁵ Sartori, 1976. *Parties and Party Systems*, 283.

³⁶ Australian Electoral Commission, 2000a. *Federal Registration of Political Parties*, 7.1.

³⁷ The Country Liberal Party (Northern Territory) Member's caucus with either the Liberal or National parties, but the CLP is an autonomous party.

³⁸ Gallagher and Marsh, eds. 1988. *Candidate Selection*, 237.

The Table is arranged with the most dispersed form of preselection panel to the left, through to the most aggregated to the right. The number of candidates selected to contest House of Representative and Senate seats in 1996 is distributed along the table. Type-one panels consist of a plebiscite of all eligible party members in the constituency. There were 67 contests for endorsement for the House of Representatives and 6 for the Senate determined by the four major parties using this type of panel. Type-two panels consist of local party delegates only and applied to 17 House of Representatives and 3 Senate major party endorsements.

Table 3.1: Voting Panels Used by Major Parties for Candidate Selection, 1996

1 Plebiscite of Local Branch Members	2 Vote of Local Party Delegates	3 Local Plebiscite and Central Panel	4 Local Delegates and Central Panel	5 Central Panel and other Delegates: Senate	6 Union and other Delegates: Senate
67(6)	17(3)	93(3)	133	(26)	(20)

Sources:

Modelled after Gallagher and Marsh, eds. 1988. *Candidate Selection*, 237.

For number of endorsed candidates, Department of Parliamentary Library, 1996-97. *Federal Elections 1996*, Table 2, page 4 and Table 14, page 55.

For types of panels, rules of the major parties (Labor, Liberal, National, Democrat) in the study as referenced.

Note:

Numbers refer to the preselections for the House of Representatives and (Senate) in that type of panel.

Type-three panels consist of a combination of the local plebiscite and a central panel of delegates from other constituencies, including party officers and parliamentary leaders. Ninety-three endorsements for the House of Representatives and 3 for the Senate took place using this type of panel. Type-four panels consist of a combination of local delegates and a central panel. One hundred and thirty three endorsements for the House of Representatives and none for the Senate used this type of panel. Type-five panels are found in the Liberal and National parties for the endorsement of Senate candidates (where the seat represents the entire party division, that is, the State or Territory). Delegates from all areas combine with the central panel, which consists

of the party executive and parliamentary leaders. Twenty-six Senate candidates were endorsed using this type of panel. Type-six panels are found in the Labor party for the endorsement of Senate candidates and consist of a central panel in which the affiliated unions have a predetermined proportion of the vote. Twenty Senate candidates were endorsed using this type of panel.

The Democrats have a central panel with local consultation for House of Representative endorsements; otherwise, there is a postal plebiscite of all eligible members in the division. The reason for the former is the very small number of party members. The party is virtually without a branch presence in most electorates. Labor, the Democrats and the Liberals allow an appeal to be heard and decided by their respective National Executives but these do not constitute a selection panel in the first instance.

There are dangers in being too dogmatic about the degree of competition allowed for in a particular panel. It would be difficult to conclude that only a plebiscite of eligible members in a particular district constitutes the most democratic outcome. For example, in the Labor party, party members in other districts and union affiliates may have a legitimate view about the district and its candidate. The structure of panels has much to do with the contest over different views of the quality of the candidate and sharing power between local and State or national interests. It also has much to do with other motives. Witness, Leo McLeay MHR, 'There's always been a desire by party officers ... to have a centralised preselection system ... That gives people in the party office a whole lot more power. They might say it's about having better candidates, but it's about them having more power'.³⁹

As Bob Hogg, former National Secretary of the Labor party, argued 'it is possible the good results [winning elections] are due to the informal process as much as being a result of the preselection system. However, some systems are so designed that they do not in a structural sense bring about the creative tension that forces people to talk across the board and give consideration to national/state-wide interests and

³⁹ Cumming, 1991. *Mates*, 227.

responsibilities as well as local interests'.⁴⁰ In other words, some structures are so anti-competitive as to encourage questionable behaviour, but many different types are consistent with democratic practice.

Where preselection processes are deficient, the outcome will be undemocratic regardless of the structure in which they are embedded. Graham Richardson, former secretary of the NSW Labor party has described his role in sacking left-wing delegates from right-wing union delegations. He remarked 'we would try ... to kick out the bad guys and have the good guys in ... There's nothing wrong with that: this is a hard game!'⁴¹ Some panels in the Labor party are structured to ensure union power. To appreciate how the accumulation of power occurs, at least in a formal sense, requires knowledge of a further rule: the rule under which the unions affiliate to the party. This rule will often allow the leader of the union to hand-pick the delegates that the affiliation warrants. That the political faction-minder then manages these 'numbers' is a matter of discovery and insight. The way it occurs, though, is through the particular rules that facilitate such behaviour, rules that make for entirely anti-competitive behaviour.

The method of voting may be very important in determining the outcome of a preselection ballot. It is difficult, however, to argue that one method is democratic and another not, only that one may produce a clearer outcome or allow for a share of candidates among groups in a party. There is a critical point to be made about the use of plurality (winner-take-all), preferential and proportional representation voting systems⁴² in parties. The Labor party in all divisions uses proportional representation to allow two or three factions to share power. The device does not, however, as some observers⁴³ have suggested, produce the factions. In terms of the impact of the voting system, the factions are more likely the product of the method of the affiliation of

⁴⁰ Hogg, R. 1989. 'A Report and Assessment of ALP Preselection Systems and Long Term Organisational Questions'. Canberra: ALP National Executive Minutes, 22 September. (Mimeo) 5.

⁴¹ Cumming, 1991. *Labor Mates*, 247.

⁴² Plurality, preferential and proportional representative voting systems are discussed in Taylor, P. and R. Johnston, 1979. *Geography of Elections*. London: Croom Helm, at respectively 40, 50 and 53.

⁴³ Sartori, 1976. *Parties and Party Systems*, 98. He argues that a proportional representative system allows a high degree of factionalism. Formal factions have existed in the Labor party under 'proportional representation' and 'winner-take-all' systems.

unions where the union secretary selects union delegates to party forums on a winner-take-all basis. In the Liberal and National parties, formal factions are less common, as is the lack of bloc voting as-of-right. A winner-take-all system produces the difficulty in the Liberal party whereby, if factionalism does arise, the executive, which constitutes a part of the central component of the panels, has, to all intents and purposes, a bloc vote. Another version of the winner-take-all syndrome is “managerialist”. Senator Hon. Ron Boswell has observed of the National party in Queensland, ‘[I]n a preselection, management tend to vote in a bloc’.⁴⁴ In the case of the National party, neither the structure of the panels nor the rules of affiliation, nor the voting system appear to be critical. Rather, there is a propensity among members of the party to leave certain decisions to more experienced people, which suggests a deferential ethos not found in the Labor or Liberal parties. That people vote as a bloc is an important sign of the accumulation of power and a possible pointer to anti-competitive behaviour. Accounting for such behaviour and suggesting remedies is another and more difficult matter.

In a ballot for a single position, the vote may be preferential or exhaustive. In effect, both of these methods produce a showdown between the two most popular candidates. The preferential method forces the issue at a single ballot. The second may take many ballots⁴⁵ before a winner is determined. The winner in both cases is the one who records a majority of the votes cast. The potential for anti-democratic behaviour will vary with each. A show-and-tell ballot, where ballot papers are shown to another voter in order to satisfy those concerned that a ‘deal’ has been abided by is more likely in a single ballot. In a multiple ballot, there is a propensity to use the time between ballots to conduct further negotiations, but not necessarily of an anti-democratic kind. ‘At each successive vote in the series of exhaustive ballots that was used to eliminate the candidates, I [Neil Brown] had stayed in the ballot by only a vote or two, until most of the local rivals had killed each other off’.⁴⁶ The variation in behaviour, however, is not generated by the voting system so much because the voting

⁴⁴ Interview, 22 February 1999.

⁴⁵ Andrew Peacock was preselected in 1966 for the seat of Kooyong for the LPA V. He won after five ballots. Carey, J. and T. McCrae, 1982. *Peacock M.P.* Adelaide: Rigby, 56.

⁴⁶ Brown, N. 1993. *On the Other Hand: Sketches and Reflections From Political Life.* Canberra: The Poplar Press, 26.

systems afford different opportunities for different strategies, including foul play. The issue does arise in a minor role in the context of the informal rules of play and is canvassed in Chapter 7, but it has not been presented as a separate category of analysis.

Fair Processes

The standard of fairness to be applied to party processes is problematic. If the party agrees that they are fair, then, in a sense, they are fair. Nevertheless, if the rules were written based on a pre-existing unfairness or uncompetitiveness, they may be unfair. Such rules may afford advantage to one group at the expense of another. In these circumstances, it is essential to apply a standard with the widest possible application. There is a set of standards, written by the parties in government, and accepted by the public. These are the rules for parliamentary elections. The *Commonwealth Electoral Act* is a legislative guide to fair public electoral procedures. It was devised by the major parties, largely on an agreed basis, to provide fair rules of play in the competition for votes between the parties. It may provide a means to measure the fairness of the competition for votes within the parties. Whether it should be applied, as a matter of policy, is a matter discussed below. For now, the aim is to apply some fundamental principles of wide acceptability to the conduct of candidate preselection ballots.

The first operational element is the extent to which any party rules and processes governing preselection are inconsistent with procedural fairness as defined in the Act. Any party that breaches such rules should at least have a convincing reason for why it does not adhere to such standards in its internal operations. The *Commonwealth Electoral Act 1918* contains provisions for a number of principles that may be regarded as fundamental to a fair electoral system. Six of the most fundamental have been chosen to test the parties and are set out in Table 3.2. below. The Table contains the principles to be applied to the parties' rules, and the corresponding provisions in the order in which they appear in the Act.

The first principle, equal weight of votes or ‘one-vote, one-value’, applies to elections for the House of Representatives. Strict rules against malapportionment ensure that the number of electors in each electorate differs from the average by no more than ten percent (although the quota between the States can vary more widely). While the rule does not apply to the Senate, and is not universally applied throughout all legislative chambers in Australia, it is an enduring principle and is unlikely to be legislatively overturned.

Table 3.2: Six Principles for Fair Elections: the *Commonwealth Electoral Act*

Principle	Part or Section of the <i>Commonwealth Electoral Act</i>
One-Vote, One-Value	S. 59 (10) Malapportionment
Integrity of the Roll	S. 90 Inspection of Rolls S. 91C Provide a Certified List of Voters to Candidates S. 105 Alteration of Rolls S. 114 Objection to Enrolment S. 326 Bribery
Equal Application of the Qualification to Vote or Nominate	P. VII Qualifications for Enrolment... S. 99 Claims for Enrolment... S. 163 Qualification for Nomination
Fair Conduct of Ballot	S. 155 Date for Close of Roll S. 156 Date of Nomination S. 157 Date of Polling S. 219 Participation by Candidate in Conduct of Election S. 263 Scrutiny P. XXI Electoral Offences
Secret Ballot	S. 206 Separate Voting Compartments S. 207 Secure Ballot Boxes S. 233 Vote to be Marked in Private
Access to Fair Dispute Procedures	P. XXII Court of Disputed Returns

Source: *Commonwealth Electoral Act* 1918.

The second principle, the integrity of the roll of voters, is fundamental to a fair election. The right to inspect the roll, for copies to be made available to candidates and on equal terms, the right to object to the inclusion or exclusion of voters, as well as defining responsibility for keeping the roll and ensuring the independence and integrity of the keeper(s) of the roll are components of the principle. The absence, or

poor specification, of rules in these regards would be fatal to fair play. An additional matter is bribing a voter, which is an offence under the Act and may occur at the point of voting. This element of the integrity of the rolls, arguably, may also occur at the point of paying for another person's membership, and is an issue taken up below in the discussion of the test of freedom of association.

The third principle, the ability to define the qualification to vote or stand, is very important. The actual qualifications stated in the Act are not the issue; for instance, there is no reason why a party should restrict membership to citizens. The interest, however, lies in the rules that the parties have designed to allow or disallow members to vote or stand, and the misapplication of rules to deny candidates support or deny candidates' eligibility to stand.

The fourth principle, the fair conduct of the ballot, requires that the individual voter not be subject to any interference during the conduct of the ballot. Various other offences are nominated in the Act such as issuing deceptive publications, falsely claiming a vote, defaming a candidate, forging ballot papers and so on. Further, a proper scrutiny of the ballot should be ensured, and proper notice should be given for all of the important elements of the election such as the time to nominate and to conduct the poll.

The fifth principle is the secret ballot, a widely accepted and fundamental principle of democratic elections.⁴⁷ A ballot should be conducted in private and the prerequisites for this are the provision of separate voting compartments and a secure ballot box for placing ballot papers.

The sixth principle, the provision of dispute procedures, is an important element of fair elections. The principle is not extended to an independent source of dispute resolution, as applies to a general election. The need for an independent tribunal would require a strong argument against the right of private association. Nevertheless, a party should be able to hear and decide matters that concern an alleged breach of

party rules in circumstances that allow for a fair hearing. Where rules are breached but there is little recourse to a remedy, it could be concluded that the intention to conduct preselections fairly is not firm.

These principles will be used to audit the rules of each of the parties with respect to fair process.

Freedom of Association

Parties are seen to be legitimate political organisations if they maintain sufficient electoral support, although their vitality, based on membership numbers,⁴⁸ especially those involved in the candidate selection process,⁴⁹ plays some part. A party is legitimate if a substantial portion of the electorate, for whatever reasons, accepts it. Its actions are justified in the act of acceptance. The integrity of a party is a different concept. It derives its substance from the requirements of free association—requirements such as the creation of acceptable rules for joining and expelling members, and virtue in the performance of certain tasks, such as meeting procedures, creating policies and keeping records. Most important for the purposes of preselection is the creation of a group of voters who undertake the task of preselection in the full knowledge of what they do. A party that fails in these tasks lacks organisational integrity. A party lacking integrity may not be illegitimate. However, its legitimacy may be damaged should a lack of integrity reach significant proportions.

There are many good reasons why most people will not become involved in a political party. Olson's⁵⁰ 'paradox of participation', the principle that for most participants the rewards do not justify the costs of joining, is a powerful explanation of why the numbers of those joining a political party are small relative to the voting population. Others will make the effort to become politically active but participate in other forums, such as interest groups.⁵¹ Indeed, the motivation of those who join political

⁴⁷ It does have detractors; see Brennan, G. and L. Lomasky, 1993. *Democracy and Decision*. Cambridge: Cambridge University Press, 218.

⁴⁸ Webb, 1995. 'Are British Political Parties ...?', 302.

⁴⁹ Ware, A. 1992. 'Activist-Leader Relations: "Exchange" Models and Vote-Seeking Behaviour in Parties.' *British Journal of Political Science* 22: 74.

⁵⁰ Olson, 1971. *The Logic of Collective Action*, 11.

⁵¹ Richardson, 1995. 'Interest Groups and Representation', 61.

parties will vary widely.⁵² For whatever reasons, sufficient people have overcome the cost of collective decision-making⁵³ and volunteered to join a political party. Obviously, members of parties are different to the rest of the electorate by the fact of their membership. Taken as a collective, the behaviour of these freely associating individuals will determine the integrity of the process of preselection.

A fundamental element of the freedom of association is the distinction between a person who votes for the party and a party member. Only the latter, in fact a sub-category of the latter, has the right to vote in a party ballot. The assumption is that if there is no distinction between members and non-members, or if the members have been forced to join, or are unaware of the aims and objectives of the association, or join unknowingly, then freedom of association is breached. If a distinction is made on the grounds of the member having a greater commitment than the voter to the ideals or objectives of the party, how then to distinguish between the member who joined yesterday and one who joined ten years ago, or one who joined only for the purpose of taking part in the ballot? The parties have clear rules to establish the qualification of members to vote in a ballot. They also make judgements about the virtues of qualifications. These may be entirely practical. For example, restricting the right to vote to members of long-standing would dissuade joiners. Nevertheless, giving every voter a say, regardless of membership, would destroy the reason to join.

Freedom of association and competition may be diminished when too few compete. While size is not critical, very small numbers are a concern to parties. Most Australian parties allow for the intervention of the party administration in circumstances where the number of members involved in a ballot is small. A small pool of members may lead to an unsafe choice⁵⁴ of candidate. Party rules also allow for the intervention of the party administration in circumstances where too few candidates stand. New candidates may be invited to stand and competition is

⁵² Whiteley, P., P. Seyd, J. Richardson and P. Bissell, 1993. 'Explaining Party Activism: The Case of the British Conservative Party.' *British Journal of Political Science* 24: 79.

⁵³ Schlozman, K. *et al.*, 1995. 'Participation's Not a Paradox: From a Study of American Activists.' *British Journal of Political Science* 25: 1.

⁵⁴ Just eight local Liberal party delegates in Oxley selected Pauline Hanson. She was disendorsed as an unsuitable candidate during the 1996 election, too late to be replaced on the ballot paper. Conversation with John Blake, campaign director for Elizabeth Grace MHR, LPA Q, 29 April 1998.

enhanced. However, if the numbers are small because a local candidate or their accomplice closes the books to new joiners, the result lacks integrity. It brings into question the ability of the party to perform the role of conducting preselections. The practice of signing up new members *en masse* (sometimes called ‘branch stacking’ or ‘exuberant democracy’) in time for a preselection has the potential to change the character of a party. It is a matter for the parties whether the rules are restrictive and are a disincentive, or open and are an incentive, to stack.⁵⁵ Either extreme, however, may result in an abuse of the free association of the membership.

Recruiting, and sometimes the restriction of the membership, may rely on access to superior resources, or knowledge. The former Western Australian Liberal Senator, Noel Crichton-Browne estimated that he signed up (but did not pay for) 10,000 members of the Liberal party division in Western Australia in a fifteen-year period.⁵⁶ That amount of effort and the recruits’ loyalty gave him immense power in the division. The fact that it flowed from an estimated \$1–1.5 million of his personal finances expended in travel and accommodation during the period did not necessarily make it undemocratic. Others are free to work and expend as they please. Similarly, if vote buying is forbidden, the rules of a party may be invoked. Where it is not forbidden,⁵⁷ ‘organising’ cannot be held to be undemocratic in the sense of being unfair. Neither can it be anti-competitive; in fact, it is extremely competitive. However, these behaviours do raise the issue of the ability of a party to distinguish itself from the rest of the electorate. It may suggest that there is nothing to distinguish this group of voters from any other. It raises the question, why should this group of voters have the right to preselect candidates for public office, and others not be allowed to do so?

The *Commonwealth Electoral Act* contains a prohibition on bribery of a voter. It specifies that, ‘A person shall not ask for, receive or obtain, ... any property or benefit

⁵⁵ Robinson, S. 1996. ‘Remarks’ In *The Paradox of Parties: Australian Political Parties*, ed. M. Simms. Sydney: Allen and Unwin, 59.

⁵⁶ Interview, 13 August 1998.

⁵⁷ There is no rule in South Australia Labor forbidding vote buying, but the allegation that ‘membership fees for the [2,000] “new members” were paid by about eight to ten persons ... the total of these fees was \$41,937,’ was central to the successful 1999 court injunction by Clarke against the party executive. *Clarke v ALP* (2 September 1999), 3.

of any kind, ... on an understanding that ... any vote of the first-mentioned person ... any candidature of the first-mentioned person ... will, in any manner, be influenced or affected'. It further specifies that, 'A person shall not in order to influence or affect ... any vote of another person ... any candidature of another person ... give or confer, ... any property or benefit of any kind to that other person or to a third person'.⁵⁸ Signing-up a person to become a member of a political party and paying the membership fee on their behalf is a matter of some controversy. It may be tantamount to an inducement to vote. However, joining and voting are two separate acts, so it may not be reasonable to rely on the prohibition on bribing a voter as a principle to assess the payment of membership fees by others. In a sense, a vote is always cast in expectation of some reward, however remote. On the other hand, a political party, which contains a large proportion of people whose membership fees have been paid by others, is clearly undermining its own claim to be different to the wider electorate. In such circumstances, a party cannot be said to be an association of free individuals.

Party officials worry that the candidacy of someone selected by a group of people who join at the last moment before a ballot lacks integrity. According to former NSW Labor party secretary and Senator, Graham Richardson, '[I]n New South Wales, where branch votes count for everything, the next few years may well see the party stalwarts replaced by "stackers" with no party history ... the Labor Party will be the ultimate loser'.⁵⁹ The practice is, on the surface, certainly competitive. It is fair in the sense that it may fall within the rules and be available to all sides. At another level though, the lack of experience among members may ensure that the decisions are confined to a closed circle of activists, and therefore is anti-competitive. A dramatic loss of membership may be just as damaging to a party. In the NSW Liberal party, membership dropped from nearly 45,000 in the 1980s to 13,000 in the early 1990s after 'vicious' faction fighting.⁶⁰ In these examples, the average experience and longevity of the membership has declined in the party with the stacking, and in the party with the loss of membership. In some respects, competition may well be diminished in both.

⁵⁸ *Commonwealth Electoral Act* 1918, Section 326.

⁵⁹ Richardson, G. 1994. *Whatever It Takes*. Sydney: Bantam, 62.

Another questionable practice is the recruitment of large numbers of 'ethnic' members. In this case, the membership may object but formal rules to exclude members because of their ethnicity would be impossible without invoking a wider issue of discrimination. Michael Johnson, Liberal party activist in the Federal seat of Ryan, has experienced considerable pressure from other members to withdraw his nomination, among other reasons, for the disquiet that he has caused by being able to recruit over 200 new members to the Liberal party mainly from the Chinese community.⁶¹ The concern about ethnic branch stacking has two bases. First, the disquiet at a group winning voting rights, despite the fact that they allegedly have no idea of what they are being asked to do. The other, the fact that such numbers are controllable and are therefore a power to be reckoned with. Allegedly, 60 members of the Greek community would, without demur, raise their hands at meetings of the Victorian Labor Left faction at the request of Theo Theophanous MLC.⁶² Arguably, the practice arises out of a competitive urge, and is not against the rules, but the effect may be anti-competitive.

A deal between factions to join forces in support of certain candidates does not necessarily breach the freedom of association. Factions tend to concentrate power in few hands but this may occur by consent and rely on an exchange between leaders and members. 'The [Labor NSW] Right ... was a feudal system ... You got in a queue and you got rewarded... And that's how they kept the political party together'.⁶³ Then again, it may be a gift built on loyalty, deference or ignorance. A high concentration of power in few hands suggests anti-competitive practice, which practice seeks to make outcomes more predictable. A predictable outcome is *prima facie* evidence of control and antipathetic to competition. The ability to negotiate a whole series of outcomes at one time or even several years ahead, as occurs in cross-factional deals in the Labor party, is a clear indication of oligarchy. The competition between factions is intense but for non-faction players is non-existent.

⁶⁰ Christopher Puplick. Interview, 8 December 1998. Leser, D. 1994. *Bromwyn Bishop: A Woman in Pursuit of Power*. Melbourne: Text Publishing, 65, 72.

⁶¹ Michael Johnson. Interviews, March-April 1999.

⁶² Senator Barney Cooney, ALP V. Interviews, 19, 26 November 1997.

⁶³ Hon Leo McLeay MHR, ALP NSW. In Cumming, 1991. *Mates*, 242.

Democracy does not mean that competition for recruits or, more widely, preselection deals are not made or that people are not persuaded or cajoled into making a decision. A deal designed to secure a given outcome when based on a competitive panel and procedural fairness may be democratic. Practices which call into question the distinction between the party member and all other electors raises the question of the integrity of the freedom of association and indeed the legitimacy of the party to perform its role.

The Methods

The primary data to be used in the three tests of party democracy—competition, fairness and integrity—are the rules of the parties. In the first instance, the rules of each party in each division are used to evaluate the competitive characteristics of the panels of voters. Second, the rules will be audited to see if they are consistent with the six principles derived from the Electoral Act. The audit will provide a firm basis to draw conclusions about party behaviour. It will also provide a base for the case studies to shed further light on party behaviour. Further, the parties' performance at managing their rules will be evaluated. A simple pass or fail on the audit may not allow for the fact of good intentions not being fulfilled. More likely, the performance of the parties in managing their rules will lend itself to a more informed debate on the issue of whether the parties' overall performance is sufficiently weak to warrant outside scrutiny.

In addition to the audit of the rules, there is a series of interviews with candidates and some administrators, to assess the systems in practice. Additional sources of data were the media and biographies of former Members of Parliament. Preselections are generally undertaken in private and are not readily accessible by the media, so coverage is erratic. A search of newspaper files for the period January 1996–December 2000 found reference to a handful of contests.⁶⁴ Eighteen biographies were used as a supplementary source of data. These are listed in Appendix three.

⁶⁴ Author search of *The Adelaide Review*, *The Age*, *The Australian*, *The Australian Financial Review*, *The Courier-Mail* and *The Sydney Morning Herald*.

The purposes of the audit of the rules are to search for breaches of the tests, and the source of errors in the system. As well, the audit aims to produce a typology of preselections to indicate the conditions under which democratic practices are more or less likely to occur. The scope of the study is limited only to those parties who successfully stood candidates at the 1996 election. This is to ensure that the rules are relevant in the light of the experience of elections. The exception to this is the data from numerous biographies of mostly contemporary preselections where these are particularly insightful. A number of other party activists are referred to in the text. For the practical purpose of interviewing candidates, successful candidates are mostly selected, unsuccessful ones are not necessarily easy to trace. The question is whether any bias is introduced by selecting only the winners. Would the losers have a different story to tell? It is likely that the winner and the loser in the same contest experienced different aspects of the same preselection, and that two or more views would be valuable. Apart from the instances of cheating (it would hardly make any difference whether the cheat was a winner or a loser as neither are likely to confess) the factors at play would be the same. The results of the interviews, biographies and newspaper reports indicate that examples of cheating are few. The instances of procedures and rules that are meant to favour one candidate over another, however, are evident and these are as likely to be known by the winner as the loser. The results of the interviews have in fact proved this assumption correct.

The accuracy of the study relies not so much on the verification of events by the traditional means of listening to two sides of the story, but of ensuring that there are a sufficient number of stories to cover the field of potential faults. As the important variables in the study are likely to be, for example, the structure of the panels and access to legitimate dispute procedures, two views of the experience of one panel or dispute would not necessarily expand the picture. Selections were made with the primary objective being to develop the picture of the array of actual and potential faults in the systems. So long as the material gathered was valid, that is, first hand and with no obvious reason to disbelieve the interviewee, the data were accepted.

Table 3.3: Members of the Major Parties in the Australian Parliament, 1996

Party	Democrat	Labor	Liberal	National
Division	MHR/Senator	MHR/Senator	MHR/Senator	MHR/Senator
NSW	0/1	20/5	19/4	10/2
Victoria	0/1	16/5	19/5	2/1
Queensland	0/2	2/4	17/4	6/2
Western Australia	0/1	3/4	8/6	0/0
South Australia	0/2	2/4	10/6	0/0
Tasmania	0/0	3/5	2/5	0/0
ACT	0/0	3/1	0/1	0/0
Northern Territory	0/0	0/1	0/0	0/0

Source:

Department of Parliamentary Library, 1996-97. *Federal Elections 1996*, 3, 59.

Notes:

The Members of the House of Representative (MHR) are elected one per electorate. The number of electorates is in proportion to the number of electors in each State (except Tasmania where there are five electorates regardless of population). The Senators (SEN) are elected six per State and two for each of the two Territories. There were five Independent MP's (three of whom had been elected previously on a party ticket and lost endorsement. Each failed at the 1998 election), one Country/Liberal party Senator, two Green Senators and one Independent Senator.

Cooperation from interviewees was excellent. One reason for this may be that the researcher was known to many of the interviewees. A second may be that a number of more experienced members were chosen. These interviewees may have felt less constrained to discuss issues than was the case earlier in their political career. The major variables in the determination of the rules of preselection were the parties, and the panels and the chamber for which candidates were selected. The number of candidates selected for each panel is set out in Table 3.1. The numbers of members elected for each chamber and party is set out in Table 3.3. These two sets of data provided the basic sampling framework for the audit of the rules. Clearly, the bulk of members are concentrated in the larger States and the two main parties, Labor and Liberal.

Table 3.4: Interviews Conducted in Each Type of Voting Panel

<p>Category 1 Plebiscite of Local Branch Members</p> <p>Baldwin (Sydney) safe Labor Hoare (Charlton) safe Labor Hollis (Throsby) safe Labor Melham (Banks) safe Labor¹ Plibersek (Sydney) safe Labor Woodley (Senate Qld.) Democrat</p>	<p>Category 2 Vote of Local Party Delegates</p> <p>Hicks (Riverina) marginal National Nehl (Cowper) safe National</p>
<p>Category 3 Local Plebiscite and Central Panel</p> <p>Denman (Senate Tas.) Labor Griffiths (Maribyrnong) safe Labor Johnson (Ryan) safe Liberal Kelly (Dawson) marginal National McDougall (Griffith) marginal Liberal O'Connor (Corio) safe Labor Sawford (Pt. Adelaide) safe Labor² Scott (Oxley) safe Labor Smith (Dickson) marginal Liberal Theophanous (Calwell) safe Labor Thomson (Wills) safe Labor</p>	<p>Category 4 Local Delegates and Central Panel</p> <p>Abbott (Warringah) safe Liberal Andrew (Wakefield) safe Liberal Campbell (Kalgoorlie) safe Ind/Labor Hawker (Wannon) safe Liberal Lieberman (Indi) safe Liberal McArthur (Corangamite) safe Liberal McGauran (Gippsland) safe National Pyne (Sturt) safe Liberal Rocher (Curtin) safe Ind/Liberal Thornley (Macquarie) marginal Liberal</p>
<p>Category 5 Central Panel and other Delegates: Senate</p> <p>Boswell (Senate Qld.) National Brownhill (Senate NSW) National Crichton-Browne (Senate WA) Liberal Mason (Senate Qld.) Liberal McGibbon (Senate Qld.) Liberal Puplick (Senate NSW) Liberal Stone (Senate Vic. and Fairfax) National</p>	<p>Category 6 Union and other Delegates: Senate</p> <p>Beahan (Senate WA) Labor Cooney (Senate Vic.) Labor Crowley (Senate SA) Labor¹ Schacht (Senate SA) Labor¹</p>

Source:

Author's selection.

Notes:

¹ In addition, National Executive intervention was invoked.

² State Executive selection.

It is important however, to include the experience in the smaller States and the Territories and in the other parties, keeping in mind the comparative scarcity of elections and preselections in some States and parties. The sample serves two purposes: one is to cover the breadth of the experience of preselections among Australia's major parties, and the other to recognise that the bulk of the preselection experience takes place in the larger States and parties. It is also likely that the intensity of the competition may vary depending on the margin of the seat. Competition for seats considered safe should be intense because the prize is greater—the possibility of a long career and a cabinet post. The prospects for the less safe seats are likely to be a short stay in the Parliament. The study of the experience of preselection drew on 40 interviews of Members and former Members of Parliament (Table 3.4) and some party officials, and eighteen biographies. The sample was based on the type of panel (Table 3.1) faced by the candidate, and within those categories, each party, State, chamber and margin was selected with a view to capturing the range of possibilities.

For example, a category one panel, a direct plebiscite of all members in the district, preselected Peter Baldwin. His was a safe House of Representatives seat for Labor, in the largest State, NSW. The overwhelming numbers of preselections take place in the two largest States, New South Wales and Victoria for the larger of the two major parties, Labor and Liberal (93 out of 224). There is no benefit in sampling in proportion to these preselections where the same rules and structures apply. However, any other variables, such as margin of seat or special factors are taken into account. Elsewhere, the emphasis is on covering the field of possible rule and panel variations. The parties have some national rules, such as appeals to a national executive (however constituted), and a number of divisions of different parties in the one State may have similar rules arising out of common experiences.

Some parties have very few preselections. A small party division such as the Victorian National party has only 2 seats (3 until recently) and 1 Senate position and some of those seats had been held for many years. With a tendency to leave the member alone and rules that favour the member, there is very little endorsement

activity or experience. In other parties, in the bigger divisions, and under rules that are less dominated by the local member, there is a vast experience of preselections.

The Questionnaire

The method of collecting data directly from the sample of candidates was by way of structured questionnaire. The questionnaire (see Appendix 1) was used as the basis for all of the interviews, most of which were taped. When this was not convenient, notes were kept. In retrospect, provided the notes were written up immediately following the interview, the note method was the cheaper and easier method (see Appendix 3).

The questions were grouped to guide the interviewee to the chronology of events. They were designed to map the forces involved in the candidate's path of success, including significant influences, strategies and structure of the process, and any disputes in which a candidate was involved. The strategy section sought to discover the part played by 'significant others' in the candidate's path. This path may have been by way of having been recruited to the party, or even firstly into a faction of the party. The candidate was asked to assess their confidence at the prospect for success as a means of finding out the degree of unpredictability in the outcome. Predictable outcomes were assumed an indication, though not proof, of anti-competitive outcomes, if not anti-competitive behaviour. The process of the preselection contest concentrated on the degree of competition, including whether any candidates had been persuaded to withdraw from the contest. The interviewees were also asked whether their result depended on the outcome of other contests, again as an indication of methods of controlling competition.

The interview data were added to the audit of the rules and the analysis of the panels to provide a more complete picture of preselections among successful candidates of the major parties. The interviews were essential to understand those weaknesses that open the parties to a charge of a lack of integrity in their democratic practices. The results of the audit of the panels and rules are set out in the following chapter. The

discussion of the more informal aspects of the contests, as well an overview of the entire analysis of the data is set out in Chapter five.

Chapter 4

The Audit of Party Rules and Selection Panels

An audit of the rules of the four major parties is designed to judge, in each case, if the process of preselection is fair. The measures of fairness are six principles selected from the *Commonwealth Electoral Act*. The rules that govern the preselection processes in each party division are set out, often in detail, in the various party constitutions. Each set of rules for each party division were read and interpreted as either complying with the Act, or failing to comply. Where the rule failed to comply, the way in which it failed is presented and discussed. The rules also describe the structure of the selection panels, the combination of party members who have the right to select the candidate. The audit will be used to judge if the panels are anti-competitive. A selection panel is anti-competitive when any formal group in the party has no realistic chance of effecting an outcome favoured by them.

The Selection Panels

Selection panels comprise party members who are qualified to vote for candidates in a preselection. Apart from the merits of the candidates, the ways in which members combine, and the interests of the sections of the party they represent, will determine the outcome of the contest. The major issue in the construction of panels is to weigh the interests of different parts of the party. In a completely dispersed panel, all members would vote for all candidates, in all contests. Each vote would be of equal worth. Such dispersal is rare. Often, those members in a district for which a candidate is to be selected will have the greatest say. Where local interests (votes) are weighed against the votes of party members elsewhere in equal proportion, both sets of opinions have a chance of being expressed. The way in which the interests of the rest of the party are counted is crucial. Parties mostly prefer to use the least costly means of electing candidates—means that do not involve all members in all contests. A central panel of voters may be selected at a broad forum of the party, for example a party conference, where delegates from all

districts vote for a panel to be used for a host of contests. The proportion of the local panel votes to central panel votes will determine whether the locals have a realistic say in the selection of their candidate. The central panel of voters may also consist of a higher level of delegates. These are the party executive, senior members of the party whose vote will be combined with other delegates' votes and the local members. Again, the issue is the relative weight of each component.

Structurally, some selection panels may be considered 'beyond the pale'. For example, where the balance of votes is weighted so heavily in favour of the central panel, real competition between the central panel and the local branches is unlikely. The Western Australian Labor party allows the delegates from the local electorate to comprise only 12% of the total panel (panel 4 in Table 4.1). A local vote split between two or more close contestants renders the vote ineffectual in the face of a much greater force in the central panel. Further, where the central panel is dominated by a union vote and each union votes in a bloc because their delegates are elected outside of the Labor party under a winner-take-all system, the local-to-central struggle is wholly uncompetitive. In 1991, the Labor party failed in its attempt¹ to reform the union bloc vote, a system that underpins the informal process of accumulation of power in the party.

Don Chipp's description of the preselection procedure in the Liberal Party in Victoria in the 1960s as 'fair'² assumed that only the local preselectors had a legitimate interest in the outcome. In 1989, the preselection system was changed in order to weight the views of the locals against those of a central panel. The rationale was to overcome parochialism and Member of Parliament capture and to impose discipline on renegades and non-performers. 'When I [David Hawker MP] first joined the party a sitting member was guaranteed to be unchallenged for 12 years. In 1975 it changed to two terms, next the sitting member had to be actively endorsed, ... then we moved to a system where nominations are called every time'.³ Hawker described the earlier rules in place, which protected sitting members from challenge. The apparently democratic and competitive locally controlled system described by Chipp was simply a highly controlled and anti-

¹ ALP National Executive, 1991. *Recommendations and Options of the Organisational Review Committee*, referred to the 1991 National Conference, 1, 4, 6. (Mimeo)

² Chipp, D. and J. Larkin, 1978. *Don Chipp: The Third Man*. Melbourne: Rigby, 32.

competitive system. Under the 1989 changes, the central panel consisted of delegates from all federal electorates and balanced the decision-making of the locals.

Categorising panels into democratic (or competitive) and anti-competitive panels is thus a subtle exercise. Where the local delegation is substantial (for argument's sake, a majority of the panel) and where the central component is dispersed, the system is most likely to be competitive. Where the local component is a minority and the central panel votes in blocs, the effect is probably anti-competitive. The competition within the central panel, however, is a further and separate element to consider. In the Labor party, the central component is always a majority union vote (not that all union delegates vote as a single bloc), and that majority is offset by a local component. The arithmetic proportion of a union vote is thus perhaps 50% of 50%, or just 25% of the total number of votes in the whole panel. A 25% vote provides substantial leverage in the central component. Two unions, each with 25% of the total vote, constitute a near majority of the central panel and between them are likely to control the outcome of all preselections. In this example, there may be competition between the unions but not between the unions and the branch members. The dispersed vote of the branches would make their vote ineffectual. A central bloc of votes may also leverage local votes. Often candidates will pledge their local support in an on-going way to the group from whom they are seeking central support. These more subtle manoeuvres will be explored in the following chapter. At present, the object is to distinguish the basic divisions and voting strengths of the formal constituents of each panel.

In the Liberal and National parties, the central component of the panel is less clear because that part of the panel often comprises delegates from across the State. The percentage figure in Table 4.1 only indicates the local vote versus the central panel (panels 3 and 4), or central versus local (panel 5) to distinguish panels for Senate selection. The central panel itself, however, consists of part executive and part delegates from elsewhere. Where the central component consists substantially of an executive committee assembled

³ David Hawker MHR, LPA V. Interview, 26 November 1997.

Table 4.1: Competitive and Anti-Competitive Selection Panels
(Anti-competitive panels indicated by bold text)

Division	1 Plebiscite of Local Branch Members	2 Vote of Local Party Delegates	3 Local Plebiscite and Central Panel	4 Local Delegates and Central Panel	5 Central and other Delegates: Senate	6 Union and other Delegates: Senate
NSW	Labor HR	National HR		Liberal ¹ HR 60- 90%	Liberal Sen 35% NAT Sen <25%	Labor Sen 60%
Victoria			Labor HR 50%	Liberal HR 60% National HR >90%	Liberal Sen 45% National Sen 10%	Labor Sen 60%
Queens- land	National ² HR		Liberal HR 66% Labor HR 50%		Liberal Sen 33% National Sen <50%	Labor Sen 60%
Western Australia				Labor HR 12% Liberal HR >85%	Liberal Sen <30%	Labor Sen 60%
South Australia				Liberal HR >75% Labor HR 25%	Liberal Sen <25%	Labor Sen 50%
Tasmania		Liberal HR+ Sen	Labor HR + Sen 50%			
ACT	Liberal HR + Sen		Labor HR 50%			Labor Sen 50%
Northern Territory	Labor HR + Sen CLP Sen			CLP ³ HR		

Source:

Modelled after Gallagher and Marsh, 1988. *Candidate Selection*, 237. Data from parties (see References).

Notes:

Panels deemed anti-competitive are in bold type.

Percentages refer to the proportion of the total vote of the first named component of the panel.

¹There are three zones—metropolitan, central and country—where the local component is respectively 60%, 80% and 90%. ² National members can insist on a plebiscite, but otherwise plebiscite and central (60%). ³ Data on CLP not available.

on a ‘winner-take-all basis’,⁴ and that central component itself is substantial, then the same advantage as applies to unions may exist. In the Queensland division of the Liberal

⁴ Senator David McGibbon, Liberal party Queensland, has described the Queensland Division of the Liberal party in such terms. Interview, 8 April 1999.

party, the central panel makes up only 33% of the total vote. The central panel, however, consists of 100% State Executive members. Some members of State Executive are chosen on a 'multiple-first-past-the-post'⁵ system, which allows a winner-take-all situation. Even so, these delegates do not constitute the whole of the executive. If the executive votes as a bloc, it does not arise from a structural feature of the system.

The Victorian Liberal executive makes up less than half of the central panel and the central panel is 45% of the whole for a Senate preselection. In this instance, the executive may not exhibit an overwhelming influence. However, a significant bloc of State caucus votes is involved in Senate preselection. This issue arose in the 1998 disendorsement of Senator Karen Synon, and involved an alleged breach of the rules when Victorian Premier Kennett handpicked the caucus delegates.⁶ This example may involve a breach of the rules rather than a structural fault, although it is certainly arguable that the structure of the panel is anti-competitive. The Western Australian and South Australian Liberal divisions also consist of dispersed central panels, where the executive has a minority of the vote. The Tasmania and the ACT Liberal divisions are selected by delegates from all electorates and are therefore dispersed. The same applies in the CLP in the Northern Territory. The central components of the panels for the National party in NSW and Victoria have a modest share of the vote and are therefore unlikely to constitute a powerful bloc. For the Senate preselection in the Queensland division, however, the central component is near 50% of the total vote. Moreover, a sizeable, though minority component of the central panel consists of the State Management Committee.⁷ Senator Boswell claims that the Committee votes as a bloc on preselection issues, but this is a matter of ethos rather than structure. The combination of the local panel with a dispersed central panel is characteristic of the open competition system. Table 4.1 indicates that these panels apply to many of the Liberal and National party and some of the Labor party panels for House of Representative elections.

The typology of panels presented in Table 3.1 has been taken a further step by accounting for the concentration of power in the executive component of each central panel. Taking

⁵ LPA Q, 1997. *State Constitution*. Rule 127(d), 32.

⁶ *The Australian*, 6 July 1998.

⁷ NPA Q, 1995. *Constitution*. Rule 99, 18.

into account the two-way competition between local and central, and elements within the central, the result of the audit of the panels allows a categorisation on the competitive - anti-competitive axis. On these measures, 13 of the 40 panels tend to be anti-competitive (they are indicated by bold text). Obviously, the method reveals greater anti-competitiveness in Labor because of the bloc vote of unions. This is not to suggest that there is a lack of competition among unions for power, or that non-union favoured candidates cannot succeed, but where they do so, it is against the odds. Power is more dispersed in the Coalition parties in a structural sense. It can, of course, be centralised by means of good organising, but that is due to the competitive nature of the event not the structure of the panel. Nevertheless, where a component of the central panel can be assembled on a winner-take-all basis, the influence of the centre may be anti-competitive. No Coalition party was found to contain anti-competitive structures among the selection panels.

The Audit Results

The audit of each set of rules produced a discrete set of outcomes for each party in each division. The results set out in Table 4.2 highlight rules that do not comply with the six principles selected from the *Commonwealth Electoral Act* (these are marked with a cross). The cases where the rules comply with the principle are indicated by a tick, and are not discussed further. Where the rules do not comply, the fault is set out below and discussed. The qualifications of candidates and voters are not amenable to simple classification and are not included in the Table but are presented in the order outlined in Table 3.1. The section on qualifications compares the different standards applied to party membership and candidacy requirements including the power to scrutinise applications and to exclude potential and current members.

Table 4.2: Results of the Audit of Party Rules Using the Principles for Fair Elections

Party and Division	One-Vote, One-Value	Integrity of Roll	Fair Conduct of Ballot	Provision for Secret Ballot	Fair Dispute Procedures
Democrat [#]	×	✓	✓	✓	✓
Labor [#] NSW	×	×	✓	✓	✓
Victoria	×	✓	✓	✓	✓
[#] Queensland	×	×	✓	×	✓
Western Australia	×	×	×	×	✓
South Australia	×	×	×	✓	✓
Tasmania	×	✓	×	✓	✓
ACT	×	✓	✓	✓	✓
Northern Territory	×	×	×	✓	✓
Liberal NSW	×	×	✓	×	×
Victoria	×	×	×	✓	✓
Queensland	×	✓	✓	✓	×
[#] Western Australia	×	×	×	×	✓
[#] South Australia	×	×	×	×	✓
[#] Tasmania	×	×	×	×	×
[#] ACT	×	×	×	×	×
CLP Northern Territory	×	✓	×	×	✓
National NSW	×	×	×	✓	×
[#] Victoria	×	×	×	✓	×
[#] Queensland	×	×	×	×	✓
TOTAL	20	14	13	9	6

Source:

Rules of each party (see References).

Notes:

× = unsatisfactory, ✓ = satisfactory.

Overrule clause: the ability for any of the procedures to be overruled by a majority of an executive body. The requirement for a substantial majority vote, 60% or more, is considered a sufficient remedy.

Total: the number of parties that do not satisfy the principle.

Table 4.2 also indicates the total number of parties that fail, in some respect, each principle. All party divisions fail, in some respect, the principle of one-vote one-value. Most have weaknesses in the integrity of their voter rolls and in the conduct of the ballots. Most have provision for a secret ballot and fair dispute procedures. The Table does not provide a report card for each party. It would be misleading to do so because the weight of each failure has not been determined. A string of minor infringements may do

no great harm to the democratic process within a party, though one major failing almost certainly will. For example, even the best set of rules will count for nought if a powerful executive can ignore them. The first report of the audit, therefore, is to look at rules that allow procedures to be overruled.

The Power to Overrule

There are circumstances when preselection procedures need to be waived. In selecting a candidate for a by-election, there may be insufficient time to fulfil a party's conventional rule and hold a plebiscite of the relevant membership. A by-election, however, may simply be used as an excuse by an executive to waive the rules in favour of a particular candidate. The critical questions are, which body, in which circumstances, is competent to decide when time is insufficient to hold a plebiscite? Most of the audited parties have three tiers of administration: conference, council and executive. Clearly, a vote of the broadest body of the membership, a State convention or conference must be able to change the rules. The difficulty with such bodies is that they meet infrequently and are expensive to convene. In each case, the party executive is smallest and meets more frequently and is thus in a position to decide matters more easily and more quickly than the larger bodies. However, where an executive is controlled by one group in a party with the power to overrule procedures for preselection, that group can ensure that its own candidates succeed. This is not to say that the executive cannot endorse or disendorse candidates as set out in the rules, but where those rules provide a wide discretion to do so, they can be abused. The standard way to control such excess is to constrain the executive in its actions by requiring a substantial majority to overrule decisions and procedures. Some constitutions are even more conservative and require, even of their conference, a two-thirds majority for rule changes.⁸

In the Victorian Labor party, 'the Administrative Committee may, in circumstances where the continued endorsement of a candidate is no longer viable, re-open nominations for any seat, provided such resolution is supported by 75% of all the Administrative

⁸ For example, the ALP T, 1997. *Rules*, Section 18.2, 22 states '...rule changes may be considered by State Conference in odd numbered years only if supported by a motion carried with the support of at least two-thirds of the members...'

Committee members'.⁹ The NSW Liberal party 'State Executive may cancel the selection ... if the motion is carried by not less than 60% of the members of State Executive present and voting at the meeting' and, in the Tasmanian Liberal party, a cancellation of endorsement requires a 75% vote of the executive.¹⁰ In these ways, the politically necessary flexibility of response is retained, but the opportunity for abuse is minimised.

Within the framework of a national constitution, each major party is self-governing in each division. However, there is some ability for intervention by the federal executive of three of the parties. The parties vary considerably in the extent to which the national body of rules has any part to play in the selection of candidates. The Democrats are the most centralised in that there is a national set of rules governing preselection for Federal parliament, which overrides the State divisional rules. Furthermore, the National Executive has the authority 'to intervene in a Division's preselection process'.¹¹ However, while the National Executive has considered numerous reports on preselections and taken action, such as the extension of a deadline for the completion of the process, it has not intervened to the extent of overturning or determining a State decision.

The Labor National Executive has clear powers to hear and decide an appeal 'from any person seeking to be a candidate for Federal elections...' and indeed has 'plenary powers to deal with and decide any matters which, in the opinion of an absolute majority ... affect the welfare of the Labour Movement...'.¹² A review of National Executive decisions for the years 1983-1995 (a period which coincides with the sample of case studies) shows that the plenary powers were used to hear an appeal, conduct a preselection or overturn a preselection decision on 25 occasions (see Appendix 2). At the 1996 Liberal Federal Council, its Federal Executive gained the power to disendorse a candidate with a two-thirds majority of Federal Executive and Divisional Presidents.¹³ No preselection has been overturned by these means. The National party Federal

⁹ ALP V, 1996, *Rules*, Section 15.14, 24.

¹⁰ Respectively, LPA NSW, 1997. *Constitution and Regulations*, Section 19.19.2, 57. LPA T, 1996. *Constitution and General Standing Orders for Meetings*, Part XXVII, I. 30. b, 28.

¹¹ AD, 1996 *National Constitution and Regulations*. September, Section 11.2.37. (Mimeo). Senator Andrew Bartlett, AD Q. Discussion on National Executive interventions, 19 May 1998.

¹² ALP, 1994. *Platform, Resolutions and Rules*, Rules 7c viii (c), 7 c ix, and 12 d, 323, 324, 326.

¹³ LPA, 1998. *Federal Constitution*, Section 40. (f) (ii) and (g) (ii), 13-14. Correspondence from Brett Mason confirming on inquiring with the Federal Secretariat the non-use of these sections, 21 July 1998.

Management Committee has power to endorse candidates in States and Territories only where there is no affiliated party.¹⁴

At the State level, there are eight examples of a clear power to overrule at executive (or council) with a simple (or absolute) majority, in broadly defined circumstances. That is, not simply, for example, to re-open nominations because of resignation of the candidate or a proven error in the ballot. These are:

1. Labor NSW: ‘In electorates where the local branch ... has not taken the necessary steps as laid down by the Rules to select a candidate at least six months before Parliament comes to an end ... the Administrative Committee will select a candidate’ and,

‘The Administrative Committee can ... decide not to hold a selection ballot. It can only do this if there is no sitting Labor member. If this happens the candidate will be selected by a committee made up of equal numbers from the Administrative Committee and where practicable, the local Electorate Council’.¹⁵

2. Labor Queensland: ‘The Administrative Committee may withdraw the endorsement of any candidate on the grounds of unfitness for the position...’¹⁶

3. Liberal Western Australia: ‘Upon receipt of the recommendation of the Selection Committee the State Council may ... make such other decision as it shall see fit’.¹⁷

4. Liberal South Australia: ‘Notwithstanding the procedures provided herein for preselection and endorsement of candidates State Executive shall be at liberty if special circumstances exist to vary such procedures as it deems appropriate’.¹⁸

5. Liberal Tasmania: ‘If in any special circumstances ... the State Executive considers that in the interests of the Organisation an endorsement should be re-opened, the State Executive may call for fresh applications’.¹⁹

6. Liberal ACT: ‘Where in the opinion of the Management Committee the endorsed Candidate is no longer a suitable representative of the Division, the Management Committee may disendorse that candidate’.²⁰

¹⁴ NPA, 1988a. *Federal Constitution*, Rule 23 (c), 9.

¹⁵ ALP NSW, 1996–97. *Platform and Rules*, D.4 (d), 101 and N.40, 117.

¹⁶ ALP Q, 1997. *Rules*, Section 25.19, 38.

¹⁷ LPA WA, 1997. *Constitution and Rules*, Section 128, 58.

¹⁸ LPA SA, 1996. *Constitution*, Section 17.12, 51.

¹⁹ LPA T, 1996. *Constitution*, Part XXVII, Rule 29, 28.

²⁰ LPA ACT, 1997. *Constitution*, Section 93, 35.

7. National Victoria: 'In the event that State Council deems that urgent and immediate action is necessary ... it shall take such action in relation to the election ... as it considers to be in the best interests of the Party...' ²¹

8. National Queensland: '... if Central Council considers at any time that the interests of the party will be best served by selection it may resolve by a majority of those present ... that it will select the candidate' ²²

In each case, State division party rules are open to abuse. The NSW Labor Administrative Committee has clear powers by simple majority to select the candidate, restricted only by the 'trigger' that the local branch has failed to act, which of course it may have done with the agreement of that same majority of the Committee. The Administrative Committee can also re-weight the selection panel by joining its number to those of the local panel in cases where there is no sitting member, again to suit the simple majority of the administration. ²³ The Queensland Labor, South Australia and ACT Liberal parties' administrative committees can overturn the decision of a panel on very broad grounds, by a simple majority. The rules provide no direction for the selection of a new candidate. In the Western Australian Liberal, NSW and Queensland National parties, the power to override the decision of a panel is unfettered. The only redeeming feature is that the power rests with the intermediate body, a council. The Tasmanian Liberal State Executive has a clear power to override but only to the extent to reopen nominations and restart the process, and as noted (note 19), the power to overturn a ballot is fettered.

These overrule provisions are so powerful, and so unconstrained, that the audit of the rules in these party divisions must take into account the fact that the processes of each may be significantly unfair, regardless of their record on each of the six parts of the analysis. The cases are marked (#) on Table 4.2.

²¹ NPA V, 1997. *Constitution and Rules*, Rule 114 (photocopy, no page number).

²² NPA Q, 1995. *Constitution*, Section 140, 25.

²³ There is a general proviso that the Administrative Committee 'Cannot make any Rule ineffective' ALP NSW, 1996-97. *Platform and Rules*, Rule D. 1. (b) (i), 101, but this rule can be outmanoeuvred by the more specific rules quoted above.

One Vote, One Value

The value of each vote in a preselection ballot is obviously important to the result. The immediate issue is whether the rules for assigning value to votes are applied fairly within the respective categories of the voters. Where a panel of voters has the capacity to co-opt extra votes there is a potential for a group with a bare majority to enhance that majority. Where some voters obtain more than one vote, or where the weight of a delegate's vote bears no relationship to the numbers that the delegate represents, the vote is unequally apportioned. Each suggests an inequality of vote that may offend the one-vote one-value principle, which appears in the *Commonwealth Electoral Act*, and is an accepted test of fairness.

Every party that was examined weighted votes unequally in some respect, for either or both of the House of Representatives and the Senate preselections. The result for each party is recorded only once, so for example, although elections by plebiscite of all the members would satisfy the test, a party was marked as having failed the test if their Senate panels were unfairly weighted. The inequality arises for six basic reasons:

1. Delegates are elected at the annual general meeting of a branch. The election of delegates to a preselection panel at the annual general meeting of local branches or electorate councils is common in the Liberal party. The number of delegates allocated to a branch may be in proportion to branch membership but the likelihood is that attendance at an AGM will be lower than at a plebiscite specifically held for the election of delegates.²⁴ This is not a strict example of imbalance, but where an election for delegates, an indirect form of vote, is taken at a forum where other matters are discussed, the method becomes even more indirect and may *de facto*, be subject to great imbalance.

2. There is no proportionality between the number of delegates and the number who vote for them. A common practice in many of the panels where delegates are elected is to allocate the same number of delegates per body. For example, the same number of delegates from each federal electorate is elected to a conference that will form the basis

²⁴ Christopher Pyne MHR, LPA SA. Interview, 29 October 1997.

of the Senate selection panel. The number of members who elect those delegates will vary considerably²⁵ and constitutes a clear case of malapportionment. In some cases, there is a different ratio of delegates to members dependent on the geographic region, for example, country and city electorates.²⁶

3. The rules for the election of delegates are unknown. The Labor party affiliates unions whose members elect delegates to panels. Unless it is not specified, in all but one case 'the unions follow their own procedures'²⁷ in the election of delegates. The exception requires the method of selection to be according to the registered rules of the union with the party to be notified.²⁸ In no case did the party rules specify the method of election, although in all but one case the delegate had to be Labor party member.²⁹ The Democrats only consult with local branch members in preselections for House of Representatives in areas where their membership is low.

4. The rules specify a weighted vote for the election of certain delegates. The rule for women in the NSW Labor party allows for a 20% weighting until the number of women preselected has reached a given quota.³⁰ In no other division of any party is a weighting given, although quotas are used extensively (affirmative action is discussed below). Union affiliates can vary the weight of vote, for example, for junior members³¹ although there is no such qualification for casual or part-time members, which arguably gives an advantage to those unions whose membership mainly consists of fractional, seasonal or

²⁵ The number of delegates to Queensland Labor State Council is the same for each federal electorate, although the branch members will vary between less than 100 to over 400. (Author's information).

²⁶ The Liberal NSW system has three zones, metropolitan, central and country (the formula allows for considerable variation in the ratio of members to delegates and central to local delegates, dependent on the zone). Labor South Australia differentiates the weight between country and city branches (1 city delegate per 25–50 members and 1 country delegate per 15–50 members to Convention).

²⁷ ALP NSW, 1996–97. *Platform and Rules*, Rule B.28, 100.

²⁸ ALP Q, 1997. *Rules*, Rule 4.08 (a), 15.

²⁹ 'Affiliated organisations may appoint proxy delegates [to Convention or State Council], provided such proxy delegates are members of the organisation they represent...' ALP SA, 1994. *Constitution and General Rules*, Rule 24. (b), 33 and 30. (b), 36. In other words, there is no requirement for such delegates to be party members.

³⁰ '... in any lower house preselection, primary votes or preferences distributed to women candidates in ballots for seats not held by a continuing member or where the continuing member is excluded during the course of the count will be weighted by a factor of 20% (i.e. valued at 1.2)', ALP NSW, 1996–97. *Platform and Rules*, Rule N. 7, 114.

³¹ 'If a union wishes to affiliate junior members, two junior members represent one equivalent adult member for the purpose of the calculation of a union's delegation to conference.' ALP V, 1996. *Rules*, Schedule A 5, 29. This despite the fact that membership of the party is open to anyone 14 years of age.

day workers. There is a minor element of weighting in every case where a youth and a women's wing of a party exists and young and/or women members have dual membership. In every case, these members have an ordinary vote and a vote to elect a woman and/or a youth delegate. However, those delegates feed into the wider preselection forums in very small numbers. In the Tasmanian Liberal party, restrictions are placed on the positions that may be held by an individual with dual membership.³²

A stark contrast to this is the NSW Liberal division 'where a person may be a member and hold office including as a delegate in ... not more than 1 Ordinary Branch ... and a Young Liberal Branch ... and 1 or more Special Branches'.³³ In other words, people eligible to be Young Liberals or in a Special Branch ('community of interest', usually of the same ethnic background) have two votes in branches and could feed into the system in large numbers. This rule was abolished at the August 1998 meeting of the NSW State Council but applied to the 1998 round of preselections. The ACT Liberals also allow the formation of Special Branches. In NSW, a Special Branch is entitled to send two delegates to State Council where an Ordinary Branch is entitled to one.

There are other instances where a member has two votes, for example, where a Member of Parliament is, as of right, a delegate to a conference and is also an elected delegate.³⁴ In a mixed panel system for example, there are delegates or executive who cast a vote in that capacity and in a direct plebiscite.³⁵ Husband/wife membership is a form of membership exclusive to the National party, so that if one pays a membership, the other

³² '... a person may be a member of any two or more of a branch, a Women's group and a Young Liberal Movement Branch... 2. No such person shall hold ... office[s] ... or be a delegate of more than one ... branch ...'. LPA T, 1996. *Constitution*, Part XX 1, and 2, 19.

³³ LPA NSW, 1997. *Constitution and Regulations*, Rule 10. 2 (l), 35 and Rule 2.3.1, 4. LPA ACT, 1997. *Constitution*, 28 (2), 16. Rule 30 (1), 17. The ACT division Secretary has made assurances that a member is entitled to only one vote in a ballot (conversation with John Ryan, July 1998).

³⁴ '[E]ach of the members of the Parliament entitled to be represented at Conference shall exercise two (2) votes provided that the total parliamentary vote shall at no time exceed 6 per cent of the total of exercisable votes at any Annual Conference.' ALP NT, 1996. *Rules*, 3.5 (c), 11.

³⁵ This can occur in a very dispersed vote for example where there is a central panel for a whole State and the local electorate vote counted together (eg, ALP ACT, 1997. *Rules and Regulations*, Rule 11. 4 (f), 140), and so the delegate vote is of little extra weight. This impact can be nullified by specifying that delegates for the central component cannot also be branch delegates (eg, LPA V, 1997. *Constitution*, Rule 14.13 (b) (i), 44). It can occur entirely within an electorate. Where a delegate to the federal electorate body also exercises a local vote in a plebiscite and there is no wider input, the doubling up has a greater impact. Where branch delegates and electorate council delegates make up the panel there is a double vote (NPA NSW, 1996. *Constitution and Rules*, Rule 5.1.1, 16, and LPA T, 1996. *Constitution*, Part XXVII C.8. a), 25.

is, on application, entitled to membership without fee. The NSW National party takes this even further by allowing the category of Nominated Member where, for one subscription, a company or the like can purchase four memberships.³⁶ The party also allows members of metropolitan branches to belong to one other branch, with no apparent prohibition on voting in both.³⁷

5. There are special categories of voter given automatic entry to certain ballots. In Senate preselections in the Queensland Liberal party, life members and former presidents are allowed to vote, and in the Queensland National party life members are able to attach themselves to an electorate of their choosing and cast a vote in a plebiscite for the House of Representatives.³⁸ There are forms of limited or non-voting membership in all parties, but as these people choose not to participate in the preselection activities, they are of no concern.

6. Extra voters are appointed by another body. The South Australian Liberal party State Executive can nominate five members to State Council, thus giving the Executive some measure of control over the more senior body.³⁹ In the NSW National party, the Central Council that preselects Senate candidates has the power to determine its own constitution.⁴⁰ Further, the Queensland National party has a rule for the co-option of members with voting rights.⁴¹ On the positive side, the Victorian and Western Australian

³⁶ 'A company, organisation, firm, partnership, estate, or trust paying at least the standard annual membership subscription, and nominating a person to represent it, shall have that subscription accepted and that person shall be a Nominated Member. Further nominated members, up to a maximum of four per subscription, may be accepted on application if the subscription represents at least the standard annual membership subscription for each Nominated Member (NPA NSW, 1996. *Constitution and Rules*, Rules 2.5.1 and 2, 9).

³⁷ NPA NSW, 1996. *Constitution and Rules*, Rule 4.2.3, 13.

³⁸ LPA Q, 1997. *State Constitution*, Rule 137 (1) (c), 38 and NPA Q, 1995. *Constitution*, Rule 16, 6.

³⁹ 'The State Council shall comprise: - ... five members of the Division nominated by the State Executive and approved by the State Council at its Annual General Meeting.' LPA SA, 1996. *Constitution*, Rule 9.2 (m), 23.

⁴⁰ 'The Central Council shall be composed of: ... Such delegates as Central Council may determine.' NPA NSW, 1996. *Constitution and Rules*, 7.1.1 (i), 20.

⁴¹ 'It shall be competent for: State Electorate Councils; Federal Divisional Councils; Central Council; the State Management Committee ... to co-opt members of the party ... provided that no more than 10% of the members of any Council ... shall be co-opted members and that co-opted members who are not otherwise entitled shall not have any voting right as a member of the council ... which appointed them, but may exercise all rights (including voting rights) appertaining to any position to which they are appointed in a representative capacity.' [Emphasis added] NPA Q, 1995. *Constitution*, Rule 156, 28.

Liberals allow for a random ballot of delegates from a central panel to a selection panel.⁴²

The principle of one-vote, one-value is not adhered to by most of the parties. The appearance but not the form of equal weighting seems to be important to the parties at an electorate level. Parties prefer the number of delegates from each electorate to be the same, regardless of the membership. This preference acts as a disincentive to members in large branches and electorates and is often a deliberate strategy to encourage membership in areas where organisation is weak. The other means of breaching the principle appear even less sustainable.

The Integrity of the Roll

Fourteen of the State parties failed, in some respect, the test of the integrity of the roll of voters. Four issues arise in the consideration of the integrity of the roll. The first is who controls entry to the party, and whether their decisions are subject to review. The second is who should decide the eligibility to vote, and whether their decisions are subject to review. The third is whether candidates have equal access to the roll of voters. The fourth is whether there are rules that adequately govern proxy voting.

A preliminary point is whether there are any unfair barriers to entry to the organisation. Each party division excludes persons who are members of a proscribed organisation including other parties, or who have stood against the party's endorsed candidate. The extent of the ban varies but such activity can exclude a person for several years or indefinitely. These rules could hardly be described as unfair. Similarly, a joining fee is payable in each case, usually variable according to means whether specified by income or by pension or employment status. Until June 2000, following the change to the rules of the Labor party at its National Conference,⁴³ only two cases, the Western Australian Labor and South Australian Liberal parties, had rules forbidding paying for another

⁴² LPA V, 1997. *Constitution*, Rule 14.13 (c), 45. LPA WA, 1997. *Constitution and Rules*, Rule 18. (f), 85.

⁴³ ALP, 2000. *Rules*. Rule 16 a. (Photocopy)

person's membership.⁴⁴ A variant is that offers or rewards as inducements to membership are forbidden in the Queensland Liberal party.⁴⁵ Membership applications *en masse* are forbidden in the NSW and Victorian Labor parties.⁴⁶ The rules in all parties are silent on the issue of bribing a voting member.

First, in most cases, a person joins a party either by applying to Head Office or the local branch, with the vetting of applications undertaken by a central committee. An appeal against a refusal of membership is not always available, whether at local or central level. In the Democrats, and every division of the Labor party, there is an appeal to a higher body against a branch rejection of an application. The Democrat rule is the most explicit: '[p]ersons excluded from membership of the Party may appeal against such exclusion as if they were members'.⁴⁷ In the Liberal party, there is a contrast between those State divisions that allow no appeal and have no requirement to alert the State director (NSW), those that allow no appeal, but must inform the State director of the decision (Victoria, Queensland, South Australia), those where there is a referral to a higher body from a branch decision, but no right of appeal *per se* (Tasmania), and those where there is an appeal (ACT and Western Australia). In Western Australia, there is not only an appeal to State Executive, but if the branch seeks to delay an application beyond a 42-day period the application is automatically accepted.⁴⁸ The ACT rules forbid a branch to have a rule to preclude a member joining the party. The measure is designed to counter one of the more basic forms of exclusion.⁴⁹ In the National party, the applications are made direct to the State Management Committee, and there is no appeal from a rejection. In one case

⁴⁴ ALP WA, 1995. *Platform, Constitution and Rules*, 15.4.1, 49. LPA SA, 1996. *Constitution*, Rule 5.9.3, 7.

⁴⁵ 'No member of the party shall make any material offer or reward to any person as an inducement to any person to become a member of the Party without the approval of the State Executive, and no person who has accepted such an offer or reward shall be accepted thereby as a member of the Party.' LPA Q, 1997. *State Constitution*, Rule 15 B, 10. Another variation is the prohibition on the use of professional consultants by a candidate in a preselection contest. LPA V, 1997. *Constitution*, Rule 21.7 (a), 56.

⁴⁶ 'If a branch receives eight or more new applications for branch registration at any one meeting ... the branch must send the applications to the NSW Administrative Committee...' ALP NSW, 1996-1997. *Policy and Rules*, Rule A.20 (a), 93. 'The branch may not recommend acceptance of more than 13 new members at a single meeting.' ALP V, 1996. *Rules*, Rule 5.3.6 (c), 5.

⁴⁷ AD, 1996. *National Constitution*, Rule 4.3, 3.

⁴⁸ '[If] a Branch ... fails to deal with the application ... within a period of forty two days ... the application will ... be deemed to have been approved...' LPA WA, 1997. *Constitution and Rules*, Rule 12. e (iii), 10.

⁴⁹ LPA ACT, 1997. *Constitution*, Rule 30 (2), 17.

only, the NSW National party is the power to expel a party member in the hands of a local branch.⁵⁰

Second, the questions of who holds the roll, who verifies it, and what appeal rights exist where an individual is excluded from the roll need to be considered. In a system where the vote is by plebiscite, without the qualification of branch attendance, the list is held centrally in all cases and there is either a right of appeal to the returning officer or a central committee. In a system with a plebiscite but with a qualification of branch attendance (Labor NSW, Tasmania, ACT) the branch record has to be verified, and there are rules for the manner of keeping records. This type of system relies heavily on local scrutiny for verification.⁵¹ In a system where delegates are elected at an AGM, local verification is critical. For example, in the NSW, Western Australian and South Australian Liberal parties, the secretary of a branch has to notify the General Secretary not only of the details of the results of the election of delegates, but also the details of the roll of those who voted.⁵² In the Victorian and Tasmanian divisions of the Liberal Party, and the Victorian division of the National party, only the names of the delegates are furnished to the General Secretary.⁵³

The rights of access to membership lists held at a central level vary considerably. The most accessible are the Victorian and Tasmanian divisions of the Labor party, which allow access to any member (the Tasmanian division of the Labor party has the most comprehensive arrangements covering access and privacy).⁵⁴ Some allow access by certain persons, such as administrative and credentials committees (Labor NSW), or a broader list including chairs of electorate councils (South Australian Liberal). Others

⁵⁰ 'A Branch may expel a member ... from the Party for improper conduct. ... The motion for expulsion must be carried by two-thirds of those present voting in its favour. Any member ... expelled may appeal to Central Council.' NPA NSW, 1996. *Constitution and Rules*, Rules 4.2.7, 13.

⁵¹ For example, the extraordinary detail in specifying the keeping of the record of branch attendances and verifying signatures in the ALP NSW, 1996–97. *Platform and Rules*, Rule I. 9, 107.

⁵² LPA NSW, 1997. *Constitution and Regulations*, Rule 3.13, 13. LPA WA, 1997. *Constitution and Rules*, Rule 36, 21. LPA SA, 1996. *Constitution*, Rule 6.16.3. (b) and (c), 13. There is an interesting waiver clause where State executive may declare the election of delegates valid despite breaches of the rules.

⁵³ LPA V, 1997. *Constitution*, Rule 7.2 (2) (b), 24. LPA T, 1996. *Constitution*, Part VI 7, 9. NPA V, 1997. *Constitution and Rules*, Rule 120 (a) (ii). In the NSW National party there is no provision for making the names of delegates available to anyone, 'It shall be the responsibility of the Branch Chairman ... to satisfy Electorate Councils and Conferences that the Branch delegation is correct.', NPA NSW, 1996. *Constitution and Rules*, Rule 3.2.3, 11. The Queensland National party rules are silent on this matter.

⁵⁴ ALP T, 1997. *Rules*. Rule 16, 21.

have no rule that allows anyone access to the records, only that records be kept (National party in NSW, Queensland and Victoria).

The verification of union affiliations in divisions of the Labor party is handled at administrative committee level but the proof required varies considerably. Only the ACT division requires an audit of union members.⁵⁵ The Western Australian division requires evidence from an industrial registrar, whereas NSW, Victoria, Tasmania and the Northern Territory require a statement from the union concerned, and an audit only when requested (there is no provision for the latter in the Northern Territory). In the case of the Queensland and South Australian divisions, it is not specified at all.⁵⁶ In addition, unions can choose to under-affiliate in order to allow for conscientious objection by members against party affiliation.⁵⁷ They can also choose to over-affiliate, that is, to buy votes.⁵⁸

Third, the preselection candidates' right of access to the roll of eligible electors is critical to the verification of the roll. The systems divide along the lines of plebiscite and delegation appointment by branch. Where the plebiscite system is in place, there is provision in each instance for candidate scrutiny of the roll and for the roll to be made available to all candidates. Where the electoral college consists of delegates appointed by branches, there is no provision for lists to be available as the emphasis is on the candidates' meeting the delegates at the preselection. The assumption is that the roles

⁵⁵ 'The membership of an affiliated union ... shall be determined by the union ... providing to the Administrative Committee ... a statement prepared and certified by an independent public auditor ...' ALP ACT, 1997. *Rules and Regulations*, Rule 5.6, 141.

⁵⁶ 'The membership of an affiliated union shall be determined by the union providing to the Administrative Committee ... a statement of its financial members. Where requested ... the union shall provide a statement by a public auditor of the number of financial members in that union.' Emphasis added. ALP V, 1996, *Rules*, Rule 5.2.5, 4. (The same holds for Labor NSW and Tasmania). The Northern Territory is the same except that there is no mention of request for audit.

'A union wishing to affiliate to the Party must: provide written advice from the relevant Industrial Registry of the Union's current total financial membership figure.' ALP WA, 1995. *Platform*, Rule 3.1.3, 3.

'When a union affiliates it shall pay capitation fees on the membership at the end of the preceding quarter ...' ALP Q, 1997. *Rules*, Rule 13.03, 25.

'Any disputes regarding a Trade Unions level of affiliation shall be referred to the State Executive ...' ALP SA, 1994. *Constitution*, Rule 68. (c), 59.

⁵⁷ For example, 'Where a union seeks affiliation on a number less than that disclosed in the advice [from the Industrial Registry]... the Union Secretary must state in the letter of application, the number they wish to affiliate on.' ALP WA, 1995. *Platform*, Rule 3.1.4, 3.

⁵⁸ Public allegations have been made by former MHR Brian Courtice ALP Q, against the Australian Worker's Union (Queensland) in relation to his 1998 contest for the position of AWU secretary (various interviews various 1997-99). AMWU Secretary Dave Harrison has admitted that he affiliates his union to

switch from politician seeking votes in the plebiscite to candidate being judged by the panel of delegates. In fact, there is probably no reason to make such a distinction and the loose rules of access to lists of delegates seem a failure to comply.

Fourth, the integrity of the roll requires rules that control the use of alternate or proxy delegates. Proxy voting does not occur in Australian public elections (except in a minor way with the provision of assistance to those not capable of casting a vote) but is not uncommon in political parties. The rules in each party division are explicit. They either ban proxies, or allow them under stringent conditions, the main one being that the proxy delegate (there is no proxy voting for plebiscites) must satisfy the same eligibility criteria as the delegate they replaced. For example, the Western Australian Liberal party specifies the circumstances for the election of proxies for all of its constituent bodies. 'All proxies for each Constituent Body shall be elected at the annual general meeting of the Constituent Body and shall be elected in accordance with the rules of the Constituent Body in such numbers and in such numerical order as shall be determined at the annual general meeting...'⁵⁹ The exception is the Western Australian Labor party, which allows delegates to State Conference from 'Non-Metropolitan Councils and Sub-branches [to] credential any financial Party member as their proxy.'⁶⁰

The integrity of the roll of voters is one of the most important areas of electoral politics. The evidence suggests that there are poor procedures in place in a number of party divisions, especially where verification takes place locally and not elsewhere. While the powerful players are presumed to be in the most central parts of the party organisation, some of the greatest breaches of faith with the rules occur at the local level. A concerted campaign to sign-up members by buying membership is arguably a blow to the integrity of the membership and may be at the behest of central figures. That few parties explicitly state that the buying of memberships is illegal is a serious concern. Such a void is not only an invitation to undermine the integrity of the association but implies that the undermining is condoned by the rule-makers. The attempt to establish rules to slow

the Labor party in numbers that suit the union's purpose, i.e. 'strategically' (*The Courier Mail* 20 April 2000).

⁵⁹ LPA WA, 1997. *Constitution and Rules*, Rule 137. (b), 60. There is also a ban on anyone casting more than one vote, except in the case of a remote constituency, and then under stringent conditions.

⁶⁰ ALP WA, 1995. *Platform*, Rule 5.4.5, 13.

branch-stacking in the Labor party is a reflection of a truce between warring factions. It does nothing to instil a confidence that recruits have joined in good faith and in full knowledge of their actions.

Equal Application of the Qualifications to Vote

The two major concerns here are whether branch membership or electorate residence dictate eligibility to vote and whether discretion by party officials in the application of a system leads to a candidate obtaining an unfair advantage. In the Democrat and Labor parties, there is a clear preference for the electorate qualification. In the Liberal party, there is a clear preference for defining eligibility based on branch membership. National party use varies for each division.

The rule for public elections is that voters should reside within the boundaries of the electorate (except for military personnel and itinerants). Systems which use the electorate definition have a standard which is beyond dispute, and the only issues that arise are length of residence, and the nature of the proof required, which is usually the name appearing on the electoral roll at a given date. This system does not, of course, ensure against fraudulent enrolment.⁶¹ The revelations of the Shepherdson Inquiry⁶² in Queensland reveal that the public law has been broken where party members defraud the electoral role in order to enrol new branch members. In some regards, the stringent rules about electorate qualification forced cheats into defrauding the public law, a far more serious matter than breaking party rules.

Those systems that rely on branch membership and, by extension, branch area boundaries, at the very least require a great deal of management. The business of

⁶¹ For example, the following rule change was made in response to charges of electoral fraud being laid against the Labor candidate, and one other in the State seat of Thuringowa, following the preselection for that seat in 1998, 'On or immediately after the 31st March (the cut-off day) in each year the State Secretary shall acquire an electronic roll ... and the place at which each Branch member is enrolled shall be deemed their enrolment address regardless of their alteration of enrolment during the succeeding 12 month period ...' ALP Q, 1997. *Rules*, Rule 30.01 (b), 40.

⁶² The Inquiry, established by the Criminal Justice Commission to investigate electoral fraud was yet to report at the time of the audit.

defining branch boundaries becomes contestable. It is obviously acceptable in such a system to draw membership with no particular relevance to the electorate. It also provides the opportunity to shift voters from one electorate to another as required, although there are rules against people voting twice in a single round of preselections.⁶³

Table 4.3: Qualifications Required to Vote in a Preselection Ballot

Party and Division	Minimum Age ¹ Required	Minimum Membership in Months	Branch Meetings to Attend	Relevant Location of Membership
Democrat	Any	1	0	Electorate
Labor				
NSW	17	24	3	Electorate
Victoria	15	12	0	Electorate
Queensland	15	6	0	Electorate
Western Australia	16	1	0	Branch
South Australia	16	13	0	Branch
Tasmania	14	6	2	Electorate
ACT	16	12	3	Electorate
Northern Territory	15	1	0	Electorate
Liberal				
NSW	16	6	0	Branch ⁶
Victoria	17	12	0	Branch
Queensland	17	12 ³	0	Branch
Western Australia	18	1	0	Branch ⁷
South Australia	16	3	0	Branch
Tasmania	20	24	0	Branch
ACT	16 ²	3	1	Electorate ⁴
CLP				
Northern Territory	Any	12	50% ⁵	Branch
National				
NSW	18	1	0	Electorate ⁴
Victoria	18	6	0	Electorate
Queensland	18	3 ⁴	0	Branch

Source:

Rules of each party in the study as referenced.

Notes:

¹ Includes membership qualification.

² Must be applying for citizenship, otherwise eligible to vote in an Australian Federal election.

³ And 6 months in a branch.

⁴ Qualification may be waived.

⁵ 50% of branch meetings in the last 12 months.

⁶ 75% of branch members to live in the electorate.

⁷ A majority living or working in the electorate.

⁶³ 'A member who transfers his membership or voting rights from one branch to another shall be ineligible to vote at the Annual General Meeting of more than one Branch in any one year.' LPA SA, 1996. *Constitution*,

The NSW Liberal division encourages branch members to reside in the electorate. Failing that, there is a rule to specify that 75% of members should reside in the electorate for the purposes of the calculation of delegate numbers.⁶⁴ The Western Australian Liberal division allows the workplace to count as a residence.⁶⁵ Such rules allow different classes of residential qualification, which at the very least make the task of verifying the roll more difficult, and may increase the opportunity to 'import' voters at short notice. There is no right or wrong boundary or qualification but a significant management issue does arise under the branch membership system, which implies that branch membership has little to do with local residence.

Equal Application of the Qualifications to Nominate

Table 4.4 shows the qualifications required for a member of a party to become eligible to nominate as a candidate for preselection. The first three categories indicate the preference among the parties to have candidates with some involvement in the local branches, as demonstrated by their length of membership (in nearly every case this can be waived), attendance at branch meetings and local branch support. The policy issues arising from this data will be discussed in the next chapter.

The immediate issue is the nature of the vetting of candidates. In addition to the process of satisfying the eligibility requirements (credentialing) before preselection, all of the parties' executive committees have the power to refuse to endorse or to disendorse candidates. The Democrats, Liberals in all divisions and the NSW National party, however, have a system of vetting the candidates before the preselection. The Labor party has no formal sifting process, preferring the matter be left to the preselectors. The question is whether the vetting committees act in such a way as to take the decision out of the hands of the properly constituted panel and deliver it into their own hands. For example, some simply make a recommendation to the preselectors; others have the power to refuse a candidate the opportunity to stand.

Rule 5.5. (b), 5.

⁶⁴ LPA NSW, 1997. *Constitution and Regulations*. Rules 2.3.2, 4 and 3.5.1, 11.

⁶⁵ LPA WA, 1997. *Constitution and Rules*, Rule 117 (d) (iv), 54.

The Candidate Assessment Committees for the Democrats are elected directly by the membership in each division. They have the responsibility to determine whether each candidate is suitable for endorsement for public office. They proceed by interviewing each applicant and providing each with a written statement of their performance against certain criteria.⁶⁶ A candidate who is rejected has a right of appeal.

Table 4.4: Qualifications Required to Nominate in a Preselection Ballot

Party and Division	Continuous Membership in Months	Branch Meetings to Attend	Members' Signatures Required	Vetting Committee, other than Panel to Select Candidates
Democrat	1	None	None	Yes
Labor *NSW	12	None	5	No
*Victoria	12	None	10	No
*Queensland	36 ¹	None	None	No
*Western Australia	12	None	None	No ⁵
*South Australia	13	None	None	No
*Tasmania	6	2	None	No
ACT	24	3	None	No
*Northern Territory	12	None	5	No
Liberal *NSW	6	None	3 ²	Yes
*Victoria	12	None	None	Yes
Queensland	1	None	None	Yes
Western Australia	1	None	None	Yes
*South Australia	3	None	4	Yes
*Tasmania	1	None	None	Yes
ACT	1	None	None	No
CLP Northern Territory	None	None	None	No
National *NSW	12	None	Branch ³	Yes
Victoria	6	None	10	No
Queensland	1	None	10 ⁴	No

Source:

Rules of each party (see References).

Notes:

* Qualifications may be waived.

¹ Or one year branch and three years union membership.

² Members of more than 12 month's duration.

³ Exceptions granted.

⁴ From within the electorate.

⁵ The State Executive may declare any person seeking preselection to be unsuitable.

⁶⁶ 'The criteria for assessing applications for endorsement shall include: *inter alia*, party involvement, community involvement, public speaking skills, employment history, suitability for Parliamentary work.' AD, 1996. *National Constitution*, Rule 11.2.27, 7.

In the NSW Liberal party the Nomination Review Committee, comprising the division president, the federal parliamentary leader, the electorate president and the State director interviews the candidates and recommends to State executive whether candidates are ‘fit and proper’⁶⁷ to present to a selection committee. There is a right of appeal against a decision to reject an application.⁶⁸ The Victorian Liberal party has a two-part process. The first consists of a Prospective Candidates Committee appointed by the president of the division, which carries out a development program for potential candidates. At the time of application, the executive of the electoral council investigates the qualifications of applicants and reports any findings to the Convention.⁶⁹ The Queensland Liberal party Management Committee appoints a Vetting Committee which investigates applications and recommends to State Executive, which having given a candidate an opportunity to be heard can deny an applicant proceeding to preselection.⁷⁰ The Western Australian Liberal party vetting is less interventionist, in as much as the chair of the selection committee simply makes a report on the veracity of the credentials and qualifications of the applicants, including ‘the verification of all references and testimonials’.⁷¹

There is no provision to stop the application proceeding on grounds other than failure to satisfy the credentials test. The South Australian Liberal party Candidate Review Committee consists of the division president and State parliamentary leader, the senior South Australian federal minister, various members of the executive, the presidents of each State Electorate Council within the federal electorate, and the Federal Electorate Council president. The committee must be satisfied that candidates are ‘fit and proper persons’⁷² for preselection and may recommend to State Executive against a candidate presenting to an electoral college. State Executive may refuse a nomination on the advice

⁶⁷ LPA NSW, 1997. *Constitution and Regulations* Rule 18.5.3 (a), 49.

⁶⁸ LPA NSW, 1997. *Constitution and Regulations*, Rule 18.5.5 (c), 49.

⁶⁹ LPA V, 1997. *Constitution*, ‘Prospective Candidates’ Rule 15.7, 47. ‘Investigations of Applicants’ Rule 21.8, 57.

⁷⁰ ‘The Executive may with a minimum quorum of at least three quarters of its members present and by resolution carried by three quarters of those present, having given the candidate an opportunity to be heard, resolve that a candidate’s nomination not be allowed to proceed to a plebiscite or other preselection council.’ LPA Q, 1997. *State Constitution*, Rule 141 (5), 40.

⁷¹ LPA WA, 1997. *Constitution and Rules*, Rules 115–117, 50.

⁷² LPA SA, 1996. *Constitution*, functions of the Candidate Review Committee, Rule 11.4.2, 33–34.

of the committee. There is no appeal against a refusal.⁷³ The Tasmanian division Candidature Committee consists of the leader of the federal parliamentary party (or nominee), the State president and vice-president and two local members elected by the local electorate committee, whose job is to scrutinise all applications and report to the selection committee. There is no provision for refusing an applicant the opportunity to face the preselectors.⁷⁴ The NSW branch of the National party undertakes a vetting procedure using the Electorate Council, the same body that preselects a candidate. The Council satisfies itself, based on several criteria,⁷⁵ about the suitability of candidates to enter the contest. There is no appeal from a decision to refuse the application.⁷⁶

Vetting procedures based on 'quality' criteria, and in some instances without appeal, can deny a candidate a chance at a ballot. Such a power places a very strong tool in the hands of the vetting committee and may be used to stifle competition. The panel of voters alone should decide the suitability of candidates. At the very least, if a party does not trust its own panel, there should at least be an appeal from the decision of the vetting committee.

Fair Conduct of the Ballot

Each State division of each party has reasonably specific rules about the machinery aspects of the conduct of the ballot. Thirteen of the parties, however, failed in one or more of three areas of fair conduct. These are the truncation of the procedures, provisions for retiring members, and ethical behaviour.

The provision common to all cases is that the executive can call for preselections when it chooses, and has the power to truncate the normal procedures when there is insufficient time, such as an election called at short notice. Given the flexibility in the electoral laws,

⁷³ LPA SA, 1996. *Constitution*, Rule 17.4.6, 44. The rules governing vetting are in two different parts of the constitution and could cause confusion as to the proper process. Nevertheless, it is clear that a person can be refused an opportunity to face preselection.

⁷⁴ LPA T, 1996. *Constitution*, Rule 10. (c), 26.

⁷⁵ 'The meeting shall then satisfy itself, ... that each prospective candidate ... satisfies acceptable standards of: Character. Sincerity. General qualification. Ability.' NPA NSW, 1996. *Constitution and Rules*, Rule 12.2.5, 29.

⁷⁶ 'If a prospective candidate is found to be unsuitable by failing to meet an acceptable standard ... the Electorate Council shall not recommend that person's endorsement [to face preselection] and shall report to Central Council the reasons for the failure of the person to satisfy the Electorate Council.' NPA NSW, 1996. *Constitution and Rules*, Rule 12.2.6, 29.

which allow a government the power to determine the timing of an election, it would be difficult to expect the parties to deny themselves equivalent flexibility. Nevertheless, a variation in the timing of preselections and/or the truncation of procedures can be a weapon in internal battles. The key element is whether there are rules that govern the nature of the truncation. For example, the NSW Labor party Administrative Committee can call and close nominations for preselections 'in the way decided by the Rules'.⁷⁷ The circumstances that allow for variations are set out and include by-elections, when the call for nominations has failed, and when the candidates are not approved. In these cases, the Administrative Committee can select the candidate if there is no time to hold a ballot.⁷⁸ The Victorian, Queensland and ACT Labor parties specify that if there is insufficient time to hold a ballot locally, the central panel of delegates conducts the ballot.⁷⁹ Such an arrangement is somewhat easier to organise under a delegate system than it is in the case of a plebiscite.

The Western Australian, Tasmanian and Northern Territory Labor parties' rules are silent on the issue of truncated processes, which leaves the matter in the hands of the administrative committee. The South Australian Labor party relies on the State Council or, failing that, the State Executive to select a candidate where time does not allow the full preselection.⁸⁰

The NSW Liberal party can modify the procedures in very specific circumstances and, in the extreme, dispense with them while at the same time consulting with the local panel.⁸¹ There are no rules covering truncated processes in the Victorian Liberal party, so the decision would fall to the administrative committee. The Queensland Liberal party provides an alternative set of procedures for a truncated preselection that involves the local members.⁸² The Western Australian Liberal party has no truncated procedures other than to have State Council take over the running of the preselection. The South

⁷⁷ ALP NSW, 1996–97. *Platform and Rules*, Rules D.4 (a), 101.

⁷⁸ ALP NSW, 1996–97. *Platform and Rules*, Rule N.4, 114.

⁷⁹ ALP V, 1996. *Rules*, Rule 15.8, 23. The Victorian rule has the additional opportunity for local preselection voters 'present at the scheduled time' to participate. ALP Q, 1997. *Rules*, Rule 27.05, 39. ALP ACT, 1997. *Rules and Regulations*, Rule 11.5 a), 141.

⁸⁰ ALP SA, 1994. *Constitution*, Rule 58.8, 56.

⁸¹ LPA NSW, 1997. *Constitution and Regulations*, Rule 18.20, 57–58.

⁸² LPA Q, 1997. *State Constitution*, Rule 140, 39.

Australian Liberal party has no truncated procedures; in 'special circumstances' the matter falls to State Executive to decide. The Tasmanian Liberal party has no truncated procedure other than to leave the matter to the State Executive.⁸³ The ACT Liberal party allows the Management Committee to endorse the candidate in certain circumstances.⁸⁴ The CLP has a form of truncated procedure, which allows some branch input into a decision of Central Council.⁸⁵ The NSW National party essentially places the matter of expedited procedures in the hands of Central Council, although it is not clear that Council⁸⁶ makes the choice, which is certainly the case in the Victorian and Queensland branches.

One cause of a truncation of the normal preselection process is a Member of Parliament giving no notice of resignation. For instance, in the Victorian, Queensland and South Australian Labor parties the sitting member must give notice of their intention not to nominate, otherwise nominations shall be re-opened.⁸⁷ No other parties have rules for this event. The late notice of the intention to retire has been used from time to time to ensure a limited field of competitors.

The major concern with the ability of a senior body, such as the administrative committee, to truncate the normal process of preselection is that emergency procedures may be too readily relied upon to ensure that a favoured candidate wins. The need for flexibility of response to the electoral timetable is a reasonable excuse; it should not be used as a weapon in the battle for preselection. The combination of the overrule power and the specific ability to adjust the timetable of a ballot or to truncate the procedures are

⁸³ 'If the President's Standing Committee consider a situation of emergency exists, it may, ... recommend such rules as are deemed necessary for the endorsement of candidates. Such action will be required to be ratified and endorsed by State Executive, which may be called to meet on one day's notice. LPA T, 1996. *Constitution*, Part XXVII, Rule A.1c), 24.

⁸⁴ Where 'writs have been issued for the conduct of an election at a time when the preselection process has not been completed ...' LPA ACT, 1997. *Constitution*, Rule 92(1)(h), 35.

⁸⁵ 'The first opportunity to move the motion giving effect to any ... alternative procedures will rest with the Branch responsible...' CLP NT, 1997. *Constitutional Requirements and Central Council Guidelines for Preselection of Candidates*, Rule 98(i), 6.

⁸⁶ 'Where a parliamentary election is imminent and an Electorate Council has yet to be constituted, Central Council may call for nominations in that electorate and set a timetable for pre-selection of a candidate.' NPA NSW, 1996. *Constitution and Rules*, Rule 12.1.1, 28.

⁸⁷ One month's notice. ALP V, 1996, *Rules*, Rule 15.13 a), 24. Fourteen day's notice prior to close of nominations. ALP Q, 1997. *Rules* Rule 25.05, 37. All sitting members must indicate within fourteen days of receipt of letter from State Executive.

perhaps the most serious abuses available to the intermediate administrative body in each party division.

The parties' attempts to specify rules for ethical behaviour have been sparse. The Democrats National Executive attempted to write a code of conduct, but failed to agree on it. The NSW Labor party forbids the candidates to employ agents to campaign on their behalf, or to make personal comments about other candidates.⁸⁸ The Queensland Labor party forbids the circulation of defamatory material and requires material to be authorised.⁸⁹ The Victorian Liberal party forbids a candidate retaining any professional consultant and from circularising any material 'intended to promote his or her candidacy'.⁹⁰ The Western Australian Liberal party forbids members from making public statements about party matters. Should defamatory statements be made, the individual is to be held personally liable.⁹¹ The Tasmanian Liberal party has a unique rule to allow the selection committee to meet and interview the applicants, retire for up to fourteen days to consider the matter, and then reconvene for endorsement.⁹²

The sparsity of rules to ensure ethical behaviour seems to reflect the fact that specific incidents that have caused strife have been addressed by specific rules. As the Democrats' experience shows, a more general set of rules that may act as a guide to behaviour is too difficult to secure agreement. A more important ability is the response to specific events.

The Secret Ballot

There are three elements to ensure secrecy of the ballot in other than a postal ballot: separate voting compartments, a secure ballot box and privacy. Nine parties failed to specify one or more of these criteria. The Queensland Labor party rules provide that 'suitable receptacles' be provided for use as ballot boxes and that these be secured. There

⁸⁸ ALP NSW, 1996-97. *Platform and Rules*, Rule N.16 (c), 114.

⁸⁹ ALP Q, 1997. *Rules*, Rule 30.07, 41.

⁹⁰ LPA V, 1997. *Constitution*, Rules 21.7, 56 and 21.12, 57.

⁹¹ LPA WA, 1997. *Constitution and Rules*, Rules 7 and 8, 73.

⁹² LPA T, 1996. *Constitution*, Part XXVII Rule C 11, 26.

is, however, no provision for voting compartments or privacy.⁹³ The Western Australian Labor party rules state that ‘a member entitled to vote may exercise their right to vote in secret’.⁹⁴ There is, however, no provision whatsoever to ensure such secrecy. The South Australian Labor party has extensive rules to ensure a secret ballot, including the requirement that ‘the Returning Officer shall follow the same procedures as apply ... in ballots conducted by the Australian Electoral Commission’.⁹⁵ Although the NSW Liberal party allows for a secret ballot,⁹⁶ there are no rules to ensure this occurs.

The Victorian Liberal party specifies a secret ballot for all manner of positions, from branch meetings, policy assembly delegates and Convention votes. On the selection of candidates it is more specific, requiring a secret ballot and that ‘[v]otes shall be cast by delegates in accordance with their individual judgement free of any direction, restriction or undertaking’.⁹⁷ The Western Australian Liberal party requires a secret ballot for preselection⁹⁸ and a number of other party positions, but does not specify how this is to be ensured. The South Australian Liberal party also requires a secret ballot for preselection but fails to specify how this is to be ensured, except to specify that ‘[s]crutineers shall not during the course of the balloting in any way approach or communicate with other members of the College’.⁹⁹ The Tasmanian and ACT Liberal parties specify the ballot be secret but make no provision.¹⁰⁰ There is no mention of secret ballot in the CLP rules.

The NSW National party specifies that a secret ballot be used and sets out in some detail how this is to be ensured. For example, ‘[t]he voter must strictly adhere to the Returning

⁹³ ALP Q, 1997. *Rules*, Rule 30.18, 41.

⁹⁴ ALP WA, 1997. *Constitution and Rules*, Rule 14.1.9, 43.

⁹⁵ ALP SA, 1994. *Constitution*, Rule 58.2 (i), 52.

⁹⁶ Allows for secret ballot for election of candidates by the Selection Committee ‘in the manner determined by State Council from time to time.’ LPA NSW, 1997. *Constitution and Regulations*, Rule 18.17 (g) (ii), 56.

⁹⁷ For the House of Representatives, LPA V, 1997. *Constitution*, Rules 24.5 and 24.6, 64. For the Senate Rules 26.11 and 26.12, 67. The rule for the Representatives, however, leaves out mention of secret ballot in both the rule and the sub-heading. Presumably, given the number of times the specification is made throughout the rules, this is an oversight.

⁹⁸ LPA WA, 1997. *Constitution and Rules*, Rule 6, 70.

⁹⁹ LPA SA, 1996. *Constitution*, Rule 17.7.7 (b), 47.

¹⁰⁰ LPA T, 1996. *Constitution*, Part XXIV, Rule 1. b), 22. LPA ACT, 1997. *Constitution*, Appendix One, Rule 6, 28.

Officer's directions ... to maintain the secrecy ... of the ballot'.¹⁰¹ The Victorian National party does not specify a secret ballot for preselection, but requires that 'delegates must vote in person and the vote must be exercised free from any interference or obligation'.¹⁰² It does specify the use of a secret ballot however in a vote to disendorse a candidate.¹⁰³ In the Queensland National party there is no mention of a secret ballot except, as a general provision of standing orders, when a dispute arises about a chair's ruling. In such circumstances, members may request that a secret ballot be taken.¹⁰⁴

The secret ballot is one of the most straightforward and accepted procedures against fraud in a ballot. The fact that many party divisions fail to provide rules for a secret ballot is of great concern. A returning officer, for example, may fail to apply rules in a ballot properly, but if a rule exists, at least a dissatisfied candidate has grounds to appeal a decision. The lack of rules raises a very strong suspicion that ballots are indeed no more than confirmation of a deal. The 'show-and-tell' ballots in the Labor party are a clear breach of the secret ballot. This occurs when members are paired to observe each other's ballot paper, to ensure that a deal is carried out. For example, in a ballot for several Senate preselections, two or three factions may agree beforehand that their candidates will each receive a position and the show-and-tell ballot ensures that the votes deliver the 'right' result. Ballots as confirmation of a deal are not an inessential part of politics. However, the trust that goes with allowing those who are presumed to agree with the deal, to do so, is essential. The essence of democracy, the dispersal of power, needs to be secured through the secret ballot. The desire to centralise power in a party and to maintain integrity often takes place at this simple point in an election, the ballot.

Access to Fair Dispute Procedures

For practical purposes, tribunals of the type found in political parties can rarely exhibit the standards of impartiality expected of a court. 'Domestic tribunals are often constituted of persons who may, or even must, have taken some part in the matters

¹⁰¹ NPA NSW, 1996. *Constitution and Rules*, Rules 5. b) (v), 36.

¹⁰² NPA V, 1997. *Constitution and Rules*, Rule 120 (e).

¹⁰³ NPA V, 1997. *Constitution and Rules*, Rule 129.

¹⁰⁴ NPA Q 1995. *Constitution*, The Schedule 21, 32.

concerning which they are called upon to exercise their quasi-judicial function'.¹⁰⁵ It is of course common that members of a disputes tribunal will be chosen for their political allegiance, apart from any other attributes that may be useful to the task. The provision by the parties for the semi-judicial functions that members must perform from time to time varies considerably. A sophisticated disputes procedure may not guarantee fairness in the settlement of disputes, and a simple procedure may indicate nothing more than the absence of conflict or a conservative or obedient party constituency, or indeed an autocratic leadership. Further, a sophisticated disputes procedure almost inevitably involves a quasi-judicial method and may reflect the degree to which the party has been affected by the general move towards the judicialisation of politics observed in Australia and elsewhere.¹⁰⁶

Nevertheless, the variation in the procedures for dispute settlement within the parties may provide some clues as to the seriousness with which parties take their role of securing the rights of members, as opposed to keeping the peace. A party with no formal procedures, or with procedures that lack even the rudiments of natural justice, would fail the test. On this basis, six State party divisions did so fail. An example of poor procedure is where the only opportunity to put a case occurs in a forum such as a State conference, where a proper hearing would be most difficult to accommodate and therefore unlikely.

The appeals systems at the federal level follow closely the powers of the national body. Neither the National party Federal Management Committee nor Federal Council have provision for an appeals body. The Liberal party Federal Executive is able to delegate its powers to a sub-committee or establish a Review Committee. The Democrats have a National Appeals Committee, and the Labor party uses the National Executive. On a question of expulsion, however, the Labor party establishes an Appeal Committee for which there are procedural guidelines.¹⁰⁷

¹⁰⁵ Quoted in, Forbes, J.R.S. 1996. 'Judicial Review of Political Parties.' *Research Paper 21* Department of Parliamentary Library, Commonwealth of Australia, 8. *Bowen v Australian Workers' Union* (no. 2) (1948) 77 CLR 630.

¹⁰⁶ Johns, G. 1997. 'The Arrogance of the Unelected'. *Proceedings of the Australasian Political Studies Association Conference*. Adelaide. 391–408. Vallinder, T. 1994. 'The Judicialization of Politics: A World-Wide Phenomenon.' *International Political Science Review* 15 (2): 91–9.

¹⁰⁷ For example, part 7. 'All parties to an appeal are entitled to be represented at the hearing by some other person of their choice. Any such representative, whether legally qualified or not, must be a member of the party.' ALP National Executive, 1987. *Procedural Guidelines For Appeals Committee*, Minutes, 12

The sophistication of the appeals systems in each division varies between the extraordinary, such as the NSW and ACT branches of the Labor party, and the ordinary, such as the NSW and Victorian National parties' State Councils, which are poorly specified as appeal bodies. Appeals can be heard on all manner of issues such as credentials, discipline, expulsion and ballots. Only the right to be heard on a disputed preselection ballot is essential to the consideration of fair preselections. The less sophisticated systems lack the rudiments of a fair appeal process and, in some cases, no right of appeal on the question of a disputed preselection ballot.

The Democrats, every division of the Labor party, the Western and South Australian branches of the Liberal party, the CLP and the Queensland Nationals have a disputes tribunal, which is a separate body from the executive. Each hears appeals on contested ballots and allows an appeal to State conference from a decision of the tribunal. The Victorian Liberal party has no tribunal but has a detailed complaints procedure for preselections, which involves the State director and the administrative committee. The procedure includes the right to be heard, and a final vote by the administrative committee by a two-thirds majority.¹⁰⁸ The remainder have less than satisfactory processes.

The NSW Liberal party has no tribunal and allows an appeal to State executive on a rejection of nomination. On the ballot itself there are the regulations to guide the conduct of the ballot and the decision of the returning officer is final.¹⁰⁹ The Queensland Liberal party has no tribunal and no process for handling disputes set out in the rules. Further, if a candidate does not object to the composition of the plebiscite, 'that candidate shall be deemed to have waived any right they might otherwise have ...'¹¹⁰ There are no provisions in the rules of the Tasmanian and ACT Liberal branches for the resolution of a dispute arising from a ballot.

November. Canberra: National Secretariat. (Mimeo) The guidelines were drawn up in response to the expulsion in 1986 of left-winger Bill Hartley, who was advised by Alec Shand QC.

¹⁰⁸ LPA V, 1997. *Constitution*, Rule 27.6, 68.

¹⁰⁹ LPA NSW, 1997. *Constitution and Regulations*, Regulations C. 15.2, 24.

¹¹⁰ LPA Q, 1997. *State Constitution*, Rule 135 (g), 36.

The NSW branch of the National party has no dispute mechanism, and like the Queensland Liberal party has a waiver mechanism, which forestalls any appeal.¹¹¹ The Victorian National party holds that, in the event of a dispute, the returning officer's decision shall be final 'subject only to State Council determining otherwise'.¹¹² There is no indication as to how the matter is to be raised at State Council and whether an individual has the right of appeal.

The access to fair disputes procedures is one of the most intimate of areas for the display of power in a political party. It is rarely open to outside scrutiny or comment. There are, however, a number of internal party disputes that have, very recently, come before the courts. Once in the courts, judges may insist on a standard of dispute settlement that the court thinks appropriate. The parties may be forced to change their rules in response to this outside influence. A more sophisticated requirement of a disputes tribunal would be to free it from the control of the party entirely. This policy has huge implications for the freedom of association of the parties, and may be an example of two great principles, free association and democracy coming into conflict. These matters are explored more fully in Chapter six.

Affirmative Action

For the reasons outlined earlier, affirmative action is not regarded as a basic principle of fair democratic processes. Nevertheless, there is considerable debate about the 'politics of presence',¹¹³ where the characteristics of candidates count as much as the ideas they represent. In this regard, it is worthwhile reporting the response by the parties to the perceived need to have a greater female representation in Parliament. Clearly, the response depends on the acceptance by the parties of the values implicit in the policy; even then, the means of implementation has varied considerably.

¹¹¹ 'The Returning Officer shall request the meeting chairman to call for and put to the meeting a motion that at this stage the conduct of the ballot is correct. If the motion is not resolved in the affirmative then the ballot shall be declared null and void, the matters disputing the correctness of the ballot shall be resolved by the meeting and the whole of this procedure shall begin again ...' NPA NSW, 1996. *Constitution and Rules*, Appendix C 5. f), 36.

¹¹² NPA V, 1997. *Constitution and Rules*, Rule 120 (h).

¹¹³ Phillips, A. 1995. *The Politics of Presence*. Oxford: Clarendon Press.

The Democrats have no rules or procedures that could be described as affirmative action for women, including a women's section of the party. They nevertheless have the highest proportion of female representatives of any party. Most of the parties have some rules in place whether for candidate selection or other positions in the party (not counting a women's section which is common to all). The remainder have no rules and very low levels of female representation.

The Labor party response has been guided by the national rules on affirmative action, agreed upon in 1994.¹¹⁴ The rule requires that a minimum quota of 35% of all party, union delegation, and public office preselected positions be allocated to women by 2001. The NSW Labor party has the only example of a weighted ballot, where a female candidate's votes are weighted by a factor of 20% (see note 30). Kelly Hoare is the first woman to succeed because of this rule. She defeated a male preselection candidate for the seat of Charlton in 1995, by just 1.2 votes out of 135. Without the 20% weighting she would not have succeeded. The seat is safe for Labor and she is now the Member for Charlton.¹¹⁵ In addition, NSW Labor has a quota for other positions in the party as prescribed by the national rules. The Victorian Labor party has a target of 35% of females to be preselected in winnable seats, as does every other branch; the only variation is the date of fulfilment of the target, which was 1994 for Victoria and 2002 for the ACT branch. The Tasmanian branch has set a 40% target to be achieved in any party election.¹¹⁶

The Liberal party has no quotas for the election of women to public office in any division, and considerable variation in the imposition of quotas for party positions across State divisions. The NSW Liberal party imposes quotas on some positions, the election of office bearers to Federal Electorate Conferences, the election of office bearers to State Council and the Convention Committee of State Convention.¹¹⁷ The use of quotas in the Victorian Liberal party is comprehensive. There is a designated position on the executive of branches and (as far as possible) branch committees, a 50% quota is imposed on

¹¹⁴ ALP 1994. *Platform*, 325.

¹¹⁵ Kelly Hoare. Interview, 29 October 1997.

¹¹⁶ 'In any election involving two or more positions, at least 40% of those elected ... shall be women ...'
ALP T, 1997. *Rules*, Rule 12.4, 16.

¹¹⁷ LPA NSW, 1997. *Constitution and Regulations*, Rules 5.3.1 (c), 26, 10.4, 35, 14.2.1, 43.

delegations to Federal Electorate Councils, State Council and State Convention, as well as for the office bearers of these bodies.¹¹⁸ The South Australian Liberal party has a quota arrangement where branch delegates to Electorate Committees, Regional Conventions and State Council shall 'where possible at least one shall be a man and one shall be a woman'.¹¹⁹ This provision does not apply to the selection of delegates for Electoral Colleges. The Queensland National party provides for a woman delegate in branch delegations (consisting of 5) to State Electorate Councils, Federal Divisional Councils and State Electoral Council delegations to State Conference.¹²⁰ These provisions do not apply to the selection of delegates to Central Council, which is the electoral college for Senate candidates, and in lieu of a local plebiscite can be the electoral college for House of Representatives preselections.

The remainder, those that have no rules for affirmative action, are the Liberal party in Queensland, Western Australia, Tasmania and the ACT, the CLP and the National party in NSW and Victoria. The response to the policy of affirmative action makes a clear divide between progressive (accepting) and conservative (not accepting) parties. The results indicate clearly why the policy cannot be accepted as a universal principle of fairness.

Conclusion

Using a measure of anti-competitiveness, the audit of party rules reveals some serious deficiencies in the structure of the selection panels in many divisions of the Labor party. The anti-competitive nature of the Labor panels arises from the weight of the vote given to trade unions, and more important, the ability to use votes in a bloc, as of right. The panels for the Coalition parties are far more dispersed. The opportunities to aggregate power are not based on the structure of panels. As the Democrats operate on a plebiscite basis and almost exclusively across the entire division, the issue of mixing the various component parts of a party does not arise.

¹¹⁸ For example, office bearers for State Council must be 50% women, which include Vice-Presidents, Administrative Committee, State Council Agenda Committee, and Policy Assembly (members of which form one part of the preselection conventions). LPA V, 1997. *Constitution*, Rule 11.2, 35.

¹¹⁹ LPA SA, 1996. *Constitution*, Rules 6.7.2, 11 and 7.5.3 (b), 17.

¹²⁰ NPA Q, 1995. *Constitution*, Rules 41. (a), 9, 51. (b), 11, 79. (b), 15.

Using six principles derived from the *Commonwealth Electoral Act*, the audit indicates a general failure to allow an equal weight to be accorded each vote in a preselection ballot. The unequal weight of votes may be relatively mild in its impact, as with extra votes for female and youth wings of all the parties, but sometimes through the formation of special branches, membership categories, and special voting rights the impact may be substantial. There are elements of weakness in each system to maintain the integrity of the roll. The propensity, indeed the temptation, to use the rules or indeed to ignore the rules in order to affect voter eligibility is a serious area for improvement for almost all of the parties. In some instances, too much power is left in the hands of local officials, without supervision. In others, too much power rests in the hands of central administrators who use their discretion to affect eligibility. The conduct of the ballot is clearly professional and highly scrutinised in some parties, for example, the NSW, Victorian and Queensland Labor parties and in the NSW and Queensland divisions of the Liberal party, but elsewhere they are unsatisfactory. Provision for the secret ballot is more complete in the Coalition parties and much less so in the Labor party where the ethos of using ‘supervised voting’ in the ballots to confirm deals is entrenched. Disputes procedures are rudimentary in some of the divisions of the Liberal and National parties, and generally highly sophisticated in the Labor party divisions.

If the democratic process is conceived of as links in a chain, then there are significant weaknesses in the links of nearly every party audited. The results indicate that these significant weaknesses can lead to a breakdown in democratic practice and that that breakdown is not confined to the local members, local branches or the executives of the parties. All or any of these have the opportunity to behave poorly. The break in the links in the democratic process is not solely confined to the rules, nor is their remedy. The behaviour of various actors within the parties and the ways in which they organise also exert a powerful influence.

Chapter 5

The Integrity of Association in Political Parties

The competition for the party label takes many forms and is handled by the parties and the candidates in different ways, some of which stretch the limits of the integrity of association. Each competitor may seek to control the factors that will determine the outcome of a preselection. The party officers are charged with the responsibility to maintain the integrity of the organisation as a whole. Many of the strategies which the candidates use to improve their chance of success, or which the powerbrokers use to manage the process of preselection, while highly constrained by the rules, are not determined by them. These strategies affect the competitiveness and the fairness of the preselections and the freedom of association of the members. Overall, they have an impact on the integrity of the parties.

The competition for endorsement takes place within an environment where some factors are external to the party and beyond the control of the competitors, and sometimes beyond the control of the parties. Other factors are internal to the party and in the hands of the candidates, such as the resources and skills that they can apply in order to gain the requisite number of votes. These requirements will depend, to some extent, on the source of votes and the type of panel to be faced. Still other factors are internal to the party, but mostly beyond the reach of candidates. They are the province of 'head office', central panels and factions.

Taking into account these various sources of influence on the competition for endorsement, three different types of ways of managing competition are assessed for their impact on the integrity of the parties.

Factors External to the Party

A smorgasbord of external events may conspire to change the competitive circumstances of a preselection. The agent may be the Church. The Anglican Archbishop openly supported the candidacy of the first Aboriginal member of the Commonwealth Parliament, Neville Bonner, who was endorsed in 1971 for the Queensland Liberal Party Senate ticket.¹ It may be the police: 'the [Labor] party had preselected a young person [for Corio] ... the cops caught him pissing in Woolworths' car park. He was pulled out, persuaded not to stand ... four weeks before the [1983] election'.² On the other hand, it may be God. In 1980, the probable winner of the preselection for the Nationals in Riverina died just three weeks before the preselection. This reduced the field of candidates from three to two.³ Largely, though, the major factors external to the parties are redistribution, an early election, the unexpected retirement of an incumbent and the history of previous preselections in the seat.

A redistribution of electoral boundaries is relatively common in the Federal arena, especially in States where the population growth has been above or below the national average. This may cause significant disruption to the prospects of candidates through a change of boundaries and its impact on the margin required to win or retain a seat. Alternatively, and just as important, a redistribution can affect the base of party members remaining in a district. These events may enhance prospects⁴ for those who may not otherwise have had an opportunity to stand. They may bring pressure on a member who was previously unchallenged at preselection. The seat of Throsby was won by Colin Hollis for Labor as a marginal seat and became safer with subsequent redistributions. As the threat from the Liberal party declined, that from the Labor party increased: 'the safer the seat the more marginal the member. The last two preselections have been very torrid'.⁵

¹ Burger, A. 1979. *Neville Bonner: A Biography*. Melbourne: Macmillan, 76.

² Gavin O'Connor MHR, ALP V. Interview, 26 November 1997.

³ Noel Hicks MHR, NPA NSW. Interview, 23 October 1997.

⁴ Neil O'Keefe MHR, ALP V, relied on a major redistribution, which caused a chain of events and led to his successful bid in Bourke. See Hon Andrew Theophanous, ALP V. Interview, (undated) late 1997.

A redistribution may cause the party to close down the competition to the advantage of one candidate, and leave another to sink. Former Prime Minister Paul Keating's attempt to win the 1969 preselection in Banks was thwarted by redistribution. With the help of the administration, the entire membership of one of his branches was transferred to Blaxland 'exactly one year and one day before the preselection ballot,'⁶ thus ensuring his victory. Hon Leo McLeay MHR commented on the propriety of the timing of the preselection, saying 'it wasn't crookery, it was being able to have an input into the determining of the date'.⁷ A left faction candidate for the Labor seat of Griffiths withdrew from the race when the 1994 redistribution took her numbers out of the seat, thus handing Griffiths to a right faction opponent.⁸

An early election may also upset candidates' plans and deliver the power to determine the preselection into the hands of others. On a number of occasions the Labor party National Executive has used the pretext of an early election to confirm existing members and avoid a preselection struggle. In 1983 and 1987, all Labor Senate tickets were confirmed, and in 1992 all ministers in the Keating Government, and the Speaker, were endorsed in this way.⁹ The NSW Liberal executive also used this excuse to by-pass the normal endorsement procedures. Jeanette Thornley, the Liberal candidate for Macquarie was disendorsed in 1995 and challenged the 'urgent endorsement procedures' of the party because the executive's excuse of an imminent election was patently false.¹⁰

An unexpected early retirement, or the suggestion of one, by an incumbent can affect the outcome, or even determine the nature of the competition. The Liberal Member for Wakefield, Geoffrey Giles, let it be known in 1982 that he was thinking of standing down, and then changed his mind. The announcement let loose the competition from those who had been prepared to wait.¹¹ The same occurred with Ian

⁵ Colin Hollis MHR, ALP NSW. Interview, 23 October 1997.

⁶ Cumming 1991. *Labor Mates*, 74.

⁷ Cumming 1991. *Labor Mates*, 79.

⁸ Norma Jones, former organiser ALP Q and would-be candidate. Conversation March 1998.

⁹ See Appendix 2.

¹⁰ Jeanette Thornley, candidate LPA NSW. Various conversations late 1998–early 1999. Also see *Thornley v Heffernan* CLS 1995 NSW EQ 206.

¹¹ Neil Andrew MHR, LPA SA. Interview, 22 September 1997.

Wilson, Liberal Member for Sturt, who allegedly reneged in 1991 on a commitment to retire, too late to stave off a successful challenge.¹² The unexpected announcement of the early retirement of Hon. Peter Baldwin Member for Sydney in 1998 left the competition for preselection 'wide open'. Baldwin commented, 'this is a real local plebiscite because of the unanticipated nature of it'.¹³

The history of the competition in a particular seat may determine the nature of subsequent preselections. In Sydney, the great battle by the left faction to wrest control of the Labor party branches from the right faction in Baldwin's preselection of 1982 was so successful that the recent preselection was between members of the Labor left. The winner of the 1997 local plebiscite, Tanya Plibersek MHR, described the preselectors of Sydney as 'very sophisticated, quite different from the factional assigned "sign-ups" of some elections'.¹⁴ Seats may remain a battleground for factions over many years with competing groups within a party agreeing not to give way. The safe Liberal seat of Curtin¹⁵ has remained a factional battleground in Western Australia for some twenty years, with the incumbent Alan Rocher MHR facing no fewer than six preselections between 1981 and 1996.

Largely, external events open competition by presenting an opportunity that may not otherwise have arisen for candidates. They can also upset the best-laid plans of those in a favoured or dominant position. They make outcomes less predictable by offsetting the control that candidates and others seek to impose on the process. Then again, they may work to close competition by excluding a candidate or presenting an opportunity to a powerful body in a party to assert authority by changing the process through the rules. Mostly, external events present the occasional opportunity or the occasional crisis, but they are not a significant factor in shaping the behaviour of the

¹² Christopher Pyne. Interview, 29 October 1997.

¹³ Hon Peter Baldwin, ALP NSW. Interview, 19 November 1997.

¹⁴ Tanya Plibersek, candidate ALP NSW and staff member of Senator George Campbell, ALP NSW. Conversation 27 October 1997.

¹⁵ The Sir Charles Court, LPA WA and Noel Crichton-Browne's faction, against the Fred Chaney faction, initially backed Rocher. Rocher was then abandoned by them, to be supported by the Prime Minister against Crichton-Browne's new candidate, Julie Bishop. Alan Rocher MHR, LPA WA. Interview, 23 September 1997. Senator Noel Crichton-Browne, LPA WA. Interview, 13 August 1998, and Noel Crichton-Browne's notes on the Bishop preselection (mimeo) Appendix 3.

parties in managing preselections. They provide only a fleeting insight into the integrity of the process.

Candidate Skills and Local Panels

The way in which candidates seek to win preselection, the nature of the contest and the panel they face offer significant insights to the integrity of the process. On being accused of recruiting new members in time for a preselection, a candidate recently pleaded in his defence, 'preselection for candidates should be based on merit'.¹⁶ To which the reply is, what is the measure of merit in a preselection? Is it the best recruiter, the best speaker, the most loyal member? Clearly, there are skills that a candidate needs to win a preselection. These skills are quite different for different parties, for different electorates within the same party, and even the same party and same electorate at different times.

Candidates working alone may be able to convince a local selection panel for support, but often they rely on others to do so. Hon. Jim McLelland's view of his own preselection, 'to a large extent I had to win the preselection myself,' was preceded by the admission that he 'had contributed many delegates to Ducker's [senior union official and NSW president] support by the factional victories in which I had been involved ... I was able to remind Ducker of this ...'¹⁷ The Senate preselection depended heavily on union delegates and McLelland was a barrister who had appeared in the industrial court for many unions. On the other hand, Senator Peter Walsh's view was 'I never had to scrounge for preselection votes or do deals'.¹⁸ But Senator Walsh also admits that he relied on others, in particular [activists and future Federal Ministers] John Dawkins and Bob McMullan, to lobby on his behalf for his position on the Western Australian Labor Senate ticket.

The skills required of a candidate will vary with the requirements and nature of the local panel. Sir Billy Snedden, a former leader of the Opposition, described his 1955

¹⁶ Mr Ciobbo, mooted candidate for the Liberal party for the seat of Moncrieff, *The Courier-Mail*, 31 May 2000.

¹⁷ McLelland, J. 1988. *Stirring the Possum: A Political Autobiography*. Melbourne: Penguin, 123.

preselection for the seat of Bruce, which occurred before a panel where the candidates were largely unknown, as 'naïve' and a 'beauty contest'.¹⁹ Where contact with the panel is restricted to literature sent out by the candidates, as was the case with John Hewson's 1986 preselection for Wentworth, the panel may be flooded by material. 'Not waiting for the preselectors to find out about him for themselves, Hewson delivered by courier to each of them a weighty document containing testimonies from 95 personal referees'.²⁰ In addition to the material in circulation, the beauty contests characteristic of the Liberal and National parties rely heavily on the performance on the day. According to Tony Abbott MP, his 1994 Warringah preselection was largely won because of his public profile. He distributed a 10-minute video of his media performances, and an 'excellent' list of referees and 'made a corker of a speech'²¹ to secure his nomination.

A panel of new recruits signed-up to vote for their sponsor may undertake no evaluation of the candidates at the ballot. The emphasis may be wholly internally focussed with scant regard for the electoral prospects of the party. This scenario is likely in a safe seat but may occur in a marginal seat if the conditions are right. In this type of contest, a candidate's skills lie in recruitment and possibly an ability to trade allegiance for further numbers. In the preselection for Banks, Daryl Melham outstacked the sitting member. 'There was a massive stacking operation [between 1984-1986]. The branch membership went from 850 to 1,500. The truth is 440 of them were Mountford's [MHR] and we basically responded'.²² Sometimes the skill required is to climb aboard the most promising vehicle, whether this is a faction or a leader or head office. Kelvin Thomson MHR tended to the Left of the Labor party ideologically but joined Labor Unity (the Right faction in Victoria) when he saw it was better organised and could help his career.²³ A panel of members, deferential to the requirements and views of the senior managers²⁴ of the party, play only a legitimising role. They will, essentially, give authority to the choice of the managers.

¹⁸ Walsh, P. 1995. *Confessions of a Failed Finance Minister*. Sydney: Random House, 13.

¹⁹ Snedden, B. and M. Schedvin, 1990. *Billy Snedden: An Unlikely Liberal*. Melbourne: Macmillan.

²⁰ Abjorensen, N. 1993. *John Hewson: A Biography*. Melbourne: Lothian Books, 101 and 99.

²¹ Tony Abbott MHR, LPA NSW. Interview, 12 November 1997.

²² Darrell Melham MHR, LPA NSW. Interview, 18 December 1997.

²³ Kelvin Thomson MHR, ALP V. Interview, 25 November 1997.

²⁴ Ron Boswell. Interview, 22 February 1999.

A wise candidate will concentrate on the senior managers for their support. The likelihood of power being delivered upward in this manner tends to increase with the opacity of the process. Having people who understand little of the process may increase opacity. This is more likely with new recruits and with ballots among delegates most removed from the knowledge of the candidates.

In a marginal seat, the choice of candidate may have a real bearing on the election. That being so, the focus of the preselection may be predominantly on the candidate's ability to win the seat. A strategic decision by a panel is evident in the three-cornered contests where the National, Liberal and Labor votes are significant. The National Party seat of Gippsland is vulnerable to challenge from the Liberal Party. In the opinion of the winner of the 1983 preselection for Gippsland, Hon. Peter McGauran MHR, the panel chose him because he was a 'solicitor with the same farming credentials' as his opponent and therefore more likely to appeal to Liberal voters.²⁵ The National party seat of Riverina, on the other hand, is vulnerable to challenge from Labor, so in the 1980 preselection the panel chose a former Mayor of Broken Hill, Noel Hicks, to appeal to Labor voters. 'If you want to win this seat you have to get some votes from Broken Hill ... I've been the mayor'²⁶ was his successful pitch. Where the choice of candidate may have little bearing on the election, most likely in a safe seat, the focus may be almost exclusively on the candidate's ability to represent the party or a section of it.

As a general proposition, and judging from those party divisions which have a vetting process (see Table 4.4), it is clear that the Labor party contests (and the National party Queensland and Victoria) do not require candidates to perform in public, at least not at the local panel level. There is no emphasis on the local candidate to convince the local panel of their merit to be the party's candidate. The sole emphasis is on gathering support for a ballot. These skills are altogether different to the performance skills required of those systems that vet the candidate and require formal speeches and questions. These are very common in the Democrats, the Liberal party and in the

²⁵ Peter McGauran. Interview, 19 November 1997.

²⁶ Noel Hicks. Interview, 23 October 1997.

National party in NSW. The ethos of, indeed the meaning of, selecting on 'merit' is entirely different in the two systems.

Candidates and Preferred Sources of Votes

Where preselection candidates have to exercise the skills of recruitment, then logically, they will recruit where there is the best return for effort. The calculus of the candidates, particularly when applied to recruiting, will be determined by the incentives and rewards attaching to recruiting certain types of voter. Some incentives and disincentives are provided in the party rules. Until very recently, the double voting rights of Young Liberals in the Western Australian and NSW divisions made them an obvious target. In the NSW National party, 'a company, organisation, firm, partnership, estate, or trust [may have] a Nominated Member [as well as] further nominated members, up to a maximum of four...'²⁷ Such an incentive to recruit among the farming and business community would be difficult to resist! The ban on family members and staff voting in a number of Liberal divisions is an obvious disincentive to recruit. With the NSW National party, the ban extends to employees. 'A person who is or was within the period of six months prior to the date on which applications for endorsement were first called an employee of a business controlled by an applicant ... shall not be eligible to be a delegate'.²⁸ None of these bans exist in the Labor party, where one Federal Member is alleged to have 25 members of his family enrolled to vote in his branches.²⁹

Rules can lower or raise the incentive or the cost of recruitment through the length of membership or attendance required to be eligible to vote. Table 5.1 sets out the period for which members have to join and the number of branch meetings they must attend before being eligible to vote. There is a considerable variation between the parties and divisions. The importance of the vote of local delegates or voters, over which a candidate may have some sway, also varies considerably. Taking the House of Representative panels only (the Senate panels are highly centralised and not as

²⁷ NPA NSW, 1996. *Constitution and Rules*. Rules 2.5.1-2, 9.

²⁸ LPA V, 1997. *Constitution*. Rule 23.13, 62.

susceptible to a local recruiting strategy), the incentive to recruit in the NSW Labor party is high because the panel consists 100% of local voters. The barrier to successful recruiting, however, is high, inasmuch as an eligible voter must be a member for 2 years and attend 3 branch meetings in the year before the ballot. The Baldwin preselection showed the difficulty of a candidate maintaining numbers, where only 700 were eligible out of 2,000 branch members (Table 5.2).

The cost of recruiting in the Western Australian Labor party is low. The requirement is just one month's membership with no requirement to attend meetings to be eligible to vote. The incentive, however, is also low—the branch vote accounts for just 12% of the total panel. In the Western Australian Liberal party, the cost of recruiting is low—one month to be eligible and no branch meetings. Moreover, the incentive to recruit is high as the branch vote accounts for 85% of the total panel. The incentive to recruit is also high in the South Australian Liberal party, and a member seeking to stave off attack would be best served by local recruiting. Christopher Pyne MHR lifted his branch membership from 780 to 1200 between 1992 and 1995 after defeating a sitting member at the 1991 preselection 'because I knew they would challenge me the next time'.³⁰

On occasion, the integrity of voter rolls is questionable. For example, some parties do not keep branch records, and 'paper branches'³¹ may be established in order to garner delegates. In a system that allocates the same number of delegates to branches, irrespective of branch size, there is an incentive to establish, or campaign among, small branches. Senator Bronwyn Bishop reportedly used this technique, 'The West of Sydney was full of pocket branches ... and each of them sent ... one delegate to state council. In terms of putting one's time to best use these ... were undoubtedly the branches to target'.³²

²⁹ Hon Laurie Brereton MHR, ALP NSW. As reported in 1997 to the author, by Hon. 'Johnno' Johnson MLC, ALP NSW.

³⁰ Christopher Pyne. Interview, 29 October 1997.

³¹ Christopher Puplick. Interview, 8 December 1998.

³² Leser, D. 1994. *Bronwyn Bishop: A Woman in Pursuit of Power*. Melbourne: Text Publishing, 72.

Table 5.1: Incentive to Recruit Voters for HoR Preselections for Each Party

Party and Division	Minimum Membership to Qualify to Vote (months)	Number of Branch Meetings Attended to Qualify to Vote	Local Branch Voters %Total Vote of Preselection Panel
Democrat	1	0	100% ¹
Labor			
NSW+ACT	24	3	100%
Victoria	12	0	50%
Queensland	6	0	50%
Western Australia + Northern Territory	1	0	12% + 100%
South Australia	13	0	25%
Tasmania	6	2	50%
Liberal			
NSW	6	0	60-90%
Victoria + Queensland	12	0	60% + 66%
Western Australia	1	0	85%
South Australia	3	0	75%
Tasmania	24	0	100%
ACT	3	1	100%
National			
NSW	1	0	100%
Victoria	6	0	90%
Queensland	3	0	100% ²

Source:

Rules of the parties in the study as referenced.

Notes:

¹ The Democrats allow for a local plebiscite for House of Representatives, however their membership is often so low in a particular seat, that the State executive selects with local advice.

² A rule not always invoked, often 60% local with 40% central panel.

The formal requirements of a candidate for membership of a party are largely very few (see Table 4.4), and present no great impediments to competition. The Democrats

and the Liberal party generally require a candidate to be a member for less than three months, and often only one month, with no requirement to have attended branch meetings. The Labor party generally requires membership of 12 months (as do the Victorian Liberals) and the Queensland division 3 years but with a proviso to relax this requirement for exceptional candidates. This proviso was used for Cheryl Kernot MHR, former Leader of the Australian Democrats, who defected to the Labor party in 1998 and successfully sought a Queensland seat. The NSW and ACT Labor parties have the most arduous requirement of 2 years' membership and attendance at 3 branch meetings, and no proviso to overrule.

Although the residence rules of the party divisions (see Table 4.3) reveal two very different systems, electorate and branch qualification for voting, the impact on the incentive to recruit is unclear. The qualification to vote in the Labor party (except Western Australia and South Australia) and the National party divisions of NSW and Victoria is based on the electorate residence of the member. In the Liberal party (except in the ACT) and the in the National Party Queensland division, the qualification is based on the branch membership. The member can live anywhere but must join a branch inside the electorate. The rationale for the former is clear—the local party activists are best placed to know their electorate. The explanation for the latter is that the system encourages members who live in safe seats to join and work in marginal areas. 'You can live anywhere you like. We [in the Liberal party] would prefer to encourage members in places like Bragg [South Australia State electorate] where we have a 32% margin to join in marginal Liberal seats and be active there'.³³ The reality, however, is sometimes quite the opposite. In order to win preselection in the safe seats, candidates recruit branch members from anywhere and everywhere.³⁴

The degree of control a candidate may exercise over branch voters is a major source of power. To sign up or assist people who subsequently cannot be relied upon may be handing numbers to an opponent. 'On the ground in Geelong, my [Gavin O'Connor MHR] opponents who had cars running people up to the preselection had people in

³³ Christopher Pyne. Interview, 8 December 1998.

³⁴ Michael Johnson. Interviews, March–April 1999.

those cars who voted for me'.³⁵ The now commonplace sources of malleable numbers at the local level are young and ethnic voters. University students have long been a source of activists in political parties, and in some instances, their enthusiasm and naivety may make them particularly loyal troops for a candidate seeking party endorsement. This was certainly the view of Noel Crichton-Browne who recruited heavily among students, both because of the rules favouring their vote and because of their response to his 'pastoral' interest in and concern for their studies. 'What disappointed me was the very modest number of kids that went from the Young Liberals to the senior party'.³⁶

The alleged control that some candidates have over members of ethnic communities is a source of malleable votes. The establishment of branches exclusive to one ethnic group has become common in the Labor party³⁷ and the Liberal party³⁸ in Victoria and NSW. The malleability of these voters is arguable. On the issue of 'ethnic branch stacking', Zappala records, 'the people I [party activist] sign on in this way are not stupid, they know what they are doing ... many ethnic constituents are familiar with this kind of politics from their home countries'.³⁹ The nature of the relationship between patron and client is not of concern. What is of concern is the degree of control that may be exercised by a candidate and the incentive this provides to recruit certain people.

Some 'ethnic' candidates are falsely accused of ethnic branch-stacking. In his first preselection, Andrew Theophanous MHR relied on numbers of an existing panel of middle-class Anglo-Celtic voters. 'The bulk of the population ... were these country areas right up to Mt Macedon. Of the panel of 35, the majority were not from Broadmeadows but from the country. In that sense they were middle class people, not ethnic people'.⁴⁰ Nevertheless, there is clear evidence of a propensity for some groups to vote *en masse* without any knowledge of the issues before them, which makes them

³⁵ Gavin O'Connor. Interview, 26 November 1997.

³⁶ Noel Crichton-Browne. Interview, 13 August 1998.

³⁷ Healy, E. 1993. 'Ethnic ALP Branches: The Balkanisation of Labor.' *People and Place* 1(40): 39.

³⁸ Howson, P. 1984. *The Howson Diaries: The Life Of Politics*. ed. D. Aitkin. Melbourne: The Viking Press, 472

³⁹ Zappala, G. 1997. *Four Weddings, a Funeral ...*, 166.

⁴⁰ Andrew Theophanous. Interview, (undated) late 1997.

an obvious choice to recruit. 'Ethnic groups are used by key leaders and kept in the dark ... there is a wall between these people and others. There is little access ... not able to speak to these people. The head honcho tells them what to do or how to vote ... 200 people vote as one says'.⁴¹

Branch-stacking refers not only to recruitment but also to recruitment of a malleable or controlled group of voters. In that sense, stacking is competitive but damaging to the integrity of the process of candidate selection. Similarly, closing off books to new entrants is anti-competitive and certainly prejudicial to the integrity of the notion of a party as a free association of individuals. Closing the books is a not an uncommon device. It was used in the Peter Baldwin Labor preselection for Sydney and remarked on by Christopher Puplick as a device used in the Liberal party.⁴² The re-awakening of dormant branch members is a further recruiting device. It is a legitimate source of votes and has the advantage of not alerting an opponent. Tom Uren used this tactic to great advantage in his preselection contest for Reid in 1956, 'The Grouper element in the branches was speechless. They couldn't believe the result, as there had been no stacking of branches and the overwhelming majority of voters had been in the party for years'.⁴³

The consequences for the integrity of a political party where ethnic stacking activity is rife may be that the party can no longer make a judgement at all about a candidate on grounds other than ethnic background. Whether the blind loyalty of an ethnic group is any different to the blind loyalty of any other group is a matter of conjecture. The major criticism of 'identity' politics is that it tends to be one-dimensional. The contribution of political parties in a basically dual party system is their ability to aggregate the wishes of a substantial part of the electorate, including across a range of issues most of which do not divide on ethnic lines. Parties that become beholden to groups with narrow interests may find that they cannot any longer perform their broader role in the electorate and begin to operate as a lobby rather than a party.

⁴¹ Senator Barney Cooney and staff member. Interviews, 19, 26 November 1997.

⁴² Peter Baldwin. Interview, 19 November 1997. Christopher Puplick. Interview, 8 December 1998.

⁴³ Uren, T. 1994. *Tom Uren: Straight Left*. Sydney: Random House, 97.

The effort and resources expended by a candidate are a measurement of competition. They need to be interpreted with considerable caution, however, especially if a candidate has made a number of attempts at preselection. For example, Liberal Senator Alan Missen's 'successful 1973 bid for Senate preselection was his seventh attempt at preselection for a parliamentary seat'.⁴⁴ There is no suggestion of a parallel between effort and success.

Table 5.2: Elements of the Magnitude of the Task of Preselection (HoR)

Candidate	Number of Competitors in the Ballot	Was the Panel Recruited or in Place?	Duration of the Preselection Campaign	Time Joined Prior to the Ballot (Years)	The Number of Eligible Voters on the Panel:	Local Voters/Central Voters
Abbott	14	In situ	Months	6	800 ¹	110/50
Andrew	3	In situ	Months	12	~1000	228/12
Baldwin	5	Recruited	Years	12	2000	700
Bishop	5	In situ	Months	20	50	120/60
Campbell	3	Recruited	Years	>6	~800	12/200
Hawker	18	In situ	Months	10	~1000	180
Hicks	2	In situ	3 months	1	~600	81
Horae	3	In situ	Months	19	300	137
Hollis	5	In situ	Months	8	~400	218
Kelly	2	In situ	Months	14	~1500	48
Kernot	2	In situ	Days	1 month	200	~100
McArthur	15 (3)	In situ	Days	22	1200	80
McDougall	4	Recruited	Years	16	~300	200
McGauran	2	In situ	Days	1 day	2500	N/A
Melham	2	Recruited	Years	15	1000	580
Nehl	3	Recruited	Years	20	3000	206
O'Connor	3	In situ	Months	16	N/A	140
Pyne	3	In situ	Months	8	780	69
Sawford	10	State Exec	Months	10	N/A	0/25
Scott	7	In situ	Months	16	~300	247/42
Smith	1	In situ	Weeks	13	N/A	30
Theophanous	3	In situ	Weeks	5	~200	35/35
Thomson	2	Recruited	Years	20	600	500
Uren	2	Recruited	Years	5	~500	404

Source: Interviews and biographies. See Appendix 3.

Notes:¹ The total number of members in the electorate.

N/A. Figures not available.

⁴⁴ Hermann, A. 1993. *Alan Missen: Liberal Pilgrim*. Canberra: The Poplar Press, 83.

Moreover, large *in situ* panels require only lobbying, and such a campaign may be of short duration. A campaign to recruit members of the panel may take years. Hon. Paul Keating MHR explained, 'by the time I was 21 I was flat out, flat out on my preselection every night of the week, every night'.⁴⁵

Further, while challengers will want to open the competition, incumbents or factional inheritors will want to close it down, so numbers may not be a sign of competition. Nevertheless, the magnitude of the task is an important element of both competition and the integrity of the association, and some indications have been set out in Table 5.2. The Melham preselection for Banks is illustrative. 'So 580 [preselectors] was big, but what happened was we had a 'credential' [the checking for eligibility to vote] that started at 10 o'clock Saturday morning and went till five to one on Sunday'.⁴⁶ By contrast, the 1983 McGauran preselection for Gippsland was before [an unrecalled number] of delegates, who represented some 2,500 branch members. McGauran, however, had only joined the National party the day before!⁴⁷

Taking into account the discussion of candidate requirements and recruitment costs and incentives as they affect local panels it is possible to distinguish three basic types of local panel:

Type 1: Big field of candidates—large and stable numbers of preselectors, open to relative newcomer candidates, external but non-electorate focus.

Type 2: Small field of candidates—large and unstable number of preselectors, closed to newcomer candidates, internal focus.

Type 3: Small field of candidates—large and stable numbers of preselectors, open to absolute newcomers, external electorate focus.

In the competition for preselection, different local panels have *a priori* different strengths. Few panels will contain an exclusive type of competition, but tendencies are discernible. A panel of recruits is the result of a test of strength; its focus is internal and best suited to a safe seat. A panel of peers is *a priori* a judge of skills and

⁴⁵ Cumming, 1991. *Labor Mates*, 59.

⁴⁶ Darrell Melham. Interview, 18 December 1997.

may be suited to both an internal and external focus. A panel of deferential members is *a priori* not a judge of skills or of electoral prospects and therefore not suited to either focus, except in so far as it hands the decision to others. A panel that consists of peers, that is, a panel of party members with some experience and which is probably stable in numbers, is probably the archetypal device for the free expression and judgement of the members. Where competition is sufficient and influence is satisfactorily dispersed, a panel of peers may judge a colleague or a new comer to be worthy to represent the party, based on whatever characteristics it desires. A panel based purely on recruiting is more subject to anti-competitive behaviour, although it is at the same time a highly competitive activity. Whether the 'harder' school of mass recruitment and factional territory wars is a better training ground for parliamentary politics is a different matter entirely.

Each type of panel represents a different ethos of candidate selection. The panel of peers seeks a candidate to carry the party banner. The focus is to select a member of parliament in the image of the party, one who will perform the duties of a member of parliament. It is of a job interview type and is more likely in the Liberal party. The second type is not a selection contest at all but a contest to recruit, often in the name of a faction rather than a party. Here, the primary allegiance is to the faction, from whence resources will come to assist the candidate and to which, in turn, the candidate may contribute future numbers and support. The second type is most typical in the Labor party in safe seats, and in the Liberal party in safe seats. The third type is an electoral judgement by party members intent on winning the seat for the party. Typically, this occurs in a seat that is marginal, either to the Coalition partner or to the Labor party. Competition, or the lack of it, may occur in many guises, so will poor processes, as will activities that damage the free association of members. Practices and an ethos intent on making the contest one that is based on recruitment appears the most likely to produce such damage.

⁴⁷ Peter McGauran. Interview, 19 November 1997.

Head Office Decisions

Those responsible for managing the party should want to ensure the selection of the 'best' candidate in an efficient, orderly and legal manner. To achieve the party's objectives there will be in each party an accepted way in which competition is managed. Where the preselection is in the hands of local politicians, the party can control the process, but has little control over the outcome. The development of central panels, and of powerful groups within the party such as factions or an executive intent on controlling the local outcome, requires a second tier of analysis. Central panels allow for a party-wide view, but they may also create the opportunity for trading votes between electorates. Where delegates to the central panel are highly loyal or tightly controlled, certain areas may be declared contestable, others not. Central control and executive involvement in that control may also condone the unacceptable practices that occur at a local level and for which the executive has responsibility. Senator Beahan brought allegations of serious vote-rigging against certain officials and senior members of the Western Australian Labor party in his 1994 preselection for the Senate ticket. Ballot papers were allegedly taken from the voting room and filled out by persons other than the registered voters, and some ballot papers were amended to change the preference of the voter. The Labor party National Executive heard the matter but no action was taken.⁴⁸

Senator Noel Crichton-Browne was expelled from the Western Australian division of the Liberal party in 1995 for bringing the party into disrepute. The grounds of appeal against his expulsion were largely on the basis that the material used to accuse him about his personal domestic behaviour was obtained illegally. The allegations levelled against the Senator were sufficient to have him expelled from the party which, just months before, had elected him to head their Senate ticket. The Western Australian division is an incorporated association, but the standard of hearing afforded Senator

⁴⁸ Senator Hon Michael Beahan, ALP WA. Interview, 19 November 1997 and correspondence (undated) and Beahan, M. 1994. *The WA Branch Senate Preselection*.

Crichton-Browne was not of a standard expected of such an association. The matter would be arguable in a court but the former Senator chose not to pursue the matter.⁴⁹

The power to manage a party's affairs are used in many circumstances, sometimes to overcome a situation where raising a candidate is difficult. Gilbert Duthie became the Labor party candidate for Wilmot and consequently the member for 30 years based on his writing to the State secretary and asking, '[I]wouldn't mind having a shot at it!'⁵⁰ Alternatively, managerial power may be needed where a recalcitrant member, or a failing candidate, has to be disendorsed. There was considerable involvement by the State secretary and the President of the Queensland Liberal party in the defeat at the 1998 preselection of Tony Smith MHR for Dickson,⁵¹ and the NSW Liberal executive undertook a performance audit of candidates in 1995 and found, among others, Jeanette Thornley (Macquarie) wanting and consequently dismissed her.⁵²

At times, a star recruit is fast-tracked. The seat of Dickson was found for Cheryl Kernot in 1998, a seat in which she faced nominal resistance at preselection.⁵³ Only one other candidate stood and he was not a local. Such a move does not always work or meet with approval. Colin Hollis MHR alleges that Senator John Faulkner before this was touting 'an outstanding candidate' for Throsby. 'We now know that it was Cheryl Kernot'. The suggestion was met with stiff local branch resistance.⁵⁴ Bob Hogg, former National and Victorian Labor party secretary, remarked of [Prime Minister] Bob Hawke's 1980 preselection, 'Once Hawke had decided to nominate, the matter was decided. The party could not afford to defeat him'. This did not stop a very hard fought struggle against the left faction candidate Gerry Hand.⁵⁵

⁴⁹ Noel Crichton-Browne. Interview, 13 August 1998 and Crichton-Browne, N. (undated). *Appeal Against the Expulsion from the Liberal Party of WA Division (Inc)*. Submission to the Liberal Party WA State Executive. (Mimeo)

⁵⁰ Duthie, G. 1984. *I Had 50,000 Bosses: Memoirs of a Labor Backbencher 1946-1975*. Melbourne: Angus and Robertson, 17.

⁵¹ Tony Smith MHR, LPA Q. Interview, 17 July 1998.

⁵² Jeanette Thornley. Various conversations, late 1998-early 1999.

⁵³ O'Reilly, D. 1998. *Cheryl Kernot: The Woman Most Likely*. Sydney: Random House, xxi.

⁵⁴ Colin Hollis MHR, ALP NSW. Interview, 23 October 1997.

⁵⁵ D'Alpuget, B. 1984. *Robert J. Hawke*. Melbourne: Penguin Books, 390. Hand was later endorsed for the seat of Melbourne and became a member of Hawke's cabinet.

At other times, stars will have to be saved because of their position in the government. Senators Crowley and Schacht represented the same faction of the South Australian Labor party. The 1994 preselection used proportional representation, which would have ensured the demise of one. Schacht was elected under the old list system of voting where the dominant faction could elect all candidates. The National Executive intervened on the basis that they were Ministers and needed to be saved.⁵⁶ Some interventions are extraordinarily prejudicial and public. Labor's National Secretary Gary Gray intervened publicly in the 1998 preselection for Oxley, condemning the candidacy of Anne Scott, wife of former Member Les Scott.⁵⁷ Other interventions are more subtle and indirect. Prime Minister John Howard was alleged to have 'recruited' senior Liberals in Western Australia to the cause of Alan Rocher MHR for readmission to the Liberal party and endorsement for Curtin. Howard also made public his support for Alan Rocher.⁵⁸ Still others were less specifically directed at a candidate. South Australian Liberal Senator Nick Minchin attended the 1998 preselection of Queensland Senator Brett Mason. 'We had a Federal Convention and Minchin was hanging around the halls the day of the preselections'. 'They [Federal Executive] didn't want, to quote Senator Nick Minchin, a "shit fight" in Queensland. They wanted it quiet'.⁵⁹ On rare occasions, members of a government will use a preselection to attempt to bring down a competitor. Hon Peter Howson MHR was encouraging the Higgins electorate branches to force Prime Minister John Gorton to a preselection convention as a way of getting him to resign as Prime Minister.⁶⁰

The control exercised by the consensus of the executive of a party is vastly different to that exercised by the weight of factional numbers within the party. How such consensus arises is of interest inasmuch as it may be engineered or simply taken for granted. For example, the Victorian Liberal party Policy Assembly, which has a large influence over preselection, is seen as 'a group of senior people'⁶¹ who make

⁵⁶ Senator Hon Chris Schacht, ALP SA. Interview, 18 November 1997.

⁵⁷ Anne Scott, candidate ALP Q. Discussions, March–August 1998 and various correspondence (see Appendix 3).

⁵⁸ Notes (undated) by Noel Crichton-Browne on the 1996 preselection of Julie Bishop MP (mimeo) (see Appendix 3).

⁵⁹ Brett Mason. Interview, 13 July 1998.

⁶⁰ Howson, P. 1984. *The Howson Diaries*, 715.

⁶¹ Michael Kroger, former President LPA V. Interview, 9 February 1998.

judgements about the suitability of applicants. The ability of the party's senior managers to have any influence over new entrants relies on the rules that place some power over preselections in the hands of the Assembly. Prior to that system being implemented, power rested decisively with the local member of parliament, or when a new candidate was to be chosen, the collective of politicians. In the 1966 Andrew Peacock preselection, the comment was made, 'in the final days the lobbying by both State and federal ministers was intense'.⁶² The Liberal party in Victoria was very much a politicians' party prior to the rule changes in the late 1980s. There is also a sifting process that allows this senior group to exercise a veto over unacceptable candidates. The device of the panel and the scrutiny has been designed to remove power from the hands of incumbents, and operates with a great deal of trust in an ethos of managing the party to get the best result. The concept is somewhat fragile, however, and the consensus required for such an instrument appeared to break down over the dispute between the Kennett and the Kroger factions to control the Assembly. The consensus tool, if indeed it ever operated as such, has thus now reverted to a forum of internal contest.

The National party appears to have achieved a consensus based on membership deference to the leaders, that is, an acceptance of the leadership of the party 'knowing best'. The archetypal party manager, Sir Robert Sparkes, President of the Queensland National party, preferred a selection committee⁶³ process to a plebiscite. In some circumstances, the committee is unavoidable, for example, when the National party wanted to expand into Brisbane in the 1980s but had no urban membership.⁶⁴ However, an attitude that may have developed for particular circumstances can persist long after its original rationale has passed. Former Federal Treasury Secretary John Stone was recruited by Sir Robert Sparkes in 1989 to devise a tax policy for the 'Joh for PM' campaign and at the completion of the task was offered a Senate post in Queensland, despite his not being a party member and living in Victoria! Stone describes the preselection this way: 'on the day of the preselection I felt that I was

⁶² Carey and McCrae, 1982. *Peacock MP*, 56.

⁶³ Marinac, A. 1995. 'The Secret Paddock of Australian Politics: Preselection Procedures in the National Party in Queensland and Victoria.' Honours Thesis, Monash University. Interview, Sir Robert Sparkes, 65.

⁶⁴ Marinac, A. 1995. 'The Secret Paddock. Interview, Michael Evans, 64.

kept more or less in hiding, and was only brought out when the nominees spoke'.⁶⁵ This attitude of management-knows-best is prevalent, 'management are actively looking for people. In a preselection, management tend to vote in a bloc. They will come up with a person who can win it. They are better informed than the locals'.⁶⁶ The same may be said, however, of local members who made a practical choice in the Noel Hicks preselection. Perhaps a different ethos exists in the National party, 'the National party has always been a close family type party, close knit, political ambition does not come in like the Labor and Liberal parties. The National party more [want] someone to do a job for their constituency'.⁶⁷

Consensus decisions do occur in other types of management. The Labor party parliamentary leadership, and executive 'management' clearly wanted Cheryl Kernot to stand for Labor as someone who could help them win not just a seat, but government. The degree of consensus in preselections, however, is rare in the Labor or the Liberal parties, where either an open contest exists between candidates at large or a closed one is conducted along factional lines. Consensus was ignored when factional interests were threatened, as was the case when the affirmative action rule was overlooked in a deal for the Senate position in Tasmania. 'If affirmative action had been used, the Left would have put a woman up to get further up the ticket, which would have knocked me [Denman] out altogether'.⁶⁸

Central Panels and Factions

The simple architecture of a preselection panel cannot convey the entire picture of the centre of power. In the Victorian Liberal party, the late-1980s change in the architecture of the panels was accompanied by a change in the culture of the party. The ritual speech was abandoned. The party decided that a once-only stand-up speech by the candidates to the panel of selectors was not the basis for judging someone for a possible life-long career. The new culture is 'performance-driven' and the tests are more formal and lengthy, more akin to a job interview. Whether the new rules and

⁶⁵ Former Senator John Stone, NPA Q. Interview, 18 February 1999.

⁶⁶ Ron Boswell. Interview, 22 February 1999.

⁶⁷ Senator David Brownhill, NPA NSW. Interview, 26 November 1997.

culture work in practice is another matter. The rule changes may in fact have set off another dynamic. Michael Kroger⁶⁹ talks of ‘a judgement made by an unofficial collective of senior people’. Moreover, the ‘dispersed’ group of senior people begins to think as one and ‘a lot of potential candidates go to the Policy Assembly [central panel] just to get known’. Because the group is elected at State Council it is possible to talk of a ‘Head Office camp’ and ‘candidate’.⁷⁰ The transition in the Victorian Liberal party, from a dispersed and open competition, to a centrally managed one reflects a change of culture. It reflects a party that has moved from one that was controlled by local members of parliament to one where central ‘bureaucrats’ share control with the politicians. The model of open competition, referred to earlier by Sir Billy Snedden and Don Chipp, is mythical. Local control is often confused with open democracy. In fact, local control is often control exercised locally in an entirely anti-competitive manner. The key to power sharing between local and central players rests in the impact it has on competition between the two. Neither should prevail.

The ability to ‘deliver the numbers’, to hold people together in order to make certain an outcome, is at the heart of winning a central panel preselection. In the Labor party, the basis for authority is straightforward, it is a product of what Olson calls ‘a captive membership of a group organised for other purposes’.⁷¹ Union members are organised for employment relations’ purposes and affiliated unions deliver their numbers to the party. Furthermore, their delegations often vote as a bloc in order to maximise the unions’ power. They are able to do so because the union leader or party faction leader has control over the selection of the delegates. The situation is not nearly so clear in the Liberal and National parties. The Liberal party has developed factions, or at least a ‘machine’ that can deliver votes either through the extraordinary commitment of resources by individuals, or by the extraordinary bitterness and endurance of personal divisions between individuals—neither of which are rare commodities in politics.

Senator Noel Crichton-Browne wielded enormous influence in the Western Australian Liberal party for two decades. His opponents attribute this influence to

⁶⁸ Senator Kay Denman, ALP T. Interview, 18 November 1997.

⁶⁹ Michael Kroger. Interview, 9 February 1998.

⁷⁰ Stuart McArthur MHR and former president LPA V. Interview, 21 October 1997.

assiduously 'working the numbers'. He did so by signing new members to mainly small rural branches, the extensive use of proxy voting 'collected' by his people, recruiting among Young Liberals who had special voting rights, the formation of dummy branches, the use of 'flying squads' which enabled people to vote at more than one branch annual general meeting, and the closing of books to exclude new applicants.⁷² Crichton-Browne indeed worked the numbers assiduously and responded to each criticism. 'If I could go out and sign up thirty members, which I did every Sunday ... why would I want to write a cheque out from my own pocket? I'd say to my mates, if you're going to sign the application form I want your money'. As for the use of proxies, the response was, 'I'm the guy that signed them up. I started the branch. I was at the inaugural meeting ... they voted for me'.⁷³ He established 'every single branch north of the 26th parallel' and spent \$1-1.5 million of his own money in 'a membership drive', mainly on expenses for accommodation and travel over the period. His claim is that none was spent on paying member's dues.⁷⁴

In the NSW Liberal division, the shift from the era of 'party barons', the founders of the Menzies era, to 'party factions' (or tendencies) occurred in the early 1970s with the rise of middle-class activists. 'Their [the party barons] first defeat was when the Young Liberals jumped up and in 1973 by one vote got Phillip Ruddock over Nick Shehadie and that was the first time the "laying on of hands" didn't work. It was essentially from that time that we got factionalisation of the Liberal Party in NSW'.⁷⁵ The change overturned the headhunting era where senior party officials chose and sponsored candidates. The reason for the creation and endurance of factions is not obvious structurally, but the passions of the activists served to keep the contest divided into essentially two camps. 'There was practically no preselection, executive or council meeting where the exchanges between supporters of Bishop and those of the Group [Puplick] were not barbed or bellicose'.⁷⁶ Factional politics has extended to

⁷¹ Olson, M. 1971. *The Logic of Collective Action*, 133.

⁷² Former MHR John Hyde, LPA WA. Interview, 2 October 1997. Mr Alistair Tomlinson, quoted in Senator Noel Crichton-Browne, *Appeal Against Expulsion*, (mimeo) 102. Hon. Fred Chaney, quoted in *Appeal Against Expulsion*, (mimeo) 112.

⁷³ The issue of multiple proxies voting arose following changes to the Division constitution in 1987, not in his time as President. Crichton-Browne, (undated) *Appeal Against Expulsion*, (mimeo) 116.

⁷⁴ Crichton-Browne. Interview, 13 August 1998.

⁷⁵ Christopher Puplick. Interview, 8 December 1998.

⁷⁶ Leser, D. 1994. *Bromwyn Bishop*, 65.

the Queensland division of the Liberal Party⁷⁷ although almost exclusively at the central panel level. Nevertheless, the alliances do run sufficiently deep to operate at the local level with some Federal Electorate delegations tied to a faction. 'To what extent do chairs of [Federal Electorate Councils] bring ten votes? It depends on the chairman, how well organised they are, it varies from FEC to FEC ... We were organised, but the converse was also, where the chair was supportive of me but lazy, a shambles'.⁷⁸ Only occasionally is there the full-blown illustration of dealing between seats. 'Our [1993] preselections were on the same day [Moreton and Griffith], caused a lot of damage, he was responsible for the branch stacking ... what happened to me was I got caught up in it [the two electorates shared panels through a zonal arrangement], that bloc vote of his to knock off Margaret [another candidate], but knocked me off'.⁷⁹

The deal making in the Labor party is far more certain. It reaches across an entire division. 'It was during a period [late 1980s–late 1990s] of factional negotiations over anything and everything in Victoria when every seat and every position possible was allocated to one faction or another'.⁸⁰ Moreover, due to the existence of national factions⁸¹ and the strength of national rules,⁸² it also extends to national deals. The candidate will inevitably seek to represent the party, but in seeking to do so may in fact be a representative of some section of the party. The candidate may undertake this voluntarily or be a 'captive', that is, forced to comply with the wishes of one group in order to survive a preselection challenge. The need for certainty in deal-making is paramount in the circumstances where groups wish to divide positions among themselves in proportion to their numbers. The strategy relies on the good judgement and communication between the dealmakers and the complete ignorance of the voter. With reference to a factional deal over his preselection, Senator Beahan remarked, 'Those people [voters] would not have known on the night what was

⁷⁷ Senator David McGibbon, LPA Q. Interview, sometime in March 1999.

⁷⁸ Brett Mason. Interview, 13 July 1998. A much more haphazard arrangement than would occur at a NSW, Victorian or Queensland Labor party local plebiscite.

⁷⁹ Former MHR Graham McDougall, LPA Q. Interview, 2 December 1998.

⁸⁰ Kelvin Thomson MHR, ALP V. Interview, 25 November 1997.

⁸¹ Lloyd, C. and W. Swan. 1987. 'National Factions and the ALP', 100.

⁸² Richardson, G. 1994. *Whatever It Takes*, 193

happening'.⁸³ The methods of closing down competition are the 'show-and-tell' ballot, or the supervised ballot. The former involves the system of pairing members as they vote to ensure that they vote according to the agreed ticket.⁸⁴ The latter involves the collection of ballot papers, by a faction representative, from faction members. It is most commonly used for union delegates, who are mostly appointed by their union secretary for their loyalty, and most likely to comply with the faction's wishes.

A supervised ballot allegedly brought down Senator Beahan. A preselection under proportional representation allows several groups in a party to have their candidate succeed in a ballot. The 'left' candidate was to head the ticket, the 'centre' was to be next, and the 'right' to be in the third and probably unwinnable position. The strategy of the 'centre' and 'right' was essentially to compete for votes from the 'left', once it had secured its own quota. 'The left worked very hard at unstitching those people we had pulled across. They did it by using the ploy that their quota was under threat and did this quite effectively'.⁸⁵ A further example was the Graeme Campbell preselection: 'as it turned out they [faction leaders] did not collect the votes and I won [the 1979 preselection ballot] by one vote'. In 1995 the story was different, 'votes were gathered up again and supervised. Not taking any chances this time. Big unions made sure their tickets held'.⁸⁶

The same fine-tuning of the numbers occurs under various voting systems. For example, in an exhaustive ballot for a single position under conditions of true secret ballot some skilled operators claim⁸⁷ to know the numbers so accurately that they can direct their 'people' to give preferences to one candidate and knock another out of the running, so as to advantage their candidate. Andrew Theophanous MHR described the disastrous result for his opponent in his first preselection with the unpredictability of an exhaustive ballot. 'But what happened between the first and the second ballot was that a number of people panicked when they saw that I was the front-runner. They thought that it would be easier to defeat me, if they switched some votes from

⁸³ Michael Beahan. Interview, 19 November 1997.

⁸⁴ Author observation of Federal Labor caucus votes.

⁸⁵ Michael Beahan. Interview, 19 November 1997.

⁸⁶ Graeme Campbell MHR, ALP WA. Interview, 21 October 1997.

⁸⁷ Christopher Puplick. Interview, 8 December 1998.

Mackenzie to Johnston. So in the second ballot Mackenzie came third and he dropped out. That was a huge mistake because all the people with the Mackenzie votes split and I actually received the majority of the Mackenzie vote'.⁸⁸

The few hands in which power rests is a concern in some parties. The South Australian Labor party, which has just 25% of the total vote in a preselection assigned to the branch members, has been described by Rod Sawford MHR, a beneficiary of the system, as a 'joke'. 'Effectively only two people have the power and that's Pat Conlan who works for [Senator Hon. Nick] Bolkus and Pat Farrell who works for the shoppies [Shop Distributive and Allied Employees' Union]. They are the two that run that liaison group. As the shoppies are the major union of the right and have a lot of delegates and also employ a lot of young apparatchiks that's basically how the power has resulted there'.⁸⁹ The power to determine preselections is narrowly based even within the unions. The degree of control exercised in the factional negotiations is quite extraordinary, dividing up the 'spoils' between the factions across the complete field of tradeable items, including a wide range of conditions for support, 'there was a deal done with the left to employ on my staff one of the Metalworkers [union official] who wanted to run in the next State election'.⁹⁰

That is not to say that contests do not proceed, 'there were contests despite agreements'⁹¹ or that 'upsets' do not occur. 'Neil [O'Keefe's preselection] was interesting, the local panel, something went wrong, so Neil was chosen by the central panel without any [faction] support'.⁹² The explanation of what went wrong with the local panel is provided by Andrew Theophanous. 'Landeryou had been given the opportunity to go for the seat of Bourke ... but he refused to go for it. It's in this context that Neil O'Keefe came out of nowhere'.⁹³ The extent of control over the outcome of a large number of preselections may be great, but it is rarely absolute. There are also considerations given to electoral prospects wider than the faction as

⁸⁸ Andrew Theophanous. Interview, undated, late 1997.

⁸⁹ Rod Sawford. Interview, 23 September 1997.

⁹⁰ Kay Denman. Interview, 18 November 1997.

⁹¹ Barney Cooney on the inability to have all contests predetermined. Interviews, 19, 26 November 1997.

⁹² Barney Cooney on preselection for Bourke. Interviews, 19, 26 November 1997.

⁹³ Andrew Theophanous. Interview, undated late 1997.

part of the negotiations. 'I was approached to run because "they" [the factional leadership] identified a need for a rep[resentative] on the north-west coast [of Tasmania] where I lived; they wanted a woman'.⁹⁴

Factions are not all top-down, especially in a system where the local vote is substantial, 50% or more. A candidate may have substantial local support and force the factional favourite out of the race by agreeing to assign and deliver that support to the faction. Alan Griffiths was able to recruit in Maribyrnong and place himself in a strong position to make an offer to the Labor Unity faction of the Victorian Labor party by pledging support and local numbers to other forums in the party. The faction accepted the deal and asked their preferred candidate to stand aside.⁹⁵ A degree of mutuality is involved in such a situation. The factions supporting the agreed candidate at central preselection deliver a deal. This ensures an overwhelming vote and is almost impossible to overcome, no matter what the strength of the local candidate. 'Labor Unity had and continues to have a majority in Wills ... it was allocated so members of the left were obliged to vote at the central panel level for whoever Labor Unity chose'.⁹⁶

Deciding the factional candidate and how the choice relates to the local vote is a less clear-cut affair than the formal ballot for preselection. A seat allocated to a faction means that a small number of faction members meet to decide who should run. An internal faction ballot of the Labor party Left in NSW was held for the seat of Throsby to decide the candidate, in fact as a means of removing the Left's incumbent. 'They [George Campbell, Secretary of the AMWU] thought their candidate was going to get up. I [Colin Hollis] got 74 votes, my nearest rival got 50-something, their favoured candidate got 11'.⁹⁷ Through cross-factional agreement and using the power of the central panel, the organised minority can impose its will on the unorganised majority. There were 500 branch members in Wills but only 25–30 members of the leading faction.⁹⁸ In some cases, two candidates from the same faction will run to test

⁹⁴ Kay Denman. Interview, 18 November 1997.

⁹⁵ Former MHR Hon Alan Griffiths, ALP V. Various conversations late 1998–early 1999.

⁹⁶ Kelvin Thomson. Interview, 25 November 1997.

⁹⁷ Colin Hollis. Interview, 23 October 1997.

⁹⁸ Kelvin Thomson. Interview, 25 November 1997.

their support among the branch members. The risk in them doing so is that other factions in the seat will have an influence on the faction's candidate.

The faction rules may mirror the party rules in a formal and public way, but in fact hand the decision to the most powerful. 'The Victorian Labor Unity rules have been more or less [the same as for the party], depending on the political muscle and whoever has the political muscle will adjust the rules in whatever way to give them the results that they want'.⁹⁹ The problem of 'stacking' applies to factions as to the party as a whole. For example, if a faction hands a substantial say to its local representatives, it may provide an incentive to stack the faction. 'In Wills although we are the strongest group we'd have only 25-30 paid up [Labor Unity] members. So if you are saying they are getting 50% of the preselection say, you might not get a result that is reflective of the real levels of support within the party locally. And it would be an incitement to faction-stacking'.¹⁰⁰ Evidence of faction-stacking in the Left in Victoria is provided by Senator Barney Cooney: a 'faction will recruit an ethnic leader for the faction, the trade-off is that you get in but you have to keep delivering the numbers—at a meeting one night [of the Socialist Left] 60 [new] people turned up to vote'.¹⁰¹

The difficulty with such staunchly contested ballots among such intimates is the breakdown of faction loyalty and discipline and thus the inability to have small, organised numbers hold sway over larger numbers. Sometimes a group will choose an outsider as a 'circuit-breaker' in order to preserve peace in the faction. 'Bruce Hartnett and Bill Hartley were evenly divided over months. Even though I [Barney Cooney] was not a member of the group I was acceptable to the group as a circuit breaker. Everybody could say there is this outsider. Had to have an outsider to keep the whole thing together so no-one in the group won'.¹⁰²

A rather extraordinary attempt to bar the concept of factional endorsement is set out in the rules of the Queensland Labor party, 'A candidate who has been knowingly and

⁹⁹ Kelvin Thomson. Interview, 25 November 1997.

¹⁰⁰ Kelvin Thomson. Interview, 25 November 1997.

¹⁰¹ Barney Cooney. Interviews, 19, 26 November 1997.

willingly selected or endorsed by any Party unit or affiliated unit, or any section of an affiliated union for the purpose of furthering that candidature in any selection shall not be endorsed'.¹⁰³ When this rule was tested before a disputes tribunal in 1998 and the evidence of factional endorsement by the Australian Workers' Union of a candidate for Oxley was clear [according to Anne Scott a defeated candidate], the tribunal found 'that a faction is not a party unit or affiliated union for the purposes of [the rule]'.¹⁰⁴

The reach of factions is finite and often does not have influence where the party organisers or captive numbers are not available. The influence of factions is not so apparent in regional areas, for example, Newcastle and Geelong.¹⁰⁵ Factions with a structural base, such as affiliated trade unions, are able to lever considerable support through a monopoly of delegate loyalty. On this resource base is built a machine that enables the organised minority to control the unorganised majority. Where the resource base is less formal it may rely on the extraordinary accumulation of numbers through personal loyalty, and in that sense contains an element of the third form of managed competition.

Conclusion

The three tests of the democratic integrity of party preselections presented in Diagram 3.1 were couched in terms of the environment within which the contests were conducted. The audit of the rules and the selection panels indicated some anti-competitive structures and some poor processes. Three styles of local competition identified in the discussion of the behaviour of the candidates, extended those results by identifying the ethos of each panel and the likely implications of each for the integrity of the process.

¹⁰² Barney Cooney. Interviews, 19, 26 November 1997.

¹⁰³ ALP Q, 1997. *Rules*. Rule 25.25, 38.

¹⁰⁴ Anne Scott, correspondence with Labor party Disputes Tribunal, 3 August 1998.

¹⁰⁵ Gavin O'Connor. Interview, 26 November 1997. Kelly Hoare candidate, ALP NSW. Interview, 29 October 1997.

It may be that the three styles represent three phases in internal party politics, from local competition controlled by politicians, to a shared central arrangement, to a centralised system. These phases were closely related to the management of the parties, with an earlier naïve stage, a deferential or managerial consensus stage, to a factional trade stage. The Labor party has long been in the factional style. The Liberal party exhibits elements from naïve to managed to factional, and the National party is predominantly managed. The three parties are not exclusively of any one style but the tendencies are evident.

Factors that were external to the party were often powerful in providing a stimulus to competition. However, the desire to compete sometimes resulted in a loss of integrity of the party in one of three ways: A breach of the free association of the membership of the party through such practices as branch-stacking. A diminution of competition by misuse of the rules to favour one candidate. Or cross-factional agreements to exclude a wider body of voters. Factions did not necessarily breach the freedom of association *per se*, although sometimes their means of delivering on deals and their source of power did.

These observations and measurement of the performance of the major Australian parties suggest that they do not perform the task of managing preselections in a sufficiently democratic way. The ways and means by which they fail are by no means uniform and for some the record is far worse than others. This is not to argue that they do not intend to manage the processes to be more democratic. Competition for power within political parties, as we have seen, can be intense. However, if the parties fail to fulfil their obligations to deliver internal democracy, it is clear that some external body will undertake that scrutiny.

The remaining tasks are to explore the issues of the scrutiny of the parties and to draw some policy conclusions. The first task is to study the parties' record of management on preselection issues. The second is to review the amount of external scrutiny that exists at present and the likelihood of external scrutiny in the future. The third is to

draw the policy conclusions from the research, including the issue of whether the parties should be regulated.

Chapter 6

Internal Scrutiny: Managing Preselections

Australia's major parties regard themselves as democratic organisations. They profess to be run by their members, each of whom has a reasonable chance to influence the decisions of the party, particularly with regard to the selection of candidates. In many respects, however, they fail the tests of democratic practice applied to the selection of candidates. The structure of some of their panels is anti-competitive, some of their procedures are tainted and, in many different ways, they fail some tests of a free association of individuals. Are these failings a consequence of a lack of intent or a deliberate exercise in the accumulation of power? One means of answering this question, indeed one way of gaining access to reliable data, is to see how and why the parties change, and sometimes fail to change, the rules that govern preselection. Despite Ranney's view that 'all conflict over party reform is, at bottom, conflict over who should be running the parties',¹ it is possible to distinguish the struggle for power from the establishment of rules that allow competition for power.

The Struggle for the Rules

It is possible to sort rule changes into three broad, if sometimes overlapping categories: those concerned with the integrity of the process of preselection, those concerned with the quality of the outcome, and those concerned with the management and maintenance of power. A survey was undertaken in 1998 of major changes or proposed major changes to party rules, to assess the intentions of the parties. The survey of rule changes covered those that were either recommended by way of a report to the party, or debate at the respective party conferences. The information was gathered after telephone interviews with the national and each divisional secretary (or their nominee) of the four major parties. The question put to the official was, 'what is the most recent report or major change of rules, concerning preselection?' In some cases, the parties supplied documents;

¹ Ranney, 1975. *Curing the Mischiefs of Faction*, 144.

in others, these were obtained from other sources. As a further aid to interpretation, interviews were held with various political activists who had been associated with rule changes. Twenty-two reports (identified by the name of the principal author where there was such a person) and debates were studied. These are set out in Table 6.1 for the four major parties. The reports and debates are discussed for each party, with any federal reports discussed first, followed by each State.

Table 6.1: Recent Major Rule Changes and Reports on Candidate Selection

Division	Democrat	Labor	Liberal	National
Federal	Code of Conduct (97)	Conference (91)	Goldsworthy (93)	Federal Manag. Committee (96)
NSW	¹	Liverpool (89) Conference (92)	Osborne (93) Conference (97)	Clarence, Tamworth
Victoria	¹	Dreyfus (98)	Kroger (89)	Murray (95)
Queensland	¹	Conference (96)	Convention (93)	Cribb (89)
Western Australia	¹	Conference (94)	Clough (96)	No Member ²
South Australia	Coulter (95)	Duffy (93)	Minchin (94)	No Member ²
Tasmania	¹	Intervention (92)	Conference (97)	No organisation
ACT	¹	Conference (93)	None	No organisation
Northern Territory	¹	Simplification (91)	³	³

Source:

Telephone interviews with State or national secretary (or their nominee) of parties, August-September 1997.

Notes:

¹ The rules are national, and only one example of State-based behaviour causing a change to the national rules was reported.

² The study has been restricted to States where parties hold seats in Federal Parliament.

³ There was no response from the Country Liberal Party.

(Kroger) represents the principal author of the report or rule changes.

(91) Indicates the year of the report or conference when the rules were considered.

Democrats Party Management

The Democrats National Executive has the authority to intervene in a division's preselection process but to the extent of overturning or determining a preselection, has not done so. The Democrats reported only one contemplated recent major change to their national preselection rules. Following some 'robust' lobbying in the ballot for the Senate vacancy, which occurred with the retirement of the former leader Senator Coulter and

which resulted in the endorsement of Natasha Stott-Despojta, a draft Code of Conduct for lobbying was established. After consideration, however, the National Executive decided that it was not possible to 'legislate for morality' and the Code was abandoned.² As the audit of the rules and panels has shown, the Democrats appear to have few problems with their democratic credentials. The tiny membership and consequent recourse to postal ballots on a division-wide basis do not leave a great deal to organise at the party level. Presumably, most of the realpolitik occurs in the Senate caucus.

Labor Party Management

The Labor party National Executive has clear powers to decide on preselections and has done so on many occasions. Their most extraordinary recent changes started with a 1989 preselection dispute in the NSW State seat of Liverpool. The dispute resulted in three extensive reports on most aspects of preselection, and for the first time a partial set of national rules was accepted at the 1991 National Conference. The Liverpool contest caused such a level of dispute in the NSW division that two affiliated unions appealed to the National Executive against the conduct of the ballot. The Executive responded by establishing an arbitration panel to intervene.³ The panel determined that the ballot was invalid, and conducted a fresh ballot. The key reason cited for the panel's action were the rules relating to the eligibility to vote. 'The current rules in NSW appear to be based on the belief that voters have to prove their eligibility, rather than that there should be a presumption of eligibility' and, '[t]hat to endeavour to hold a plebiscite would continue the misconception that "rank and file" ballots exist in NSW. In fact, the only ones who vote are those who succeed in filing past the myriad of rules and precedents in existence without failing the 37 conditions. To get a vote is as much by chance as it is knowledge or skill or party loyalty. There is no rank and file ballot in NSW. Those left standing vote'.⁴

The then Labor party National Secretary, Bob Hogg, used the opportunity of the Liverpool intervention to review the rules and preselection systems in the Labor party at

² Andrew Bartlett. Interview 19 May 1998 and correspondence.

³ ALP National Executive Arbitration Panel, 1988. *Interim Report*, Minutes, 9 December. Canberra: National Secretariat.

large. 'We need to examine the long term adequacy of the basic operations of the Party, its membership base and its relationship to the preselection systems nationally'.⁵ This report stimulated the establishment in 1990 of the Organisational Review Committee. In completing the review of the NSW preselection rules, it also examined the broader organisational problems facing the party. The Committee recommended to the 1991 National Conference a number of changes crucial to future preselections. Among these were:

1. 'The process of joining the Party shall be simplified and all unnecessary impediments to that process shall be removed from State branch rules. [Adopted]
2. In all States full membership rights shall begin to accrue once the member has attended their first branch meeting and those rights shall accumulate, to the maximum, following twelve months consecutive membership. These rights include: being eligible for preselection.... [Adopted]
3. In all states, the State Conference shall comprise 50 percent union representatives and 50 percent constituency Party representatives. [Rejected]
4. In all States the State Conference shall comprise not less than 50% nor more than 60% union representatives and not less than 40% nor more than 50% constituency party representatives. [Adopted]
5. When electing delegates to the ALP conferences the union should introduce a system of proportional representation or some other system which ensures a cross representative view is reflected in the conference delegation. [Rejected]
6. The affiliated union delegation to Conferences... should comprise only members of the union whose basic employment derives from the awards covered by the respective union. [Rejected]
7. The only residential boundaries that can affect [voting for a candidate] are those devised by the Federal, State or municipal electoral commissions. [Adopted]
8. The collegiate system be the method by which preselections normally occur, the central component comprising either the State Conference or a unit elected by State Conference together with all the votes cast within the respective electorate

⁴ ALP National Executive Arbitration Panel, 1988. *Interim Report*, 5–6.

⁵ Hogg, R. 1989. 'A Report and Assessment', 2.

for individual candidates on a weighted basis of 50 percent central, 50 percent local'. [Rejected].⁶

The matters at the heart of the Liverpool preselection (items 1, 2 and 7), essentially the qualification of members to vote in a plebiscite, were taken up by the National Conference. These were not issues, however, with which other State divisions needed to comply. Largely they already had these rules in place. On the balance of union-to-branch power (items 3 and 4) the less radical option was adopted. The unions held on to a majority of power. The attempt to make the unions more internally representative and less subject to abuse by outsiders (5 and 6) failed. These were the two most important attempts at reform. In the first, the election of union delegates to party forums would have been by proportional representation rather than the union secretary dictating the political hue of the entire delegation. In the second, the object was to restrict the unions delegations to those who worked in industries covered by unions. This was a clear attempt to stop the practice of union leaders filling their delegations with factional 'hired hands' who, in many instances, had no connection with the union or its workforce. The attempt to convert all preselection systems to a collegiate system, with a balance of local and central components, encountered resistance both from those who preferred the local plebiscite system, and those who preferred a larger central component. In terms of the elements of integrity, quality and power these changes enhanced the integrity of the process to the extent of making it easier for members to vote, but only in so much as the power of unions was not disturbed.

At the 1994 National Conference, the party firmed its commitment to affirmative action for women parliamentary candidates. In doing so, it moved beyond the 1981 Conference decision for a program and opted for a quota for public office positions to be filled by women. 'Preselections for public office positions at state and federal level shall incorporate affirmative action. The intention of this is to produce an outcome where 35 per cent of public office positions held by Labor or a majority of seats needed to form government, whichever is the greater, will be filled by women and not less than 35 per cent will be filled by men by the year 2002. The National Executive shall have the

⁶ ALP National Executive, 1991. *Recommendations and Options*, 1, 4, 6.

responsibility and the power to determine the outcome in any public office preselection progressively between now and the year 2002 in order to ensure that this rule is complied with'.⁷

As discussed in Chapter 3, affirmative action is to be assessed in terms of a party's acceptance of the policy of demographic representation, not as a core element of democratic practice. Nevertheless, the affirmative action rule has been used to advantage one group or another as and when it suits the needs of the competitors. The final recommendation contains the seeds of the further centralisation of power in the Labor party. The National Executive shall determine preselections where the affirmative action goal is not met. Presumably, further goals could be set in which the Executive also becomes the final arbiter. The 2000 preselection of Jennie George, former President of the Australian Council of Trade Unions and member of the left faction in NSW, is a prime illustration of the power of the dominant factional alliance in the Labor party apparently fulfilling the affirmative action goal as a mask to a broader agenda. The agenda was to avoid three rank-and-file preselections in NSW where two of the right faction's sitting members were under threat.⁸

The Liverpool imbroglio produced not only the national rule changes cited above, but also a full-blown internal party debate on the panel system. The number of conditions to be an eligible voter was reduced to 26 from the 37 mentioned above, but there was no change in the total local plebiscite stand-up vote system,⁹ the only one (except the Queensland National party where it is an option in a House of Representatives preselection) outside the Territories. The major arguments are worth recounting. They also provide some insight into the evolution of the system in NSW. The system became established in the 1930s and involved not only Labor League (branch) members but also members of affiliated trade unions who lived within the electorates concerned (a system which not only survived in some State branches, for example Queensland, well into the 1970s, but was subject to enormous abuse).

⁷ ALP, 1994. *Platform*, 325.

⁸ Mark Latham MHR in Werriwa and Julia Irwin MHR in Fowler will be spared the possibility of defeat in preselection. The price of their saving is to 'spare' Jennie George from a preselection she would most likely have won in Throsby, vacated by the 'left's' Colin Hollis MHR. *The Weekend Australian*, 24–25 June 2000.

The local plebiscite system suffers from its own instances of abuse. For example, a member needs to attend three branch meetings to become eligible to vote. The proof of attendance is contained in branch attendance books, which are in the hands of local branch officials. Unfortunately, from time to time such officials have falsified records. An infamous case was the 1980 preselection for Sydney, when the records were stolen on the eve of the ballot.¹⁰ Attempts to overcome abuses with the rewriting of rules have their own shortcomings. 'The plethora of anti-abuse criteria in the rules minimise the number of persons eligible to vote. This often unfairly disadvantages otherwise longstanding and committed ALP members. Consequently, the small number of people eligible to participate in preselections (which has been as low as 30 or 40 people on some occasions) may not adequately reflect the local Labor constituency, let alone the Labor constituency at large... The gradual accumulation of safeguard rules to prevent abuses of the system has led to disenfranchisement of members who by any reasonable criteria, should otherwise be eligible'.¹¹ The complex rules for eligibility had at the same time increased the potential for damaging the integrity of the party electoral roll at the local level, and for the intervention by the Administrative Committee on behalf of favoured candidates.

In Victoria, the 1994 and 1996 Conferences amended the membership rules in an attempt to stem the tide of branch-stacking that had engulfed the party, especially after its loss of State government in 1992.¹² The new rules specify the number of members who may apply at any one time, and when and how this shall occur at a local branch meeting. 'The branch may not recommend the acceptance of more than 13 new members at a single meeting... All new membership applications from branch meetings which exceed these numbers are to be lodged with the State Secretary...' This rule enhanced the 1994 rule quoted in the 1996 Rules, 'Where seven or more new members are expected at a branch meeting, Branch Executives must provide seven days' notice to the State Secretary, who will send a nominee of the Membership Committee to the Branch meeting. ... A branch

⁹ ALP NSW, 1996–1997. *Policy and Rules*, Rule N. 17 (a)–(g), 115.

¹⁰ Peter Baldwin. Interview, 19 November 1997.

¹¹ ALP NSW, 1992. *NSW Preselections: A Time for Reform?* Organisational Options Paper No. 1, 4.

may only recommend approval of membership applications or receive transfers from Central Branch during the first two hours after the commencement time for the monthly meeting scheduled'.¹³

The new rules do not appear to have been all that effective—as the practice of stacking branches continued unabated in the lead-up to the 1998 round of preselections.¹⁴ A report by Dreyfus¹⁵ recommended that the 'branch adopt the principle that the membership fees of every member be paid by that member' to counter the practice of purchasing memberships. To wrest the appeals processes from the hands of the factions it also recommended the 'election of a single member Disputes Tribunal ... to be elected by a 75% majority of the delegates to State Conference'. The rules of the Victorian Labor party were introduced as an attempt to change a culture that threatened to destroy the integrity of the party. There is precious little differentiation between members and non-members when people, recruited at short notice (and often paid for by the operatives of the major factions) determine preselections. As Federal Member Martin Ferguson reported to his branch members: '[d]ealing with this issue is extremely important for two reasons: it goes to the integrity and legitimacy of the Labor Party, and it helps confront poor community perceptions of the ALP and the political process'.¹⁶ Changing the culture of the Victorian division will ultimately rely on goodwill, but the demonstration of the goodwill will be accepting rules of the type recommended by Dreyfus. The recommendations do not appear to have fared well, 'it seems implementation of Dreyfus is not a high priority'.¹⁷

In Queensland the most recent issue of significance was the abolition of the '60% Rule' whereby a sitting member who attained 60% or more of the local vote, was not obliged to face the other half of the preselection panel made up of central delegates. The rule was initiated in 1986 and was the subject of National Executive scrutiny in 1987, but was not

¹² John Lenders, State Secretary ALP V, reported in the party organ, *The Labor Star*, 4 June 1994, that membership had grown in the period 1992–1994 from 8,000 to 16,000 members, and that 4,000 of the new members were 'stackees'.

¹³ ALP V, 1996. *Rules*, 5, 17–18.

¹⁴ Allegations made on the Channel 9 *Sunday* program, 3 May 1998.

¹⁵ Dreyfus, 1998. *Panel of Review*, 2 and 4.

¹⁶ Ferguson, M. 2000. Federal Member's Report, *Batman Report* (13) 1, October. (Mimeo)

¹⁷ ALP Members for Democratic Change, 2000. *Democracy: The Newsletter of ALP Members for Democratic Change*. June 2 (2), 4. (Mimeo)

abolished until 1994. The rule favoured a sitting member, inasmuch as a competitor had to have a strong majority to succeed. In practice, however, the abolition of the rule meant that all preselections were held under the mixed panel system, which brought a number of non-aligned members before the factionally controlled central panel.

In a separate matter, the conviction of the endorsed candidate for the Queensland State seat of Thuringowa in 1998 for electoral fraud at the 1996 round of preselections led to the following rule change at the 1997 Conference. 'On or immediately after the 31st March (the cut-off day) in each year the State Secretary shall require an electronic roll for the entire State from the Commonwealth or State Electoral Commissions and the place at which each branch member is enrolled shall be deemed their enrolment address regardless of their alteration of enrolment during the succeeding twelve month period and until the next cut-off day'.¹⁸ The practice of late changes to enrolment and even the 'warehousing' of members outside the electorate and a late switch to bring them inside in time for a preselection had become a tool abused in some quarters. The rule was devised following a most publicly damaging case, which led to the trial and imprisonment of Karen Ehrman of Townsville who was convicted for falsifying electoral enrolments. Ehrman enrolled Townsville residents at false addresses without their knowledge between 1993 and 1996 in a bid to win [Labor] preselection.¹⁹ The rule will not have any direct impact on the falsification of enrolment, for which there are clear public laws, but it is an example of where a party has to be seen to be able to control its own misdemeanours.

In the Western Australia Labor party, the 1994 Constitution and Rules Conference made a minor increase in the number of local delegates (from 25 to 30) who, combined with the State Executive (218), formed the preselection panel. This change was made in the face of the defeated Rules Committee recommendation, that 'State Executive will have responsibility for selecting the Party's candidates for: ... The House of Representatives where the local party membership in that division is less than 600'.²⁰ There are about four Federal divisions in Western Australia with 600 or more Labor branch members, so

¹⁸ ALP Q 1997. *Rules*, Rule 30.01 (b), 40.

¹⁹ *The Courier-Mail*, 23rd June 2000.

²⁰ ALP WA, 1994. *Constitution*, 82. (Mimeo).

this recommendation amounted to a virtual abolition of local delegate representation in other areas (or acted as an incentive to lift the membership). As in the South Australian division, the imbalance in the union vote is gross in Western Australia, and falls well outside the guidelines recommended by the National Conference. This situation is a stark example of the National Executive having the power to intervene but being unwilling to do so. Clearly, power wins over proper rules, rules that the party itself defined as proper.

In South Australia the defeat of the Bannon government in 1993 as well as the debate surrounding national rule changes led to the establishment of the 1993 Committee of Review, chaired by former Federal Attorney-General Michael Duffy. The report recommended major rule changes as follows:

1. 'That a 50/50 preselection system be implemented. This shall be comprised as follows: 50% branch members voting in two groups, a local plebiscite of 25% and the remaining 25% being those branch members who comprise the sub-branch component at Convention. The remaining 50% is to be comprised of the affiliated unions.
2. That Convention be changed from 60/40 to 50/50.
3. That the National Executive appoint a person to chair a Dispute Tribunal.
4. That all impediments to secret ballots be removed.
5. That the right to vote in a plebiscite will be conditional on members being financial for a full 13 months prior to a preselection'.²¹

The preselection panel was changed to the 50/25/25 system as recommended, the basis of the Convention was changed as recommended, and a disputes tribunal was established, as were provisions to enhance the secret ballot by the 1994 Convention. The secret ballot provisions were further enhanced by the 1996 Convention. At the 1995 Convention, two new membership rules specified that voting rights could only apply to those who lived within the electoral boundaries. The old rules allowed for non-residents in branches within a district to vote.²² The South Australian matters were clearly concerned with the

²¹ ALP SA, 1993. *Committee of Review Report*, 3–5. (Mimeo).

²² ALP SA, 1994. *Constitution and Rules*, Rule 58.3 (a), 53. Rule 23 (a) 32. Rule 52, 45. Rule 58.3 (d), 54. ALP SA, 1996. *Rule Amendments*, State Convention, especially rules 55 (p) and (q), 6–7. ALP SA, 1995. *Rule Changes*, State Convention, Rules 5 I (ii) and (iii), 1.

integrity of the process as well as the distribution of power, including the change to the panel. The panel had given virtually no role to the local branches in preselection with the gross imbalance of votes accorded the unions. Even so, the local members still comprise just 25% of the preselection panel.

In March 1992 the Labor party National Executive appointed Assistant National Secretary Ian Henderson as administrator to the Tasmanian party following the demotion of Senator Michael Tate from the number one position on the ticket. Henderson reported to the 1993 State Conference, and Conference accepted three major changes to the rules governing preselection.

First, 'There shall be two components of the preselection process: ... The local component shall comprise all eligible members of the Party normally resident in the relevant electorate; The central component shall comprise the full membership of State Conference; The ... votes cast by the local component and the ... votes cast by the central component shall be combined equally...'. Second, 'there shall be a Disputes Committee, which shall, subject to the powers of National Conference, National Executive, State Conference and the Administrative Committee, mediate, conciliate, arbitrate, or otherwise hear, determine or recommend all matters in dispute within the Party'. Third, 'the total number of union delegates and membership delegates shall vary from year to year, ... Where the Union membership to Branch membership ratio is less than 27 to 1 then the total union delegates equals 100 (50:50): Where the Union membership to Branch membership ratio is greater than 27 to 1, but less than 32 to 1 then the total union delegates equals 110 and the total membership delegates equals 90 (55:45): Where the Union membership to Branch membership is greater than 32 to 1 then the total union delegates equals 120 and the total membership delegates equals 80 (60:40)'.²³

These changes weakened the union control of the party, although under the rules governing the make-up of State Conference it is possible for the unions to take up to 60% of the delegates if all eligible unions are affiliated to the party. The Rules Committee was

²³ ALP T, 1997. *Rules*, 15, 18, 30.

a standing committee that met regularly to suggest changes to the rules and act as an interpreter of them. Those powers now rest with the Administrative Committee, and the Disputes Tribunal only meets as and when required. These changes are a significant advance in good practice, first to balance the significant elements of the party, union and branch members, and to separate rule-making from disputes hearing.

In June 1993 a Special Conference of the ACT Labor party was ordered by the National Executive to resubmit an earlier change from a rank-and-file preselection system to a central panel/local plebiscite combination, with equal weighting to each component. The National Executive also ordered an inquiry by Hon Peter Staples MHR into the ACT party following the 1995 by-election for the seat of Canberra and much criticism of the candidate. He successfully recommended a change to the 1995 ACT Conference that the composition should change from 60% union delegates/40% local delegates to 50/50 at the following Conference.²⁴

Liberal Party Management

The Liberal party Federal Council has, since 1994, a much circumscribed power to disendorse a candidate. No preselection has been overturned because of Federal Executive action. Federal party president Goldsworthy reported to the Federal Council of the Liberal party in 1993 on the question of candidate selection. His report carried the same message as that of a predecessor, John Valder, whose 1983 report favoured plebiscites for the selection of candidates. Goldsworthy recommended that all branch members be eligible to vote in preselections and that the National Executive have the power to overturn preselections.²⁵ Only modest moves have been made to these ends, and little uniformity is imposed by national rules. As Valder argued in a 1994 speech, reflecting on the poor electoral performance of the federal Liberal party in the period 1983–1994, ‘how do we motivate people to join the party? One way must be to give people a greater say in preselections... the most important role for party members must be in the preselection of candidates for Parliament’.²⁶

²⁴ ALP National Executive Minutes, 26 November 1993. (Mimeo)

²⁵ *The Bulletin*, 22 June 1993.

²⁶ Address by John Valder, *The Valder Report and Plebiscites*, undated, 2. (Mimeo)

The NSW Liberal party established a committee to report into the nature of preselection panels. The report on the panels²⁷ recommended against a rank and file system, which had the support of the Valder and Goldsworthy reports. The debate was concerned with the representativeness of the panel, with a strong pitch by the administration against local control. The then-State Director remarked, 'Branch members... simply don't reflect the community out there. Someone said that you either had to be lonely, desperate or ambitious to join the local branch of a political party. What happens is that you end up with candidates who mirror the aspirations of the people they mix with, not the community'.²⁸ There were no changes to the composition of the panels at the 1994 or 1997 Conferences. There were, however, significant changes in the conduct of preselections, including a new procedure for the review of nominations, changes to selection committee rules and changes to urgent endorsement procedures:

1. 'Review of Nominations: A nomination review committee shall be formed comprising: *inter alia*,... the Federal Parliamentary Leader; ... the state director. Each nomination review committee... shall... interview and otherwise examine... candidates and satisfy itself that those candidates are fit and proper persons...
2. Selection Committee Rules and Procedures: The quorum for a Selection Committee shall be 75% of those constitutionally entitled to attend and vote;
3. Urgent endorsement Procedures: Where there is less than 7 days of the creation of the vacancy [in parliamentary office for the House of Representatives]... State Executive may modify procedures for selection of candidates or dispense altogether with those procedures and endorse a member... provided that before exercising this power it must consult and, as far as practicable seek agreement with, the Committee of the Relevant Conference'.²⁹

Clearly, the issue of the quality of candidates is canvassed in the rule changes in the first item with the Federal Parliamentary Leader and the State Director having a formal say over the suitability of the candidates, and in second item, to guard against an unsuitable endorsement due to a low turnout of the panel. The third item reconfirms the powers of

²⁷ Report of the Michael Osborne committee, *Sydney Morning Herald*, 31 July 1993, 7.

²⁸ Statement by Barry O'Farrell, *Sydney Morning Herald*, 9 June 1994.

²⁹ LPA NSW, 1997. *Constitution and Regulations*, 48-9, 56-8.

the State Executive to intervene and alter proceedings, but it is limited to certain circumstances and in certain ways, without destroying certain rights. Clearly, the power of the existing hierarchy wins in these changes. The NSW division did not move to a local plebiscite or even mixed plebiscite-central panel system and yet it devised a system of centrally vetting candidates, which appeared to be the great concern of the leadership, had they moved to a plebiscite system.

The Victorian Liberal party underwent major changes in the composition of its panel, in 1989, under the presidency of Michael Kroger, who was quoted at the time as saying, 'Successful parties need strong party officials and they need some party officials that have some power'.³⁰ The new Convention or panel consisted of a mix of local branch and central Policy Assembly delegates in a ratio of 60/40. This move was later argued to be not a centralising of power but 'dispersal'³¹ away from the sitting Member of Parliament who could control a panel consisting solely of local delegates. It continued a long trend away from the power and protection of the incumbent, away from a politicians' to a membership party.³² Locally controlled preselections with poor scrutiny can lead to very poor practices of the management of the rolls, and can undermine entirely an otherwise 'structurally' democratic poll such as a plebiscite of local members. The new Victorian system sought a new balance between the local members and members from other areas. The key is whether the central panel is itself dispersed or subject to control by very few, a matter canvassed earlier in Chapter 4.

The Queensland Liberal party made a major change to the preselection panel for MHRs and Senators at its 1993 Convention. The 1990 rules³³ specified that 'State Executive shall determine the composition of Selection Councils in Federal ... Elections'. Members of State Executive constituted no more than one third of the Selection Council (including a Senate Selection Council) and the remainder of the delegates were made up either of branch delegates from the electorate, in addition to delegates from within the Zone which contained the electorate, in a ratio of two to one in favour of electorate delegates, or by a plebiscite of members in a particular zone or electorate. The Senate Selection Council

³⁰ *The Bulletin*, 2 May 1989, 134.

³¹ Michael Kroger. Interview, 9 February 1998.

³² David Hawker. Interview, 26 November 1997.

comprised members of the State Executive with an equal number of delegates from each zone 'provided that wherever practicable the delegates shall be all from different Branches and the maximum possible number of branches be represented'.³⁴

These rules allowed an extraordinary amount of control and manipulation from the State Executive, which could change the panel to suit its own needs. In 1992 the State Executive appointed a Constitution Review Committee to make recommendations for change on these and other matters. The Committee recommended that 'the ordinary method for the preselection of candidates be changed from Preselection Councils comprising delegates elected by local Branches, to plebiscites, in which all rank and file members of the Party... participate'.³⁵ The recommendation for the Senate was that State Convention constitutes the plebiscite. The State Executive recommended against the adoption of a plebiscite system, opting for an expanded franchise by lifting the ratio of delegates to one in five members from one in ten. The Management Committee opposed the plebiscite 'on the basis of cost, the capacity for branch stacking, the incentive that a plebiscite provides for Members of Parliament to keep branch numbers low in their electorates and the administrative burdens that a plebiscite... would impose'.³⁶ This debate is reminiscent of the NSW division: cautious in the trust that the party officers place in the branch members and the manipulation of numbers that local control can allow.

The 1993 Convention did not follow the recommendations of the Management Committee, instead opting for change, though with some compromise on the Senate selection. The plebiscite (with a stand-up vote following addresses by candidates) consists of all members of branches, and State Executive (no more than one third). The compromise appeared to be on the new Senate panel, which comprises delegates from the Federal Electorate Councils. The peculiarity in the system is the adherence to branch boundaries for the residential qualification, as opposed to the electorate boundary.³⁷ This is precisely the problem that caused enormous harm in the NSW Labor party.

³³ LPA Q 1990. *State Constitution*, Rule 137, 28.

³⁴ LPA Q, 1990. *State Constitution*, Rule 138, 29.

³⁵ LPA Q, 1993a. *Proposed Constitution Changes*, 20–21. (Mimeo)

³⁶ LPA Q, 1993b. *Proposed Constitutional Changes: Explanatory Memorandum*, section 15.

³⁷ LPA Q, 1996. *State Constitution*, Rule 136 (a), 46.

In the Western Australian Liberal party the considerable unrest caused by the defeat of two incumbents (Rocher and Filing) in the 1995 round of preselections led to the establishment of a review committee chaired by prominent local businessman, Harold Clough. The Special Conference was called amid conflict between those forces supposedly aligned to Senator Noel Crichton-Browne and the reformists, such as Clough and John Hyde, with a view to break the control of the 'NC-B' forces. The tool for breaking such control was the plebiscite. Clough insisted on a local plebiscite for preselection and a change to the double vote awarded to members of the Young Liberal Movement. Both of these recommendations were defeated at the 1997 Special Conference.³⁸ Other less adventurous measures were introduced, such as the power of State Council to call for a plebiscite (although this power has not been exercised to date),³⁹ the random selection of delegates, and increased branch representation. The tool that the anti-NCB forces wanted, a plebiscite of local members to select candidates, was dismissed by Noel Crichton-Browne. His view was that he would have the numbers under any system!⁴⁰ New rules do not necessarily guarantee change. If the same group remains in power after a system that conforms to the principles of competitiveness, fair process and associational integrity, then the outcome is the result of a fair contest. There may be many good reasons why one side usually wins.

The South Australian Liberal party debated the issue of the reintroduction of plebiscites (abolished in favour of branch delegates in the 1973) at the 1994 State Council. The major advocate for the change was Senator Nick Minchin, who outlined his arguments in a paper delivered to the Conference.⁴¹ The plebiscite system was one in which all branch members would vote and form the entire panel, not just part, as for example in the Queensland division. Minchin argued that the plebiscite would give power to the membership and act as a drawcard for new members. He noted that the party (Australia wide) had lost 'about two-thirds of its members over the last 20 years'.⁴² He defended the accusation that plebiscites were open to branch 'stacking'. 'At the moment delegates to

³⁸ John Hyde. Interview, 2 November 1997.

³⁹ John Hyde. Interview, 2 November 1997.

⁴⁰ Noel Crichton-Browne. Interview, 13 August 1998.

⁴¹ Minchin, Senator Nick. 1994. *Plebiscites: Questions and Answers*, paper prepared for the South Australian Liberal party State Council, 12–13 August.

electoral colleges, and the members who elect them, need only have been members for one month prior to the branch AGM at which they are elected. Delegates need only to have been members for 3 months before the close of nominations for preselection. Thus the current system is wide open to stacking and manipulation'.⁴³ That system remains in place. Clearly much of the debate concerned the integrity of the system even though the proponents of each system (the status quo or plebiscite) no doubt argued the case that suited their side. The debate was underscored by distrust over the motives behind each proposition. More important, it revealed the acute discomfort within the party, as in other parties, at the loss of members. The real quandary is about who is to be trusted with the future of the party.

An important change took place in the Tasmanian Liberal party in the ability of the State Executive to grant endorsement. This signalled a significant shift in power away from the local Selection Committee. 'State Executive may at its discretion refer the selection back to the selection Committee for reconsideration' and, 'if in any special circumstances the State Council, or the State Executive considers that in the interests of the Organisation an endorsement should be re-opened, the State Executive may call for fresh applications'. These powers are nowhere near as strong as the discretion given to 'head office' in other examples but do allow the decision without referral to the locals.⁴⁴ This tendency, noted in many divisions, is undertaken in the name of ensuring the best quality candidates and overcoming parochialism. The question is whether they move beyond anti-parochialism to central control.

National Party Management

The National party Federal Management Committee only has power to endorse candidates in States and Territories where there is no affiliated party. Affiliated parties exist in NSW, Queensland, Victoria, and South and Western Australia (both of which are incorporated bodies). The 1988 Committee of Review into the Future Direction of the National Party of Australia recommended, among other things, 'that the matter of

⁴² Minchin, 1994. *Plebiscites*, 1.

⁴³ Minchin, 1994. *Plebiscites*, 8.

⁴⁴ LPA T, 1996. *Constitution*, 28.

selection of candidates for Federal elections is one for the State Parties'.⁴⁵ The absolute control by the State parties of their own affairs has not changed, and reinforces the federal, as opposed to national, nature of the party.

The New South Wales National party's Constitution and Rules, 1996⁴⁶ have not been revised for ten years, and despite the mention of two State seats lost in circumstances where the candidate was thought to be a factor, no rule changes were proposed. In Victoria, the Murray dispute caused wide-ranging rule changes, some clearly influenced by the experience of the loss of the seat. For example, a complication of the appeal process in the disputed ballot was that the two contestants sat on the management committee that heard the appeal! A new rule was passed in 1997, 'At any meeting of... the Management Committee... that involves or pertains to a pre-selection, any person who is a nominee for pre-selection... shall not be present at such meeting whilst issues relating to such pre-selection... are being considered...'⁴⁷

The rules are subject to annual review, but in the opinion of Malcolm Fearn, State Director of the National Party (Victoria), the party is an 'ultra conservative'⁴⁸ organisation, and reluctant to change the rules. He cited the example of the option of a plebiscite system that was put to the 1997 Conference but was rejected. The loss of the seat of Murray in a three-cornered contest was, however, a sufficient shock to stimulate changes. The basic allegation was one of 'insider trading', that is, that one candidate had the list of delegates before the other and therefore had a head start. Legal advice was that the courts were unlikely to hear the matter, although the fact that an individual could suffer a considerable loss of future earnings was canvassed. The party used the advice to dissuade the contestants from taking the matter to court.

In Queensland, the only change of significance reported was the option of a local plebiscite for the preselection of House of Representative candidates. The change was

⁴⁵ NPA 1988(b). *The Future: A Report by the Committee of Review into the Future Direction of the National Party of Australia*, Canberra: Federal Council, 78.

⁴⁶ NPA NSW, 1996. *Constitution and Rules*. Party Secretary Paul Davey and former State President Senator David Brownhill (interview 26 November 1987) mentioned the two State election losses in Clarence and Tamworth and the discussion about rule changes, and the fact that nevertheless none eventuated.

⁴⁷ NPA V, 1997. *Constitution and Rules*, Rule 120 (k).

⁴⁸ Malcolm Fearn. Interview, 30 April 1998.

recommended by Margaret Cribb, the University of Queensland academic commissioned by the party to produce a report on its 1989 State election loss. The rules state that:

‘The candidate shall be selected at a plebiscite of members of the Party being a member of a Branch operating in the Federal Division ...provided that if Central Council considers at any time that the interests of the Party will be best served by selection it may resolve by a majority of those present: that it will select the candidate; or that it will depute the selection to a Selection Committee. If Central Council decides to depute the selection to a Selection Committee, the Selection Committee shall consist of members of the State Management Committee and members of the... Federal Divisional Council... provided that... the number of members of the Federal Divisional Council... are in the majority’.⁴⁹

One possible reason for the lack of rule changes as a means of managing the National party is the fact that the National party holds mainly safe seats. As a result, in addition to the innate conservatism of the party members, and the deferential system apparent in the comments of officials,⁵⁰ the experience of preselection is infrequent in many areas. The lack of activity results in fewer instances of rule change as a response to problems that arise.

Conclusion

The key debate at the Federal or national level has been concerned principally with the management of power (power to overturn preselections) and the quality of the outcome (nature of the panel), and less to do with the integrity of the process (appeals, definitions of membership). The party with the greatest experience at handling preselections at the national level, the Labor party, has started to use those powers, not simply to resolve disputes that may threaten the performance of a division, but to act as a court of appeal on the integrity of the process itself. The 2000 Jennie George preselection for Throsby reinforces a view that, whatever happens on the ground, the executive may intervene to enforce its view and the local view is less relevant. If the local outcome does not suit the National Executive, it seems increasingly likely to intervene. The number of

⁴⁹ Ken Crooke, State Director NPA Q. Telephone conversation undated. NPA Q, 1995. *Constitution*, 25.

interventions is small, but the demonstration value is immense. The demonstration value is three-sided. It may reinforce the idea that a greater force will intervene for a fair outcome, or it may reinforce the idea that a greater force will intervene to keep the peace, regardless of the fairness. Then again, it may reinforce the dominant national power within the National Executive to the detriment of the autonomy of State divisions and local branches.

There is no necessary advantage in having the right to appeal to a higher body. There is the possibility that, as a raft of cases comes before a body that acts in an 'appeal' capacity, that body may indeed begin to be more careful at ensuring integrity in its own processes and those that it seeks to judge. It may be a handy tool to enforce uniformity or to solve disputes, it may in fact be used as just another forum in which to play out internal struggles or to centralise power. The 'nationalisation'⁵¹ of the rules is much favoured by the national press, which uses terms like 'professional' to describe the Labor party's National Executive's ability to intervene. In fact, what the term really means is that the national parliamentary leadership has a greater input. The Parliamentary leadership have four votes on the Executive, and the inference that the press makes is that the party is a nuisance to be dealt with, not an expression of the will of the membership of a free association.

The considerable time and energy which the Labor and Liberal parties, in particular, spend on the rules governing preselection indicate that, while much of the effort is over the control of the organisation, it is possible to recognise that members have certain rights to vote and that certain imbalances in the weight of votes are unacceptable. The parties have managed their affairs for a very long time, clearly not so crudely as to have caused a mass exodus. Nevertheless, in all four parties there is a paucity of members and a real concern at the quality of the membership. People recruited at short notice, sometimes without their knowledge, and sometimes without paying their own dues, are fatal to one concept of political parties—that they represent activists. The Labor party National Secretary wrote recently of branch-stacking, that it is 'an activity that erodes the

⁵⁰ Ron Boswell. Interview, 22 February 1999.

strong tradition of internal democracy of the ALP and damages our image as a party that it is fit to govern the nation'.⁵²

The parties manage their affairs with very little external scrutiny and under a minimum of regulation or electoral constraint. If they are not the associations that they claim to be, democratic and representing a large part of the electorate, the parliamentary system may be left with a very narrow base of activists from which to select members of parliament. The narrow base arises because of the barriers to entry erected as a result of historical political labels and because of sophisticated campaign procedures that may be operated by a small number of professional activists. Are other, comparable democracies as comfortable as Australia with their circumstances?

⁵¹ As Lloyd observes the Labor party National Conference and Executive are not purely national identities. Lloyd, C. 2000. 'A Quest For National Rules.' In *The Machine: Labor Confronts the Future*, eds. J. Warhurst and A. Parkin. Sydney: Allen and Unwin, 69.

⁵² ALP Members For Democratic Change, 2000. *Democracy*, June 2 (2), 1.

Chapter 7

External Scrutiny: Statutory and Judicial

An important consideration in studying the internal practice of the parties is whether the parties are private or public entities, and in what respects they are so. A wholly private association in a competitive party system may avoid, entirely, any obligation to allow external scrutiny or external rule-setting. A party system that consists of public parties, or where there are doubts about the competition between the parties, is likely to come under external scrutiny. Moreover, the context in which parties are established and the history of their evolution will have an important impact on whether they are regarded with suspicion or with relief, whether they are a welcome or an unwelcome part of the political constitution, and therefore more or less likely to be left to their own devices.

The purpose of this chapter is to analyse the way in which some other nations treat their parties and the extent to which they are subject to external scrutiny. The situation in Australia, in the light of the recent changes in the status of the Australian parties, is that they may well come under external scrutiny for the first time in their long history. The major Australian parties, despite considerable efforts to manage their preselections in a democratic way, have not been entirely successful at doing so. Moreover, the fact that they receive the support of the state and that the legal system has begun to impose its standards on the parties, may mean that the traditional relationship between the Australian state and the major Australian parties has changed. The changes appear gradual. The parties devised favourable electoral rules, and then more directly in their interest, devised electoral funding. The electoral funding was devised at a time when their need for members was reduced and, with the change in the technology of campaigning, their need for funds was increased. Further, the expectations of members of private organisations in general, and in some instances political parties, was that they should be treated fairly. This mix of new and old factors combine to cast new light on the future of the parties. They present new challenges to the autonomy of their internal operations.

Regulation of Parties Internationally

In Chapter two, a number of assumptions were made, about the status of political parties. Among other things, a party is said to be a private association if it is closed to the external scrutiny of its internal operations. Alternatively, a party is in some respects public if the membership has rights to an external review of a dispute. The dichotomy between private and public parties may be understood across a number of other dimensions. The more highly externally regulated a party, the less autonomous and therefore the more public it is. Six democracies are listed in Table 7.1, deliberately chosen for their familiarity and contrasting rules.

Germany was chosen, for example, because its parties are known to be heavily regulated, both in terms of the public dimensions of its funding, as well as in terms of its internal or private operations. Britain was chosen because it was known to be lightly regulated and so on. The countries have been rated according to six criteria. The criteria are all incorporated in German law. These include the funding of parties, the disclosure of donations, the statutory control of the appointment of party officials, the process of selection of candidates for public office, the extent of members' rights and access to judicial review. Table 7.1 distinguishes external regulation of the public and private side of the parties' operations. The elements of the parties' operations that are regulated by the state are marked with a tick and those not regulated are marked with a cross. The examples form three groups. Those that are externally regulated both in their public as well as their private dimensions (Germany and USA), those that use the state but suffer no external scrutiny of their private operations (Canada, Australia and New Zealand, though the latter has recently opened the door), and Britain, which remains essentially unregulated.

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Table 7.1: External Regulation of Parties in Six Countries (1999)

External Regulation	Public Face of Parties		Private Face of Parties		
	Public Donations	Public Funding	Legal Entity	Internal Affairs	Member Rights
Germany	✓	✓	✓	✓	✓
USA	✓	✓	✓	✓	✓
New Zealand	✓	×	×	✓	✓
Canada	✓	✓	×	×	×
Australia	✓	✓	×	×	×
Great Britain	×	×	×	×	×

Sources: see References.

Notes:

✓ = External regulation exists.

× = External regulation does not exist.

Donations: Disclosure of donations to parties or candidates. In Britain, legislation regulates trade union donations to the Labour party, and requires companies to disclose to shareholders donations to parties, but there is no public disclosure *per se*.

Public Funding: Public funding for any purpose excluding free airtime during elections, and for Parliamentary duties. In Britain and New Zealand, there are limits on campaign expenditure, and in Canada, there are both limits and reimbursement of expenditure, i.e., the state funds election campaigns.

Legal Entity: German and USA parties have a legal entity. In Australia, Canada and New Zealand, parties are registered for funding, but largely, as in Britain, they may remain private associations.

Internal Affairs: Legislation governing the structure or conduct of parties, including the selection of executives and candidates.

Member Rights: Members rights set out in legislation, or the affairs of the party subject to judicial review.

In Germany, the restoration of the parties and their placement in the Constitution (The Basic Law) of the Second Republic was a conscious decision to maintain the party system, but to constrain it in the light of the totalitarian excesses of the Third Reich.¹

¹ Neumann, S. [1956] 1975. 'Germany: Changing Patterns and Lasting Problems.' In *Modern Political Parties*, ed. S. Neumann. Chicago: University of Chicago, 376.

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Legislation governs not only the public face of the parties such as the disclosure of the source and size of donations and the public funding they receive, but also their internal affairs, including the selection of candidates and the rights of members to a remedy if a dispute arises. Article 21 of The Basic Law reads, 'the parties ... may be freely established. Their internal organisation shall conform to democratic principles. They shall publicly account for the sources and use of their funds and for their assets'. Further, the Federal Constitutional Court 'has the power to declare that a party constitutes a threat to freedom and democracy and is therefore unconstitutional, in which case it orders that party's dissolution'.²

In the USA, state governments 'made their first forays into the governance of party activities following the civil war' and accelerated during the so-called 'Progressive Era' in order to take power out of the hands of corrupt political machines and return it to the people.³ Indeed Justice Scalia's defence of political parties, 'Americans have made the regulation of political parties one of the principal tasks of political legislation',⁴ is a reminder of the deliberate effort of that nation to control the power of political parties by, in effect, making them public property. State legislation governs some aspects of the internal affairs of American parties (for Federal elections) such as the selection of candidates through the primaries system,⁵ and the public funding and donation disclosure legislation is Federally administered.⁶ The extent to which the parties are public affects the extent to which they can conduct their business in private. Debate about freeing parties from regulation, in effect 'privatizing'⁷ them, and the strategy for so doing, either through the courts⁸ or by legislative change,⁹ is a major stream of political discourse. It also raises the practical issue of self-regulation and external regulation, its

² Grundgesetz, 1949. *BasicLaw* (German Constitution) Last amended, 1990 (English translation) <http://www.lib.byu.edu/~rdh/eurodocs/germ/ggeng.html>

³ Petterson, P. 1995. *The Supreme Court and the Legal Status of Political Parties*. Ph. D Thesis, University of Mass, 112.

⁴ Quoted in Pomper, 1992. *Passions and Interests*, 116.

⁵ Lowenstein, D.H. 1993. 'Associational Rights of Major Political Parties: A Skeptical Inquiry.' *Texas Law Review* 71: 1742.

⁶ Federal Election Campaign Act and the Presidential Election Campaign Fund Act administered by the Federal Election Commission, (www.fec.gov).

⁷ Epstein, L. 1989. 'Will American Political Parties Be Privatized?' *Journal of Law and Politics* 5(2): 239.

⁸ Fay, J. 1982. 'Legal Regulation of Political Parties.' *Journal of Legislation* 9: 263.

⁹ Lowenstein, D.H. 1993. 'Associational Rights', 1741.

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appropriateness and efficacy. 'It seems impossible to create procedural devices which would protect against abuse and yet permit the requisite degree of autonomy [of political parties]'.¹⁰

The contrast with Britain is stark. The political system operates with low levels of regulation across the range of activities. The parties in both their public face and internal organisation are almost entirely private, and subject to a very minor degree of regulation and almost no scrutiny. The British government rejected the 1976 Houghton Report¹¹ recommendation to fund political campaigns publicly, and accepted a second report on the matter, the Home Affairs Select Committee Report 1994, which recommended 'no substantive changes in the way parties are funded'.¹² The argument, that parties 'are an essential part of civic society and the state should be kept at a distance',¹³ was elegantly put in the minority opinion of the 1976 Report. '[W]e think it mistaken and possibly dangerous to suggest that any work can be required of a political party—by the State, by Parliament or by anyone other than its members'. And further, 'Direct state aid would breach the established British constitutional practice that organisation for political ends is a strictly voluntary activity'.¹⁴ It appears that, despite arguments to the contrary, and in a parallel context, British political life will remain 'based strongly on trust'.¹⁵

Germany, the USA and Britain provide the extremes on the continuum of private and public association. Australia, New Zealand and Canada occupy a middle position. Here are examples of parties, which retain a private status but have a propensity to accept the largesse of the state as it suits their needs. There is apparently less fear and anti-party sentiment than is evident in the law of Germany and the USA, but there is no defence of the concept of private association which is evident in Britain. Australia, New Zealand and Canada are the asymmetrical types. They are moving towards establishing the public

¹⁰ Harvard Law Review eds, 1963. 'Judicial Control of Actions of Private Associations', *Harvard Law Review* 76: 1060.

¹¹ Houghton, Lord, 1976. *Report of the Committee on Financial Aid to Political Parties*. London: HMSO.

¹² Fisher, J. 1997. 'Donations to Political Parties.' *Parliamentary Affairs* 50(2): 235.

¹³ Seyd, P. 1998. 'In Praise of Party.' *Parliamentary Affairs* 51(2): 204.

¹⁴ Houghton, 1976. *Report*, 75, 78.

¹⁵ Oliver, D. 1997. 'Regulating the Conduct of MP's: the British Experience...' *Political Studies* 45: 543.

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status of parties without the clear rationale evident elsewhere and apparently without any thought as to the consequences.

The New Zealand case is one of 'asymmetrical' law because it accepts¹⁶ intervention in its parties' internal affairs, but parties do not receive much by way of campaign assistance. This is a rather selfless form of asymmetry. It has recently undergone a major transformation with a legislative requirement for democratic procedures in candidate selection. The 1986 Royal Commission on the Electoral System recommended that 'legal controls [be] introduced, as a consequence of ... voting directly for political parties as in our MMP [Mixed Member Proportional] proposal'.¹⁷ A 1995 Department of Justice Report on the Electoral Reform Bill analysed submissions, including those from each of the parties, and concluded that if the Electoral Law Committee favoured such controls, the 'rules should be such as may readily be accommodated by the political parties'.¹⁸ The Electoral Law Committee recommended a new provision, the effect of which 'in terms of redress is that some form of review can be sought in the High Court ... seeking a declaration that a party's rules or procedures are unlawful'.¹⁹ The MMP system was introduced in 1993 and the related proposal on internal democracy set out a requirement 'for registered parties to follow democratic procedures in candidate selection'.²⁰

The Canadian case is closer to the Australian inasmuch as the status of parties is more clearly private,²¹ yet the resort to public funding clearly implies a public dimension to the parties. This asymmetry is of the more selfish variety. Australia ranks in the middle in

¹⁶ There has yet been no case in the New Zealand High Court that has tested the legislation. For example, the case heard shortly prior to the new Act, *Peters v Collinge* (NZ High Court, 2NZLR at 575, 1993) concerning the expulsion of Winston Peters MP, the National Party Cabinet Minister, maintained the standard position 'that for legal purposes, political parties are private bodies. They have no statutory or public duties.' A case heard after the new law involving former members of the New Zealand First Party failed to proceed because of the lack of standing of the plaintiffs. (*Stevenson and Widerstrom and Winston Peters and ORS*. NZ High Court Registry CP 29/97).

¹⁷ Royal Commission on the Electoral System [New Zealand], 1986. *Towards a Better Democracy*, Appendices to the Journal of the House of Representatives H3, 26.

¹⁸ Department of Justice [New Zealand], 1993. *Electoral Reform Bill Report*, 3 May, 16. (Mimeo)

¹⁹ Electoral Law Committee on the Electoral Reform Bill [New Zealand], 1993, *Report*, Second session, Forty-Third Parliament, Tabled House of Representatives, 7.

²⁰ Electoral Act 1993, s. 71, *Reprinted Statutes* Vol. 35, 93. [New Zealand]

²¹ Courtney, J. 1978. 'Recognition of Canadian Political Parties in Parliament and in Law.' *Canadian Journal of Political Science* 11(1): 56.

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terms of the criteria but, most important, only the public face of the parties is subject to regulation. There is no regulation of the internal affairs of the parties, and little scrutiny by way of the courts. Although the Australian parties are willing to accept regulation for the purposes of ensuring that competition between them is fair, inasmuch as the disclosure of donations and the receipt of election funding may be argued to achieve this, they accept no scrutiny of their internal affairs. Their internal affairs, however, produce the candidates and policies by which they are known.

The Australian parties relationship with the state is asymmetrical. The electoral system, but not the parties' role in it, is highly regulated. The parties are lightly regulated in comparison to those countries where there is a suspicion of the role of parties, but not so lightly regulated that they do not appear in statute at all. The parties are no doubt happy with the position. The situation is, however, not static and Australian parties are finding that they are becoming liable to external scrutiny. The gradual encroachment of the law on political behaviour is advancing without a formal change to their private status. By various means the courts can now be called upon to judge, and provide a remedy, to all manner of disputes. The ability for matters to come before the courts depends on a number of factors, such as the legal status and rights of individual members as well as affiliated organisations and non-members, and the legal status of the parties arising from statute law.

The Legal Status of Members of Australian Parties

Where an association in some way controls a profession, or some other activity which 'substantially affects a person's livelihood',²² the courts have been willing to intervene on the basis of the common law doctrine of restraint of trade. This is probably the ground on which the Left faction NSW Labor party organiser Damian O'Connor stated, 'any individual who can argue that they've suffered economic loss by being denied a seat in Parliament because the ALP pulled a rort can go to court'.²³ The matter of Members of

²² Sievers and Baxt, 1984. 'The Rights of Members', 6.

²³ *Sydney Morning Herald*, 4 March 1997, 6.

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Parliament constituting a profession was considered in a recent British case of sexual discrimination in the selection of candidates. An industrial tribunal found that the Labour party 'unlawfully discriminated against two men in the terms on which it was prepared to confer on them an approval which facilitated possible future engagement in the occupation of being an MP'.²⁴ There is some likelihood that such a case would be successful in an Australian court because, 'where a person's livelihood ... is affected by some...decision of a non-profit association, the courts will assume jurisdiction'.²⁵

Whether more candidates will seek the assistance of the courts is a different issue. If a court finds that a preselection has been conducted in breach of the party constitution, the remedy it may grant is uncertain. For example, if there is a recognition that loss of future income has occurred, damages may be awarded. If, however, the court orders a fresh ballot, would the candidate run again, and if so would the numbers change? For example, on the second ballot (ordered after an internal investigation) in a 1996 preselection dispute in the seat of Murray,²⁶ the original winning margin increased considerably. In other words, the candidate who made the complaint was punished by the party, and the publicity given to the dispute led to the party being punished by the electorate. While a court may exercise a cautionary scrutiny, and a party be held up to public ridicule, the lack of a remedy for the complainant may well continue to keep these matters out of court. The exception may be a sitting Member near the end of a parliamentary career who has less to fear from upsetting the party. Even in this circumstance an offer of future preferment may be made in order to induce the person to withdraw the action. Such an offer was alleged by Senator Michael Beahan to have him drop his action against the Western Australian Labor party.²⁷ Nevertheless, the number of threats of action and the number of instances of members seeking legal opinion appears to be rising.²⁸

²⁴ *Jepson and Dyas-Elliott v The Labour Party and ors*, 1996. Reported in 1996 *Industrial Relations Legal Information Bulletin* 543, 10. See also Davis, H. 1995. All-Women Shortlists in the Labour Party. *Public Law Summer*: 207-14.

²⁵ Sievers, and Baxt, 1984. 'The Rights of Members', 7.

²⁶ Malcolm Fearn. Interview, 30 April 1998.

²⁷ The offer made to Senator Beahan and his staff was not delivered, despite his not proceeding with the action. Michael Beahan. Interview, 19 November 1997 and correspondence.

²⁸ Recent examples include Senator Synon LPA V (*Australian Financial Review*, 4 September 1998, 4), Senator MacGibbon LPA Q (*Courier-Mail*, 7 August 1998, 2), Stephen Mutch MHR LPA NSW (telephone conversation with staff member, August 1998).

The Legal Status of Affiliates and Non-Members in Australia

The scrutiny of the courts may be exercised on a wider range of matters. For example, in *Burton v Murphy*²⁹ the court found that the rules of the Labor party rested in the hands of the National Executive and that they had the power to install, in effect, a new regime in the Queensland division. This device has been used numerous times by the party to allow the National Executive to determine, among other things, new rules for preselections. The rules of the Liberal party were amended in 1994 and 1996 by the Federal Council³⁰ to give some limited powers to the Federal Executive to, amongst other things, review and overturn the selection of candidates. There has been no judicial consideration of these federal powers.

The ability of a party to reject applications for membership is an important power over candidate selection. More than 500 members of the South Australian branch of the Sporting Shooters' Association attempted to join the Liberal party in that State in 1996. The party rejected the applications, and one of the failed applicants took legal action.³¹ The case was dismissed on the basis that a political party had the right to deny anyone membership, and that an applicant, as opposed to a member, had no rights in the organisation. This is a fundamental power of parties, especially in the face of attempts to stack the organisation with new members. The South Australian division of the Liberal party greeted the decision with much relief. As no doubt did all other parties.

There are three issues of significance for preselection in the relationship between trade unions and the Labor party. The right of union members to decide on affiliation with the Labor party was canvassed in *Tanner*³² for the Federated Clerks Union in Victoria. The rights and manner of election of party delegates of an affiliated trade union was an issue

²⁹ *Burton v Murphy* (1983) 2 QLDR 321.

³⁰ LPA, 1998. *Federal Constitution*, Section 40. (f) (ii) and (g) (ii), 13–14.

³¹ *Baker v The Liberal Party of Australia (SA Division)* SCGRG 96/1486.

³² *Tanner and Darroch* No. V19 (1985) Industrial Law 16 IR 226. Lindsay Tanner MHR is now on the Labor frontbench.

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which was canvassed in *Adams*³³ for The Amalgamated Metals Foundry and Shipwrights Union in Tasmania. The issue of whether and under what circumstances a political levy may be imposed on a trade union was canvassed in *Williams*³⁴ for the Waterside Workers' Federation of Australia, Tasmania. In each case, the matters were justiciable because of the legal structure of the trade union and had major ramifications for Labor party preselection. The party has responded to the difficult issue of the behaviour of affiliates, over whom it can have no control, by passing rules specifying various preconditions for affiliation. For example, there is usually a proof requirement as to the number of union members and that the union membership has consented to affiliation and levies. The method of the election of delegates, as noted in chapter 4, may be a condition of affiliation but only in so much as it can be determined by the union, not the party.

The Legal Status of Australian Parties

There is nothing in the *Commonwealth Electoral Act* that specifies the legal structure of the party, for instance, that it has to become a legal entity by incorporating itself. The law of unincorporated associations generally governs the legal status of political parties in Australia. All divisions of the four major parties, save the Western Australian division of the Liberal party, the Western Australian and South Australian divisions of the National party and the NSW and Queensland divisions of the Democrats, are unincorporated. The significance of this status is that the parties are a legal non-entity. Most important the rights of members to take a dispute with a party to court are very limited.³⁵

Incorporation has major ramifications for the right of members to take issue with the decisions of the party hierarchy. For example, Queensland incorporation legislation states that 'the rules of the association shall constitute the terms of a contract between the members [and] where a member is deprived ... of a right conferred on him by the rules

³³ *Adams and Hill No. 1.20* (1984) 8 IR 137. *Amalgamated Metals Foundry and Shipwrights Union and Adams: and Adams and Hill Nos. 1.20 and 1.23* (1984) 8 IR 203 / 3 FCR 138.

³⁴ *Williams v Hursey* (1959) 103 CLR 30.

³⁵ Fletcher, K. 1996. 'Developing Appropriate Organisational Structures for Non-profit Associations.' In *Legal Issues for Non-Profit Associations*, eds. M. McGregor-Lowndes, K. Fletcher and A. Sievers. Sydney: Law Book Company, 28.

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... the Court shall have jurisdiction to adjudicate ... [Further], [a]n incorporated association shall be bound by the rules of natural justice in adjudicating on the rights of its members'.³⁶ Incorporation means having some rules that comply with state law. In the case of the Western Australian Liberal party, members have the right to inspect the membership list. Where membership numbers are the currency of party politics, this is a significant step. The Western Australian division of the Liberal party incorporated so as to better manage the financial assets of the division.³⁷ The result is that its constitution, which may otherwise have been non-justiciable, becomes an enforceable contract under company law. According to Forbes, 'incorporation makes the internal rules become a legally enforceable contract between the members and the body corporate, and among the members themselves'.³⁸

As Fletcher argued, the selection of an inappropriate legal structure 'may, unnecessarily, expose officers [of an unincorporated association] to personal liability, add to the costs of operation or deprive members control over their association's development'.³⁹ For example, the usual device that parties use to hold assets, through trusts, means that individual trustees must assume primary responsibility for any obligations generated by the association. The fact that few parties have taken this step would appear to indicate that a higher priority is given to the privacy of the machinations of the party than to any advantages that may accrue in financial matters, or to the legal rights of members.

Australian parties have been formally recognised in statutes⁴⁰ and in the Constitution in minor ways, and then only quite recently. In a sense, their right to exist was tested in the 1951 Referendum⁴¹ where the Commonwealth government sought to give itself powers to make laws in respect of communists where this was necessary for the security of the Commonwealth. The High Court decided that the *Communist Party Dissolution Act 1951* was beyond the government's powers. The consequent attempt by the government to gain

³⁶ Sievers and Baxt, 1984. 'The Rights of Members', 11.

³⁷ Jeremy Buxton, party official LPA WA. Conversation on or about 30 March 1998.

³⁸ Forbes, J.R.S. 1996. 'Judicial Review of Political Parties', 14.

³⁹ Fletcher, 1996. 'Developing Appropriate Organisational Structures', 1.

⁴⁰ The *Commonwealth Electoral (War-time) Act 1917* allowed soldiers serving, or who had served overseas, to vote for a party rather than a candidate.

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the powers through a referendum failed, and the Communist party was allowed to continue in existence. The term 'political party' first entered the Constitution in 1977⁴² with an alteration which sought to ensure that a casual vacancy in the Senate would be filled by a person of the same political party as the Senator chosen by the people. Major changes came about in 1983 as a result of the parties seeking public funding for elections.⁴³ For the first time in legislation, political parties were described as: an organisation ... the object or activities ... of which is the promotion of the election to the Senate or the House of Representatives of ... candidates endorsed by it ... is established on the basis of a written constitution ... that sets out the aims of the party... [has a] registered officer ... usually the party secretary, [and] ... a person shall be taken to have been endorsed as a candidate in an election if [inter alia] the Electoral Commission is satisfied, after making such inquiries as it thinks appropriate of the registered officer.⁴⁴ In 1991, contributions to registered political parties were allowed as tax deductions,⁴⁵ reinforcing the parties' access to public monies.

Each of these factors may increase the prospects of internal disputes being brought into the public arena through the courts. For example, it was recently reported⁴⁶ that the Labor party National Secretary received in his own name, as the registered officer, some millions of dollars of public funds due to the party (the same arrangement obtained for the nominees of the other eligible parties) indicating an enormous potential to be a subject of dispute. For example, in 1995, a person claiming to be the registered officer of the Greens sought the funds due to the party from the previous election. He failed to establish that he was the legitimate representative of the Greens.⁴⁷ Claiming public funds could cause some concern for a party which, for example, was in the middle of a federal intervention in a State branch that was itself the subject of legal proceedings, as occurred

⁴¹ *Constitution Alteration (Powers to Deal with Communists and Communism) Act 1951.*

⁴² *Constitution Alteration (Senate Casual Vacancies) Act 1977.*

⁴³ Reid, G.S. and M. Forrest, 1989. *Australia's Commonwealth Parliament 1901–1988: Ten Perspectives.* Carlton: Melbourne University Press, 126.

⁴⁴ *Commonwealth Electoral Act 1918*: s.4 (1), s. 123 (b), s.126 (2) (c), s.169B. (1), Reprinted as at 31 December 1995.

⁴⁵ *Income Tax Assessment Act 1936*, Paragraph 78(1)(aaa).

⁴⁶ *The Australian*, March 1998.

⁴⁷ *Williams v Australian Electoral Commission and the Greens* (1995) 21 AAR 467.

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with the 1983 intervention in the Queensland branch of the Labor party.⁴⁸ The issue of who should receive public funding would serve to intensify an already difficult situation. Indeed the long-running dispute between the former independent Member for Oxley and the Queensland division of the Liberal party⁴⁹ over the distribution of electoral funds narrowly avoided court, probably because it was overrun by the politically 'strategic' litigation that has occurred with a Liberal MP helping to fund an action by a former One Nation member. The action has successfully proved that the party is fraudulently registered.⁵⁰

The consequent deregistration of Pauline Hanson One Nation has stimulated the Commonwealth Electoral Commission to recommend⁵¹ that it be given express legislative authority to 'conduct reviews of the continuing eligibility of registered political parties', and 'specify the documentation it requires parties to produce in support of their application for registration and their continued right to remain registered'. It also recommends that the definition of a member of a political party be expanded to include the requirements for a person to have 'been formally accepted as a member according to the party's written rules; joined the party or renewed their membership within the previous 12 months and paid a minimum annual membership fee of \$5.00'. Further, 'the Act provide the Australian Electoral Commission with the power to set standard, minimum rules which would apply to registered political parties where the party's own constitution is silent or unclear'. These matters are still to be considered by the Parliament, and in the light of the audit of the parties' rules, present a potential for

⁴⁸ *Burton v Murphy* (1983) 2 QLDR 321.

⁴⁹ The Liberal party disendorsed Pauline Hanson (Queensland) after the nominations for the 1996 election had closed so her name appeared on the ballot paper as a Liberal candidate. The Liberal party received the public funding for its candidate (Hanson) despite disowning her, and despite the likelihood that much of her vote, on which the funding is calculated, was expressly not Liberal (Hanson received a swing of 23% with a Queensland average to the Liberal party of 8%).

⁵⁰ A former One Nation (the party now headed by Hanson) official commenced (27 July 1998) an action in the Queensland Supreme Court to argue that the party was not properly registered and should not receive \$500,000 in election funds from the 1998 State election. The action was funded in part by Hon. Tony Abbott MHR LPA NSW. *The Courier-Mail*, 3 September 1998.

⁵¹ Australian Electoral Commission, 2000(b). *Funding and Disclosure Report Following the Federal Election Held on 3 October 1998*. Recommendations 13, 14, 16.

<http://www.aec.gov.au/pubs/reports/disclosure98/main.htm>

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extensive litigation if the parties should decide to grant the Commission the powers it seeks.

This is not to suggest that the more frequent appearance of parties in legislation will necessarily constrain their actions. For instance, in *McKenzie*,⁵² it was confirmed that there was no constitutional impediment to the parties making electoral rules to suit themselves. Chief Justice Gibbs remarked in the case that ‘Members of Parliament were organised in political parties long before the Constitution was adopted and there is no reason to imply an inhibition on the use of a method of voting which recognizes political parties provided that the Constitution itself does not contain any indication that such a method is forbidden’.⁵³

The reluctance of the courts to intervene in the parties’ internal affairs stems from the 1932 case where the Victorian Labor Premier Hogan was expelled by the Labor party and sought reinstatement through the court. The High Court in *Cameron v Hogan*⁵⁴ could not provide the Premier with a remedy and decided that political parties were voluntary associations over which the court had no jurisdiction. This authority has generally kept disputes out of the courts which have maintained the view that ‘there is no contractual or other relationship that exist between the members of an association and the association (where it is unincorporated), or between themselves to give them standing to challenge decisions of the association’.⁵⁵

The policy expressed in *Cameron v Hogan*, that the courts will generally refuse to intervene in the affairs of private associations unless it can be shown that a member’s proprietary rights are affected or that the rules are intended to create legal relations, has clearly been in the minds of the parties. For example, the 1994 Labor National Platform reprinted the 1955 Conference resolution, stating that the party ‘cannot concede the right

⁵² *McKenzie v Commonwealth of Australia and others*, High Court of Australia (1984) 57 ALR 747. An independent Senate candidate, McKenzie objected to the ability of parties to organise an ‘above the line’ vote, in which a voter could indicate with a single mark a complete set of preferences. Only registered parties could register their ticket for the purposes of above-the-line voting.

⁵³ *McKenzie v Commonwealth* at 748.

⁵⁴ (1934) 51 CLR 358.

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of any member ... to initiate legal proceedings for the purposes of establishing the constitutional behaviour of the Labour movement'.⁵⁶ The 1996/97 Labor NSW Platform stated that 'These rules ... will not bring about any legal relationship'.⁵⁷ It has been argued, however, that the very pledge that members make when they join a party to uphold the constitution and rules, meet some of the requirements of a contract such that the courts should seek to 'enforce the contract of membership in the same fashion as any other contract'.⁵⁸ Indeed the minority opinion of Duffy J. in *Cameron v Hogan* indicated a strong argument for the courts to intervene in disputes within parties. '[I]n view of the extreme importance to members of the preservation of the rights given them by the rules, rights the loss of which may be far more grievous and hurtful than expulsion from a social club, and the fact that elaborate provisions are to be found in the rules to state and safeguard those rights, I can see no reason for concluding that the parties intended that their rights should not be dealt with in a Court of justice'.⁵⁹

*Baldwin v Everingham*⁶⁰ was the first case where a court found jurisdiction over an internal dispute in a political party in Australia.⁶¹ In 1991, Mr Baldwin, a member of the Liberal party of Queensland, claimed that he had been improperly excluded from the Selection Council process by the Division Executive, and as a consequence had failed to win preselection for the federal seat of Moreton. For the first time a judge distinguished the *Cameron v Hogan*⁶² High Court decision which had regarded parties as no more than voluntary associations and as such not within the jurisdiction of a court. Dowsett J. found the dispute was justiciable because the rules of the Liberal party, although a voluntary association, were registered under the *Commonwealth Electoral Act 1918*. He concluded,

⁵⁵ Sievers and Baxt, 1984. 'The Rights of Members.' 4.

⁵⁶ ALP, 1994. *Platform*, 333.

⁵⁷ ALP NSW, 1996–97. *Platform and Rules*, 101.

⁵⁸ Lindsay, S. 1987. 'Jurisdiction to Review Expulsion from a Political Party.' *Melbourne University Law Review* 16: 346.

⁵⁹ Lindsay, 1987. 'Jurisdiction to Review', 346.

⁶⁰ (1993) 1 QLDR 10, 24.

⁶¹ Other than a 'property' dispute. For example, the intervention by the ALP National Executive in Queensland confirmed the ownership of the party by the National Executive. *Burton v Murphy* (1983) 2 QLDR 321. A dispute between two factions of the AD WA as to the use of the name 'Australian Democrats' is still subject to litigation. *Australian Democrats WA Division Inc and Anor v Australian Democrats VIC and Ors*. Unreported case WA Supreme Court, 1522 of 1997.

⁶² (1934) 51 CLR 358.

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‘... there is now a significant public interest in the enforcement of the rules of registered political parties’.⁶³ He found that the decision of the party executive was contrary to the party constitution, and that the selection process had miscarried. A new preselection took place. Baldwin, however, did not stand, so his was a pyrrhic victory.

A second case⁶⁴ involved the Liberal candidate for the Federal seat of Macquarie. In 1995, Jeanette Thornley was subjected to a ‘performance audit’ by the Federal Key Seats committee and found to be not adequately performing her duties as a candidate. As a result, she was disendorsed. The party executive selected a new candidate without a plebiscite of local members, claiming that there was insufficient time to hold one because of the imminent possibility of a Federal election. Thornley claimed that this was unconstitutional and took the matter to court. The subsequent hearing determined that the executive acted within its powers and Thornley had to carry costs of \$70,000.⁶⁵

A third case was that of Gerald Sullivan Labor MLA for Wollongong, who lost a preselection ballot in 1999. Sullivan alleged the improper use of the N. 40 Rule whereby, under prescribed circumstances, the Labor party NSW Administrative Committee may forgo a local plebiscite and, in combination with branch delegates, select a candidate. He further alleged an improper credentials procedure, which adversely affected the number of eligible delegates to which some branches were entitled. The judge found that the Administrative Committee’s suspension of the ballot was within the rules and that although the credential protest should have succeeded, the delegate numbers would not have varied sufficiently to change the outcome of the ballot. Sullivan had to carry his costs for the action.⁶⁶

These few cases hardly inspire an aggrieved member to take a political party to court. In addition to the financial risk involved, the courts have only looked to the application of the rules. They have not looked to see if the rules have been applied fairly, or indeed if

⁶³ (1993) 1 QLDR at 24.

⁶⁴ Thornley and Heffernan CLS 1995 NSWSC EQ 150 and CLS 1995 NSWSC EQ 206.

⁶⁵ Jeanette Thornley. Conversations, late 1998–early 1999.

⁶⁶ Sullivan v Della Bosca (1999) NSWSC 136.

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the rules themselves are fair. These are matters reserved for cases involving the interpretation of legislation or the decisions of public authorities, or indeed to contractual relations where equity is a consideration. For example, in the Thornley case, the discretion that the NSW Liberal Executive reserved for itself under the rules was extraordinarily wide. McLelland CJ found that public law principles such as the fair application of rules had no application to voluntary associations.⁶⁷ This left him with a literal interpretation of the rules such that so long as the executive believed that there was insufficient time to hold a new vote it was within its powers to use the emergency procedures. The decision in fact entrenched a very broad power of the executive to disendorse a candidate and endorse its own without reference to the membership. In the second case, the notorious N. 40 Rule of NSW Labor can be invoked by a simple majority of the Administrative Committee to ensure the result that it wants, and not necessarily in accord with the local membership.

While *Somes*⁶⁸ argues that the status of parties may well change following the requirement for registration, *Forbes* cautions that the provisions of the Act 'have nothing to do with the relation of members to each other or to the party. They govern a single external affair between the Commonwealth and the party as a whole, leaving the party to retain the unincorporated character which has traditionally minimised the risk of judicial intervention'.⁶⁹ Indeed, the situation before the most recent cases, *Clarke v Australian Labor Party*,⁷⁰ was hardly a major breakthrough in asserting the rights of members to fair dispute processes or democratic outcomes. The *Clarke* cases, however, have opened to public scrutiny the integrity of the recruitment of party members and the processes afforded members for the resolution of disputes. The dispute arose over an attempt to defeat *Ralph Clarke*, a former deputy-leader of the South Australian parliamentary Labor party, at preselection. *Clarke* alleged that 70 new members in his area joined the party on 26 January 1999 but did not pay membership fees personally nor, when invited to, did they attend the local sub-branch. The same occurred in other parts of the South Australian

⁶⁷ *Thornley and Heffernan* CLS 1995 NSWSC EQ 206 at 9.

⁶⁸ *Somes, T.* 1996. 'The Legal Status of Political Parties.' In *The Paradox of Parties* ed. M. Simms. Sydney: Allen and Unwin, 157.

⁶⁹ *Forbes*, 1996. 'Judicial Review', 11.

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party. In all, 2,000 members were 'joined' on 26 January, which, in a party with a membership of just 3,500, was a veritable stacking spree. The cost of these memberships was \$42,000, which by extension means that 'the entire South Australian branch [division] could be purchased for less than \$100,000'.⁷¹

The question that arose was whether the struggle for power within the South Australian Labor party was played out according to the rules of the party. Mullighan J. found⁷² a number of serious deficiencies in the way in which those responsible for the administration of the party had handled the issues. He found that the administration had allowed 2,000 members to join without the fulfilment of all the obligations of membership as specified in the rules. He found that when the matter had been drawn to their attention they had not properly investigated it. For example, they had sent the matter for consideration to the Rules Committee as opposed to the Disputes Tribunal. Mullighan stated, 'I reject the contention that the rules committee was an appropriate internal dispute mechanism ... The complaints concerned actual breaches of the Rules, not the need for reform ... The rules committee could not resolve the plaintiff's grievances'.⁷³ Similarly, he rejected the administration's offer to Clarke to raise the matter at a Special Convention. 'I do not think the Special Convention ... can be regarded as an internal dispute resolution mechanism'.⁷⁴ Further, the administration attempted to make good its error in allowing the memberships to stand by proposing a rule change to be put at the Special Convention. Mullighan's view of this procedure was scathing, 'retrospective amendments which prejudice the interests of a member should be regarded as unconstitutional'.⁷⁵ Mullighan ordered that the proposed amendments be prevented from being put to the Special Convention.

With the comprehensive defeat in the first case, the administration attempted to hold a preselection convention on the basis not only of excluding the 2,000, but also of any other

⁷⁰ Clarke v ALP, SASC 365 and 415.

⁷¹ Ralph Clarke MHA, ALP SA. Interview, 27 October 1999.

⁷² Clarke v ALP, SASC 365.

⁷³ Clarke v ALP, SASC 365, 28.

⁷⁴ Clarke v ALP, SASC 365, 29.

⁷⁵ Clarke v ALP, SASC 365, 29.

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member who had validly joined, by allowing the delegates appointed in 1997 to remain in place. Clarke also took this matter before the court. The decision of Lander J. stated that ‘No Convention can be called for the purpose of considering preselection of Parliamentary candidates unless delegates to the convention are appointed or elected by reference to the entitlements of the affiliates as at 30 June 1999’.⁷⁶

The Implications of Clarke v Australian Labor Party

There are a number of outcomes from the Clarke victories. There is a Rules Committee review, which appears to be leaning towards a recommendation that members ‘must earn their stripes’⁷⁷ before they will be eligible to vote in a preselection. This will entail the twice renewal of a ticket at the sub-branch, in effect three years of fee-paying, and the requirement that the sub-branch will have 60 days to lodge with Head Office an objection to membership. The policy behind the proposed rule changes is to encourage a more transparent process of membership recruitment and renewal. The effect may be to slow and regularise the battle for preselection through recruitment.

There is also a more serious second matter. This is the integrity of association of the party. An association that consists of a large number of people who are unaware of their membership, or who have that membership paid for by others, or who have joined without any apparent adherence or knowledge of the objectives of the association, will not instil a great deal of confidence that it is an association of free individuals. When that association is a political party and selects candidates to run for public office, the idea that it is an association of free individuals is especially important. In the wake of the Clarke judgements, and accepting that Australian parties have to balance the openness or exclusivity of their membership, they will have to provide avenues to voice opinion and dissension. Further, those avenues need to be something more than the option to leave the party.

⁷⁶ Clarke v ALP, SASC 415 at 26.

⁷⁷ Ralph Clarke. Interview, 27 October 1999.

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The exposure to public scrutiny of the party may have a salutary affect on the poor behaviour shown by the party officers and lead to a more transparent competition for recruitment. More far-reaching, though, is the fact that the Labor National Secretary has alerted the Disputes Tribunal in each branch that they will have to consider issues on the merits and according to the rules or else be liable to the scrutiny of the courts. As mentioned in Chapter four, members of a disputes tribunal will be chosen for their political allegiance, and tribunals in political parties can rarely exhibit the standards of impartiality of a court. The Dreyfus Report to the Victorian Labor party noted that party members 'need to be able to take disputes to a Tribunal which is seen to be beyond reproach, and that the existence of such a Tribunal would in itself act as a deterrent to breaches of Party rules or other unacceptable conduct'.⁷⁸ He recommended that a single-member tribunal be elected by 75% of the State conference vote. But this very method was introduced in the South Australian Labor party in 1995! It is one thing to have the right tribunal; it is another to give members proper access.

The costs of the court actions, which were awarded against the Labor party, were estimated by Ralph Clarke to be well in excess of \$100,000. The party had sought to appeal against the decision of Mullighan on jurisdiction but abandoned that course on receipt of several legal opinions of the likelihood of failure. The justiciability of party disputes is now very firmly based, the management of the contest for power within political parties will henceforth be scrutinised by the courts—at least in so far as the application of the party rules are concerned.

Once a court has accepted jurisdiction to review a political party dispute, what issues may it consider, and how may it deal with them? Following the discussion in Forbes⁷⁹ a court may declare a party decision invalid and restrain any attempt to enforce it, but it is not the court's prerogative to administer the party. For example, a pre-selection may be declared void but the court cannot declare a new candidate. Where jurisdiction does exist, review depends on a finding that the authority in question did not have the power that it

⁷⁸ Dreyfus, 1998. *Panel of Review*, 25.

⁷⁹ Forbes, 1996. 'Judicial Review of Political Parties', 6.

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claimed.⁸⁰ Or, if it did, that it was not entitled to exercise it in the way, or in the circumstances that it did, or indeed that it misinterpreted the rules,⁸¹ or that there was a lack of procedural fairness—a right to be heard, and a hearing from a decision-maker who is free from bias.⁸²

The Mullighan judgement goes further than the mere interpretation of words. There is also the matter of proper process, the right way to hear a dispute. In that sense, Australian parties have ceased to be private associations, an instrument of the state has questioned their integrity. The question remains whether some parties will find an advantage in having a legislative base to the party system, as has occurred in New Zealand⁸³ and elsewhere (see Avnon⁸⁴ for a survey). For example, the Democrats want the Australian Electoral Commission to conduct the ballots for party preselection,⁸⁵ and the review of the Queensland Constitution has raised the issue of a statutory base for political parties.⁸⁶ At the end of the day, the remedy that the courts provided Clarke was not sufficient to secure a political victory. He subsequently lost his preselection, but at least there is a clearer set of rules as to what is and what is not acceptable behaviour.

Conclusion

Clearly, entering the confines of essentially private organisations, albeit when they are playing a public role, is difficult. It is made easier, though, by the parties' propensity to let them into the public arena by producing legislation that delivers them considerable public benefit. The statutory obligations of registered parties under the *Commonwealth Electoral Act* may only require a proper accounting for election expenses, but there may also exist an assumption that the candidates specified under the *Act* and shown on the ballot paper arrived there under fair circumstances.

⁸⁰ This was the finding in *Baldwin v Everingham*.

⁸¹ Norrish QC, advice to ALP NSW, 27 February 1997. (Mimeo)

⁸² Part of the allegation in the Beahan case. Michael Beahan. Interview, 19 November 1997.

⁸³ Electoral Act 1993, s. 71, *Reprinted Statutes* Vol. 35, 93. [New Zealand]

⁸⁴ Avnon, D. 1995. 'Party Laws in Democratic Systems of Government.' *The Journal of Legislative Studies* 1(2): 283–300.

⁸⁵ Murray, Senator Andrew. 1998. *Submission to Senate Finance and Public Administration Committee*.

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If the parties were to lose control of their internal processes because of misdeeds or incompetence, that could reinforce the argument that they are ‘a hindrance to democratic processes.’⁸⁷ If the parties manage the system fairly, but still lose control, it may diminish the contribution that they now make, principally in the management of conflict, acting as a guide to past performance upon which the electorate may pass judgement, and selection of candidates. Perhaps the parties should ensure that their rules are published as they register with the Australian Electoral Commission. This would ensure an informal external scrutiny and perhaps forestall any more formal external scrutiny.

The USA and Germany may have a history of distrust of parties; Australia may not, but may still end up with its parties being subject to external control. Bochel and Denver⁸⁸ observe that ‘In a few political systems the importance of candidate selection is recognised to the extent that rules about it have been incorporated into election law...’ For almost half a century, US observers⁸⁹ have proposed changes to their party system in the name of responsible government, which would look remarkably like the Australian system. Australia may be witnessing a *de facto* shift of control to external bodies; it is unclear who, if anyone, will be the beneficiary.

⁸⁶ Queensland Constitutional Review Commission, 1999. *Issues Paper: for the Possible Reform of and Changes to the Acts and Laws that Relate to the Queensland Constitution*. Brisbane: QCRV.

⁸⁷ Jaensch, 1994a. *Power Politics*, 244.

⁸⁸ Bochel, J. and D. Denver, 1983. ‘Candidate Selection in the Labour Party: What the Selectors Seek.’ *British Journal of Political Science* 14: 45.

⁸⁹ American Political Science Association, 1950. ‘Toward a More Responsible Two-Party System.’ *American Political Science Review*, 44 (2), 1–14. Pomper, 1992. *Passions and Interests*, 147.

Chapter 8

Australian Parties: To Regulate or Not?

The legitimacy of the major parties in Australia to preselect candidates for public office has rarely been called into question—although Rawson's¹ observations of the Labor party 'machine' of the 1950s and 1960s come close—because the parties have been treated as essentially private associations. The one clear exception has been the call by Queensland Premier Peter Beattie to have future preselections of the Labor party in Queensland, conducted by the Australian Electoral Commission.² The status quo of parties being treated as private associations remains intact. If, however, the parties have become public, at least in so far as their role in selecting candidates for public office is concerned, then their role may become vulnerable to the scrutiny of others, even on behalf of their own members. Legal intervention could have a democratic impact, by transferring power from the leaders to the members. Then again, it could make the parties vulnerable to a level of scrutiny inconsistent with their successful competition for power. The parties will have to think carefully about leaving themselves vulnerable to external intervention, otherwise the flavour of debate that is current in countries with a more interventionist system will take hold. For example, in the USA, Lowenstein³ argues 'both the structure of the rules affecting the parties and the question of who sets these rules should ordinarily be resolved in the give-and-take of the political process,' however, 'if and when groups within a party act oppressively against one another, judicial infringement of party freedom of association ... to prevent such oppression may well be called for'.

A Case for Intervention in the Parties' Candidate Selection

Lowenstein's argument is that the limits to democracy are reached when one group acts oppressively against another. Presumably, oppressive does not mean simply that one side wins all or most of the time. The desire to share power is different to the necessity to give

¹ Rawson, D. 1966. *Labor in Vain? A Survey of the Australian Labor Party*. Croydon: Longmans, ch. 2.

² Reported in *The Courier-Mail*, 2 December 2000.

³ Lowenstein, D. 1993. 'Associational Rights of Major Political Parties', 1771, 1787.

everyone a say on all matters. The difficulties for public policy in setting rules for fair play for political parties are not only that the parties concerned make the laws, and that certain kinds of ‘oppressive’ behaviour may be unavoidable or not amenable to rule changes, but also that standards of behaviour are a matter of judgement. The investigation of the integrity of the preselection process of the major parties provides some basis on which to judge the standards of behaviour. The results of the audit of the rules and behaviour of Australia’s major parties suggest that external intervention may be warranted. This, despite the parties’ considerable efforts at self-regulation. What form such intervention should take is unclear particularly as all forms of oppressive behaviour are not equally amenable to remedy by the imposition of rules. There are dangers to the broader political system when rules of behaviour are imposed on parties. An important one is the loss of public trust that external scrutiny presumes. Nevertheless, the major parties have a privileged and protected role in parliamentary politics. With such advantages, there should be a price to pay.

The broadest conclusion to be drawn from the audit of the parties’ rules is that there are a number of faults in the integrity of the selection processes of each of the major parties in Australia. These faults are a lack of competition between the constituent parts of the party, unfair procedures in the ballot and breaches of freedom of association. Some of the faults are more serious than others and some are more amenable than others to a formal remedy. The three elements of the integrity of preselection—competition, fair process, integrity of association—generate a number of critical issues for the parties’ management of preselections.

First, competition between the constituent parts of the parties is clearly at risk where some voters have a privileged position. This occurs in the following circumstances:

- Any rule that allows established practice to be overruled without clear safeguards for the members inevitably transfers power to the already privileged. This is clearly anti-competitive and some of the worst abuses of democratic practice occur under such rules.
- Where a group of voters is allowed to join the party on a group basis. In the case of the Labor party this is particularly so with the affiliation of trade unions. Trade unions bring with them numbers, organised for other purposes, which translate

directly into ready-made voting blocs. Their power derives from the method of the selection of their delegates to the forums of the party. The ability to caucus cannot be at fault *per se*, for example, the discipline of parties is a fundamental element of the stability of government. However, the fact that there is no choice in the selection of delegates to a party forum and that the union secretary controls these as of right, is anti-competitive. A remedy is to force unions, as a condition of affiliation, to elect their delegates directly from the members of the union on a proportional representative basis.

- Where some voters have special voting rights—those in special branches or with particular attributes—the result is anti-competitive. If internal ballots are to be fair, there should be no instances where a member receives more than one vote. Measures such as affirmative action for women should at least be acknowledged to have temporary status only. Privileged sections of the vote rarely change the rules once they have achieved power. What may commence as an affirmative measure may end as an oppressive measure.
- Similarly, the number of voters whom a delegate represents should be equal. The custom of allocating the same number of delegates to electorates regardless of their membership is clearly against the principle of one-vote, one-value. Less clear-cut is the practice of assigning members to electorates based on branch membership, rather than residence. The House of Representatives system is clearly based on residence in the electorate, voting rights do not extend beyond the boundary. The system of ignoring branch boundaries, common in the Liberal party, is at odds with the system for which it selects candidates. It intensifies the potential for interest group representation as opposed to party representation. Voting for delegates at Annual General Meetings is tantamount to a breach of one-vote, one-value inasmuch as the effective vote is very low in such circumstances. The practice is common in the Liberal party and is not a sound basis for the election of delegates. The better practice is to have, unambiguously, a separate vote for delegate positions.
- Although voting systems produce different but equally defensible outcomes in terms of representation, any that allow for a winner-take-all outcome should be discouraged. Parties such as the National party and the Democrats may not need to accommodate different views in other than an individualistic way. However, as

political parties at their essence are meant to aggregate and compound a variety of views into manageable parts, a proportional voting system is far more likely to produce representation of a variety of views.

At any point in the preselection process, including the composition of panels, where an unfair advantage may be obtained, the measures employed should be abolished. In the instances above, each is amenable to remedy by new rules and procedures. Competition for power within the parties, where it is based on the weight and composition of constituent parts, can be improved.

Fair intra-party electoral procedures are clearly at risk in the following circumstances:

- Simple matters like the use of the secret ballot or proper access to the roll of voters are fundamental, and yet some of the parties fail to make adequate provision. The electoral procedures are the most obviously amenable to standard rules of behaviour and the parties' refusal to fall into line with commonly accepted procedures is a major weakness. This is also an area where the parties have agreed on rules for the public but not themselves.
- One element of the electoral processes is the right to a fair hearing in the event of a dispute. This matter is beginning to be remarked upon by the courts and in time may well force the parties not only to have the proper structures and procedures in place to hear disputes, but to use them. The courts are particularly expert in this area and may be best placed to fulfil that role.

The free association of members is clearly at risk in the following circumstance:

- Where members are recruited to a party without their explicit consent, or in their ignorance of the objectives of the party, or by payment of membership by others.

The parties have, by and large, pointedly not established rules to ensure that members pay their own membership dues or that they understand the consequences of their actions in joining a political party. The various attempts to slow the pace of recruitment ignore the basis on which it occurs. This is perhaps the most serious weakness in the self-regulation of the parties. If the party members fail to distinguish themselves from party voters, the rationale for the party and its privileges in public elections is significantly weakened. A party that consists of some 'super' activists and others who are members in name only is

a serious matter. This is not to argue that parties, like many volunteer organisations, do not rely greatly on the energetic few. They almost inevitably do. Some members will be better competitors than others. The problem is not the competition for members, but the abuse by the privileged few of the integrity of free association. More acutely, a publicly-funded party where the need for members has declined is especially vulnerable to falling into the hands of a few. Power may always be in the hands of a few, but where it does, it should do so within fair rules of play, and with recourse.

There should be clear and unambiguous rules in every party to ban the payment of an admittance fee. Only Western Australian Labor and the South Australian Liberals have such a rule. The Labor rule is much diminished, though, as the local branch member has virtually no vote in the election of candidates. The Labor party has made a major change in this area by recently adopting new rules at its 2000 National Conference, to be implemented by all divisions, by June 2001. 'It is an abuse of Party rules for an individual or group/s to fund Party membership for other individuals or groups of individuals who would otherwise be unwilling to pay their own subscriptions'.⁴ It remains to be seen if this rule is clear and effective in its application.

There are matters at the heart of preselection politics that are not amenable to remedies by changes to the rules. The ways in which people choose to band together for support and for convenience, or for resources or for ideological reasons are not only difficult to regulate, they are not necessarily undemocratic. The entire party system is based on the dynamics of group politics and on the interplay of the people and their careers, causes, and the dedication, enthusiasm and talent that they bring to politics. The existence of factions is much lamented by members of political parties who are not members of a faction, and sometimes by those who are! These devices for career development and for collecting and wielding power are parts of the competition for power within the parties. Competition is a critical element of democracy; the existence of factions may indicate that competition is alive and well. Where there is evidence that competition is so highly organised that it is oligopolistic or even monopolistic, then critical judgement can be passed upon the behaviour of factions. More important is how the factions come to accumulate and maintain power. If they do so by unfair means, then the remedy lies in

⁴ ALP, 2000. *Rules*, Rule 16a. (photocopy)

undoing the means, not attacking the factions. Factions are a microcosm of the party system and they can be subjected to the same scrutiny as the parties. However, if within a faction, matters are agreed between members as to how positions are to be distributed or votes to be taken, there can be no investigation unless and until the matters affect the formal part of the party rules.

At another level, if power is obtained only by the extraordinary exertion of time and energy, the matter cannot be said to be anti-democratic. If members of a party are willing to defer to more experienced persons in the party, that is, to hand power to someone else, it is difficult to call the action anti-democratic. If, however, a person or group accumulates power because there are devices which give them an unfair advantage at the outset, for example because they have two votes, or a bloc of delegate votes as of right, the matter can be put right.

The ethos of the major parties was distinguishable in the analysis of the integrity of the parties. At the local level, too great a control by the local politician has a popular democratic appeal, but in fact it is the most easily manipulated and probably subject to the most common of poor practices in rigging branch enrolments. A degree of sharing power with the rest of the party is to be encouraged, as is a degree of scrutiny from outside the electorate. A party, such as the National party, with a dispersed constituency, and where seats are few and relatively safe, will have little practice at the business of preselection. The tendency will be to leave matters to the executive managers of the party. Indeed, where the ideological divisions are apparently few, the focus of the electoral panel and management will be on the candidate as a representative, not as the most prolific recruiter. An ethos of the peer group selecting the 'best' candidate is best suited to selection based on judgement of interests rather than superior resources. How this can be achieved must be a matter of rules and learning. Certainly it is not encouraged in parties where there is real incentive to recruit members with no regard to the contribution of the member than as a vote in a plebiscite. These matters are inevitably value-laden. There is no democratic ethos outside of competitive structures, fair processes and organisational integrity. Except that a party that strives towards a considered deliberation, as opposed to a contest of resources or recruiting, is less likely to stretch the limits of organisational integrity. It is more likely to maintain a distance from the electorate that allows for a distinction between party voters and party members. In

that distinction lies a key rationale for the monopoly of the selection of members of parliament to be in the hands of the parties. These matters of ethos are important and can be gleaned from the observations of the participants, but they are not matters that can change without the assistance or in the absence of rules. An agreement by all parties to construct a well-balanced and well-established peer group panel requires the sort of assurance to all the interests concerned and the sort of protection that only laws (rules) can enforce.

The limits to the democratic practice, especially within the confines of a free association, are relatively clear. Certain guideposts can be agreed to show the way to good practice, but there comes a point when the game begins and some win and some lose. A too strict set of rules or definition of democratic practice may be inimical to competition within a party; it may deflect a party from the broader competition with other parties—an important business.

Possible Forms of Intervention in the Affairs of the Parties

There is an argument that some form of external intervention in the affairs of the parties is warranted. If so, the question is what form it should take. On the other hand, there may be ways in which the parties may forestall intervention. They clearly have the power to avoid legislative intervention, but there may be actions they can undertake to answer the critics, not simply ignore them.

The Joint Standing Committee on Electoral Matters report into the 1998 Federal Election⁵ discussed two matters that relate to the internal operations of parties as they affect preselection. First, the Committee noted the Australian Electoral Commission's suggestion that the *Commonwealth Electoral Act* should clarify party membership status for the purpose of party registration. It suggested, 'that a person must be accepted as a member of the party by the party's own rules, have joined the party or renewed their membership within the previous 12 months and paid a minimum annual membership fee

⁵ The Joint Standing Committee on Electoral Matters, 2000. *1998 Federal Election: Report of the Inquiry into the 1998 Federal Election and Matters Related Thereto*. Parliament of Australia. <http://www.aph.gov.au/house/committee/em/elect98/report.htm>

of \$5'.⁶ The Committee recommended (Recommendation 50) that the definition of a member of a political party in the Act be expanded to include the requirements that a person must, 'have been formally accepted as a member according to the party's rules, remain a valid member under party rules, not be a member of more than one registered political party unless the parties themselves have sanctioned it, and have paid an annual membership fee'.⁷ The Opposition committee members opposed this recommendation on the grounds that they were 'concerned that this intrusion into the ability of parties to draft their own rules may not be appropriate, and that any such provision, may unless they were very carefully drafted, have unintended consequences'.⁸ The major issue is whether the words, 'have paid an annual membership fee' imply that the member pays the fee and not another person on their behalf. It is no surprise that the Opposition (Labor) members were wary of this recommendation as so much of the challenge to the integrity of their association comes in the form of 'sign-ups'.

Second, the Committee noted the Australian Electoral Commission's view that 'most political party constitutions are scant, and inadequately address the internal functioning of membership-based organisations'. In fact, many of the parties' constitutions are not scant at all; they are the constitutions of long-lived and mature organisations. They may, however, not be adequate as guides to good democratic practice. It was the view of the Commission and agreed by the Committee that the Commission should not have the power to impose itself upon the internal operations of the parties or to impose a definition of what is a democratic structure. The Committee was satisfied that the current approach for registration whereby the parties lodge their constitution was adequate. This was not the view of the Democrats who wish for a regulatory regime similar to that for corporations. They argue that the common law has been inadequate as a form of scrutiny and that the *Commonwealth Electoral Act* does not address the internal rules and procedures of political parties. The Democrats want to expand the Main Report recommendation (Recommendation 52) that political parties be required to lodge a constitution with the Australia Electoral Commission that must contain certain minimal elements. Among other things they seek:

⁶ JSCEM, 2000. *1998 Federal Election*, 135.

⁷ JSCEM, 2000. *1998 Federal Election*, 136.

⁸ JSCEM, 2000. *1998 Federal Election*, 160.

- 'a) The Commonwealth Electoral Act be amended to require standard items to be set out in a political party's constitution, in a similar manner to the Corporations Law requirements for the constitutions of Companies;
- e) The key constitutional principles of political parties should include: the conditions and rules of membership of a Party; how office-bearers are preselected and elected; how preselection of political candidates is to be conducted; the processes that exist for dispute resolution; the processes that exist for changing the constitution.
- f) The relationship between the party machine and the party membership requires better and more standard regulatory, constitutional and selection systems and procedures, which would enhance the relationship between the party hierarchy, office-bearers, employees, political representatives and the members. Specific regulatory oversight to include: scrutiny of the procedures for the preselection of candidates in the constitutions of parties to ensure they are democratic; all important ballot procedures within political parties to be overseen by the AEC to ensure proper electoral practices are adhered to'.⁹

The Democrats are particularly scathing of the 'scourge of branch-stacking and pre-selection abuse' and suggest that a 'Member or Senator who has won their seat through branch stacking or pre-selection abuse can be seen as morally corrupt'.¹⁰ To counter the problem, they recommend 'that the JSCEM and the AEC give closer scrutiny to branch stacking and pre-selection abuses (Recommendation 6.9)'.¹¹ They seek, in particular, to use the public principle of 'one-vote, one-value', and further recommend (Recommendation 6.10) 'that the Commonwealth Electoral Act 1918 be amended to ensure the principle of 'one vote one value' be a prerequisite of political party processes'.¹² They suggest that if such a principle were translated into political parties, it would mean that no member's vote would count more than another's and that this may rid the parties of 'undemocratic and manipulated pre-selections, delegate selections, or balloted matters'.¹³

The elements for the constitution of each party as set out in (e) above are not controversial. Each of the party constitutions contains each of the elements. The elements

⁹ JSCEM, 2000. *1998 Federal Election*, 177.

¹⁰ JSCEM, 2000. *1998 Federal Election*, 178.

¹¹ JSCEM, 2000. *1998 Federal Election*, 179.

¹² JSCEM, 2000. *1998 Federal Election*, 179.

¹³ JSCEM, 2000. *1998 Federal Election*, 179.

contained in (f), like the overseeing of party ballots by the Australian Electoral Commission, are a different matter entirely. Further, 'the relationship between the party machine and the party membership requires *better* and more *standard* regulatory, constitutional and selection systems and procedures' (emphasis added). What is a democratic weight of balance between branch members and unions, between local branch members and all other members, between members and the central executive? What is an insufficient number of members in a local district that would satisfy the Democrats that the division executive should select the candidate, only consulting the locals? It may be possible to specify some of the basics of procedure as per the *Commonwealth Electoral Act* and some elements of free association, such as the self-payment of a joining fee, but the balance or weight of votes is very difficult. The principle of one vote, one value is easy for a small party like the Democrats but a real problem for the larger parties. The notion that the Australian Electoral Commission should oversee 'important ballot procedures' is a very large step indeed, certain to cement the view that the electorate does not trust the parties. Still, the fact that the discussion is abroad¹⁴ stems directly from some considerable weaknesses in the integrity of the association of some parties and follows closely the discussion of the public funding of parties. A less invasive legislative solution is to have the Federal legislation insist that a party be incorporated in order to register for federal funds. Incorporation provides a ready-made standard of scrutiny. It would provide certain rights to members but stop short of specifying rules of the association.

The analogous organisations to political parties are probably not corporations, but industrial, trade unions, and employer organisations. The real precedent is the legislation covering trade unions and employer organisations. The *Workplace Relations Act* 1996,¹⁵ (and its predecessor the *Industrial Relations Act* 1988) have specified since 1988 that all elections for office in registered organisations, trade unions and employer bodies, must be conducted by the Australian Electoral Commission unless exempted. Before that, the AEC conducted elections for registered organisations at their request, and has done so

¹⁴ A former Commonwealth Electoral Commissioner, Professor Colin Hughes, has suggested that where 'candidates [of parties] registered with the Australian Electoral Commission are to be chosen by membership votes, those elections should be conducted by the officers of the Australian Electoral Commission.' His remarks were contained in his submission to the Parliamentary Committee on Electoral Matters, and reported in *The Sydney Morning Herald*, 15 November 2000.

¹⁵ *Workplace Relations Act* 1996, Section 210.

since 1949.¹⁶ The objects of the *Workplace Relations Act* lie in ‘ensuring that employer and employee organisations ... are representative of and accountable to their members’.¹⁷ Further, they are meant to ‘encourage the democratic control of organisations’.¹⁸ Further, the Committee endorsed the principle that ‘the public interest is best served by funding industrial elections from the public purse and providing for such elections to be conducted by the AEC’. They further recommended that a menu of ‘model rules’ be developed.¹⁹ The introduction of model rules by compulsion was roundly condemned by many of those who made submissions to the inquiry. The Australian Chamber of Manufactures argued that ‘such diversity as remains is the very minimum which is necessary for organisations to have in place rules ... which reflect the needs and character and culture of the organisation’.²⁰ The Australian Council of Trade Unions submitted that ‘standardisation denies membership control of their own organisations and will be unlikely to provide any greater certainty or fairness in the electoral process’.²¹ In recommending the changes to compulsory AEC conduct of elections, which happened in 1988, the Hancock Report, argued that such compulsion ‘should enhance the confidence of the community and members of organisations in the conduct of ballots’.²²

The four major political parties have legislated to ensure the democratic process in the key voluntary associations in industrial relations. They have done so, it appears, to enhance the confidence of the community and members in the conduct of ballots. There can be few more important ballots than those which determine who is to carry the party label of a major Australian party. It is almost the only road to parliament. Why then would the parties not do the same for themselves? Clearly, the Democrats want the parties to be scrutinised by the courts using a highly prescriptive legislative model. Such a model would incur all of the debate not only about the freedom of the parties to govern their own associations, but also the issues raised earlier about the measures of democracy. It is highly unlikely that the parties will agree to such an intrusive regime, though a

¹⁶ Joint Standing Committee on Electoral Matters, 1997. *Report of the Inquiry into the Role of the Australian Electoral Commission in Conducting Industrial Elections*, Parliament of the Commonwealth of Australia, 7.

¹⁷ *Workplace Relations Act 1996*, Section 3.

¹⁸ *Workplace Relations Act 1996*, Part IX.

¹⁹ JSCEM, 1997, *Industrial Elections*, 3.

²⁰ JSCEM, 1997, *Industrial Elections*, 14.

²¹ JSCEM, 1997, *Industrial Elections*, 15.

²² Hancock, K. 1985. *The Report of the Committee of Review into Australian Industrial Relations Law and Systems*, Australian Government Publishing Service. Vol 2, 144.

government at some point, needing the support of the Democrats, may begin to allow further specification of the regulations to be adhered to in the process of party registration.

The discussion of the rationale for internal democracy is not simply part of the argument about whether democratic preselection is essential for democracy. An oligopoly in party competition is a rationale for some remedy consistent with the assumption of stable democracy. The rationale for internal democracy rested also on the role of the party and the status of the parties. The electorate trusts the electoral process to deliver good government, whether it trusts parts of the political system to behave is altogether different. McAllister's study of the public's and politicians' perceptions of ethical conduct among legislators in Australia suggests that 'popular trust and respect for politicians and their role has rarely been lower'.²³ Moreover, it concluded that, 'contact with political parties diminishes elite [politicians] support for standards of conduct'.²⁴ Is political life in Australia based strongly on trust as Oliver²⁵ asserts it is in Britain, or is it based on competition? Or rather, do the voters trust the competition between the parties as a sufficient form of regulation or do they require trust in the integrity of the parties as well? There is a strong case to suggest that the still predominant feature of electoral politics, loyalty to the major parties, is heavily dependent on three features: the electoral system of single-member electorates, compulsory preferential voting and public funding are all props for the major parties. Each prop also tends to be a barrier to the successful entry of new parties.

Is there a way for the parties to reprivatise? If they ceased to accept public funds and abolished compulsory voting, would the grounds for public access to their internal regimes be any less compelling? In the first instance, almost certainly so. Apart from the rudiments of complying with electoral procedures, nothing is required of the parties by way of legislation other than that which arises from their registration for public funds. However, there are other grounds for members of private associations to enforce certain minimal rights through the courts. This is certainly so for those parties which are

²³ McAllister, I. 1998. "Keeping the Bastards Honest": Public and Elite Perceptions of Ethical Conduct Among Legislators.' A Paper Prepared for the Australasian Political Studies Association meetings, Christchurch, New Zealand, 28–30 September, 17.

²⁴ McAllister, 1998. "Keeping the Bastards Honest ...", 18.

²⁵ Oliver, 1997. 'Regulating the Conduct of MP's ...', 543.

incorporated under state law, it may be so where an action can be brought where a person's livelihood may be affected. There is a distinction, nevertheless, between the law as it applies to voluntary associations and that which applies to public legal entities such as companies or government bodies. The judges do not have the leeway of interpreting legislation as it applies, for example, in administrative law. In hearing matters on disputes in political parties, they are left with the literal interpretation of the party rules. Apart from the issue of allowing for a member to have a matter heard in a court of law and for the matter to have been accorded a proper hearing within the party, the court can neither provide a remedy, apart from the hearing, nor interfere with the rules of the party, even if they are patently undemocratic. There are two entirely different dialogues taking place. The judges can make sense of the rules, they cannot set the rules. The parties may lose the ability to interpret some of their rules as they affect the resolution of their disputes, but they maintain an absolute power over the establishment and nature of the rules. The Democrats want to change the parties from private associations, where certain procedural rights only may be upheld by the courts, to public entities, where rules have to abide by principles as laid down in legislation. Rules that will provide a prescription of what is and is not democratic behaviour.

To return to Bartolini and Mair's²⁶ discussion, the steady allegiance and firm rules have made stability the predominant feature of Australian politics. To some extent, that part of the stability concerned with the role of parties and the formation of government is contrived. The parties are not the organisations they once were. They are smaller relative to the electorate and they are part-owned by the electorate. The system of single-member electorates and compulsory preferential voting herd the vote towards the existing historically advantaged major parties. The system is designed to ensure stability beyond that which may exist in the electorate, as expressed by the loyalty of the voters to the major parties.

Furthermore, it is clear that the parties are performing less but being paid more from the public purse. The education system and the media have taken up their former role of educating the electorate. They no longer have to get out the vote; they do not even have to raise many of the funds that sustain them. They barely represent the cleavages of the

²⁶ Bartolini and Mair, 1990. *Identity, Competition and Electoral Availability*, 4.

electorate. It is more likely that the electorate is squeezed into an old shoe, one that fits the electoral system rather than the electorate. The suggestion is to see if the parties' internal democracy could compensate for these shortcomings in the competition between the parties, whether the asymmetry of the Australian system is re-balanced by the integrity of the internal scrutiny of the parties. Self-regulation is a major task of political parties; they spend a great deal of their time managing the contest for preselection. The management of their procedures appears orderly and mature inasmuch as they each hold regular forums within which rules are discussed, often based on investigations and reports. Their machinery for deciding preselection contests and settling disputes is in some cases extraordinarily highly sophisticated, in others rudimentary, but in all cases to suggest that the parties are able to manage the processes reasonably well and in the main fairly would be an accurate assessment. Nevertheless, from time to time, parties have acted in a less than fair manner and these matters have not only come to public attention, they have been formally brought before the courts.

The audit suggests that the parties fail on a number of counts the test of democratic election of candidates. Most important is the failure in some of the parties to come to grips with instances where the parties are no longer free associations. This occurs where people are signed-up to parties with little or no knowledge, without paying for themselves, without any commitment to the party as an association. These problems with free association coupled with the tendency to lock up competition and not to sustain fair procedures are a real blow to the legitimacy of the parties. Perhaps the only thing that stands between the parties and the loyalty of the electorate is the electorate's lack of knowledge of the internal operations of the parties.

An Acceptable Remedy?

An argument can be made for some form of external scrutiny of parties' procedures for selecting candidates. The dangers of external scrutiny are that they may damage the very freedom of association that is a precondition of democracy. Are there lessons from comparable democracies on the question of external scrutiny of parties? The degree of strife and instability exhibited in Germany and the USA is not present in Australia. The degree of faith in the Australian system may even be higher than in Britain, so there does

not appear to be the necessity and certainly not the likelihood that Australia will willingly or consciously work towards a higher degree of external scrutiny of the parties.

If the parties were to lose control of their internal processes because of misdeeds or incompetence, their behaviour could reinforce the argument that they are ‘a hindrance to democratic processes’.²⁷ If the parties manage the system fairly but still lose control, it may diminish the contribution that they now make; the management of conflict, acting as a guide to past performance upon which the electorate may pass judgement, and selection of candidates. Clearly, entering the confines of essentially private organisations, albeit when they are playing a public role, is difficult. It is made easier because the parties produce legislation that delivers to them considerable public benefit. The strict contract between the registered parties and the Commonwealth may only require a proper accounting for election expenses, but there may also exist an assumption that the candidates, specified under the *Commonwealth Electoral Act* and shown on the ballot paper, arrive under fair circumstances. A possible remedy recognises both the right of private association and the harm that public control of preselections (for example, primaries) can do to the organisational integrity of parties, but seeks greater public scrutiny of the internal affairs of party candidate selection.

Presently, the parties registered under the *Commonwealth Electoral Act*, principally to receive funding for election campaigns, only have to lodge a copy of their constitution with the Australian Electoral Commission. These documents are not available to the public. A reasonable compromise on the tension between the external scrutiny of parties and the maintenance of the privacy of association would be, as a condition of registration, to make the party constitutions available to the public. If the parties’ candidate selection rules were to be made available to the public so that voters may judge for themselves the fairness of the processes, the parties would in so far as their formal practices are concerned, be more likely to comply with basic democratic standards. Of the possible options open to Australia’s major parties—reprivatise, a highly prescriptive regime of external scrutiny, continued court scrutiny of disputes or make public their rules as a condition of registration for public funds—the latter two seem the most practical. It

²⁷ Jaensch, 1994a. *Power Politics ...*, 244.

would enhance democratic practice, maintain the trust in parties and ensure their freedom of association, itself an important element of democracy in Australia.

While the major Australian political parties maintain a near-monopoly of parliamentary representatives and their party labels remain valuable, the competition for the right to wear them will be a legitimate field of interest to those concerned with the integrity of parties and their role in a competitive democratic system. Future work in this area will be to monitor the behaviour of the parties, hopefully with their cooperation and with an abundance of data. The source of the data will be the documents they lodge with the Australian Electoral Commission, made available to the public.

Australia's major parties, the electoral system and the electorate have delivered Australia a stable electoral system. The principal players—the major parties—have been well rewarded for their considerable work. Much of that work is now 'sunk capital'. The parties are mere vehicles for new agendas and careers. If they are to continue to do the job into which they grew, in an environment when the challenges from other forms of private associations in the electorate are at their greatest—the associational revolution—they should take the opportunity to consolidate their position through a legitimacy derived from public scrutiny.

Appendix 1

Date: / / .

Confidential

Preselection - candidate questionnaire

Alert interviewee - prepare to provide copies of any media coverage.

Prepare to provide a detailed description of the contest with
Reference to party rules, including the number of party
Members involved.
Copies of any documentation circulated to members.

The interview will be tape recorded, but is entirely confidential.

Candidate's background -

<u>Name:</u>	<u>Party:</u>
<u>Seat:</u>	<u>Margin:</u>
<u>Date endorsed:</u>	<u>Age at time of contest:</u>
<u>Trigger for contest: e.g. redistribution.</u>	<u>Occupation at time of contest:</u>
<u>Year joined party:</u>	<u>Year left party:</u>
<u>Years of continuous membership:</u>	<u>Any other contests?</u>
<u>Ever member of another party?</u>	<u>Name:</u>

Any other family member joined a party?

Stand for pre-selection?:

Positions held in party prior to contest: Member of other organisations:

Strategy -

1. Who recruited you to the party?
2. With whom did you work most closely?
3. Did you join a 'group' prior to the contest?
4. Subsequently?
5. Did you choose the seat, or someone else suggest it?
6. Who was involved in your decision to contest?
7. How confident were you of pre-selection?

Extremely	Very	Somewhat	Not very	Not at all
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8. Why?
9. Who was your main opponent?
10. Who was most influential in determining the outcome?
11. What were the most important factors in determining the outcome?
12. Why do you think you were chosen/defeated?
13. How many new members did you or your team recruit?
14. What work did you put into recruiting between elections?

Process -

15. No. Of candidates: any persuaded to withdraw?
16. Result of ballot: multiple?
17. How many voted in the local plebiscite and/or electoral college?
18. How many members were not eligible to vote?
19. Describe the process of the contest by reference to the party rules:
20. Was your result dependent on the outcome of other contests?
21. Did you expect to be given another chance? (If defeated at the election):
22. Were State or Federal party officials involved at any time?
23. Have you successfully avoided a contest?

Dispute procedures -

24. Was a dispute notified?
25. If so, how was it handled and by whom?
26. Was any legal action threatened?

Appendix 2

ALP National Executive Decisions, 1983–1995

- 1995 Senator Beahan Western Australia, appeal against preselection rejected.
ACT Branch, Peter Staples appointed to inquire into Canberra by-election.
- 1994 South Australian branch, Senate ticket determined.
- 1993 South Australian branch, rules on preselection panels determined.
ACT Branch, Special Conference ordered to change the preselection panel.
- 1992 Cunningham NSW, disputed votes scrutinised and counted.
Watson NSW, appeal rejected.
Tasmanian branch, Senate ticket overturned, and determined.
All Ministers in the Keating government and the Speaker endorsed.
- 1991 National rule for boundaries for eligibility to vote determined.
- 1990 Organisational Review Committee, review of preselection rules in NSW.
- 1989 Liverpool, NSW State seat, nominations process conducted.
Victorian branch, preselection panels rules suspended following redistribution.
- 1988 Queensland branch, preselection panels rules reviewed.
- 1987 Bowman Queensland, ballot determined.
All Senate tickets determined.
- 1986 Rules governing distribution of votes among affiliated unions determined.
Victorian branch, Senator Button endorsed number one.
South Australian branch, union affiliation rules determined.
- 1984 Queensland branch, Senate ticket determined.
Certain NSW and Queensland Members endorsed.
Queensland branch, formula for union representation determined.
- 1983 Northern Territory State seat, Aboriginal candidate endorsed.
ACT branch, preselections supervised.
All Senate tickets determined.

Sources: ALP National Secretariat, Canberra. Minutes of National Executive 1983–1994, and Senator Michael Beahan for his 1995 appeal.

Appendix 3

Index of Transcripts, Notes of Interviews and Documents from Candidates and Biographies

1. Tony Abbott	2. Neil Andrew	3. Peter Baldwin	4. Michael Beahan
5. <i>Bromwyn Bishop</i>	6. Julie Bishop	7. <i>Neville Bonner</i>	8. Ron Boswell
9. <i>Neil Brown</i>	10. David Brownhill	11. Graeme Campbell	12. <i>Don Chipp</i>
13. Barney Cooney	14. Rosemary Crowley	15. Noel Crichton-Browne	16. Kay Denman
17. <i>Gilbert Duthie</i>	18. Alan Griffiths	19. <i>Bob Hawke</i>	20. David Hawker
21. <i>John Hewson</i>	22. Noel Hicks	23. <i>Peter Howson</i>	24. Kelly Hoare
25. Colin Hollis	26. John Hyde	27. Michael Johnson	28. <i>Paul Keating</i>
29. Deanne Kelly	30. <i>Cheryl Kernot</i>	31. Michael Kroger	32. Lou Lieberman
33. Brett Mason	34. Stuart McArthur	35. <i>Jim McClelland</i>	36. Graham McDougall
37. Peter McGauran	38. David McGibbon	39. Daryl Melham	40. <i>Alan Missen</i>
41. Gary Nehl	42. Gavin O'Connor	43. <i>Andrew Peacock</i>	44. Chris Puplick
45. Christopher Pyne	46. <i>Graham Richardson</i>	47. Alan Rocher	48. Rod Sawford
49. Chris Schacht	50. Anne Scott	51. Tony Smith	52. <i>Billy Snedden</i>
53. John Stone	54. Jeanette Thornley	55. Andrew Theophanous	56. Kelvin Thomson
57. <i>Tom Uren</i>	58. <i>Peter Walsh</i>	59. John Woodley	

Source:

Author selection.

Notes:

There were 41 interviews conducted with candidates and with several activists. There were various accompanying documents. There were seventeen *political biographies* with relevant and mostly contemporary material on preselection. One description of the Julie Bishop preselection as told by Noel Crichton-Browne.

References

Legislation

Constitution Alteration (Powers to Deal with Communists and Communism) Act 1951.
Constitution Alteration (Senate Casual Vacancies) Act 1977.
Commonwealth Electoral Act 1918.
Commonwealth Electoral (War-time) Act 1917.
Disability Discrimination Act 1992.
Electoral Act 1993, *Reprinted Statutes* Vol. 35, 93. [New Zealand]
Human Rights and Equal Opportunity Act 1986.
Income Tax Assessment Act 1936.
Racial Discrimination Act 1975.
Sex Discrimination Act 1984.
Workplace Relations Act 1996.

Cases

Adams and Hill No. I.20 (1984) 8 IR 137.
Amalgamated Metals Foundry and Shipwrights Union and Adams: and Adams and Hill Nos. I.20 and I.23 (1984) 8 IR 203 / 3 FCR 138.
Australian Democrats WA Division Inc and Anor v Australian Democrats VIC and Ors. Unreported case WA Supreme Court, 1522 of 1997.
Baker v The Liberal Party of Australia (SA Division) SCGRG 96/1486.
Baldwin v Everingham (1993) 1 QLDR 10.
Bowen v Australian Workers' Union (no 2) (1948) 77 CLR 630.
Burton v Murphy (1983) 2 QLDR 321.
Cameron v Hogan (1934) 51 CLR 358.
Clarke v ALP (SA Branch), Hurley & Ors & Brown. SASC 365 (2 September 1999).
Clarke v ALP (SA Branch), Hurley & Ors & Brown. SASC 415 (24 September 1999).
Jepson and Dyas-Elliott v The Labour Party and ors, 1996. IRLR, 116 [UK]
McKenzie v Commonwealth of Australia and others (1984) 57 ALR 747.
Peters v Collinge (NZ High Court, 2NZLR at 575, 1993).
Stevenson and Widerstrom and Winston Peters and ORS. NZ High Court Registry CP 29/97.
Sullivan v Della Bosca (1999) NSWSC 136.
Tanner and Darroch No. V19 (1985) Industrial Law 16 IR 226.
Thornley and Heffernan CLS 1995 NSWSC EQ 150 and CLS 1995 NSWSC EQ 206.
Williams v Australian Electoral Commission and the Greens (1995) 21 AAR 467.
Williams v Hursey (1959) 103 CLR 30.

Party Documents

- Australian Democrats, 1996. *National Constitution and Regulations*. (Mimeo)
- Australian Labor Party, 1994. *Platform, Resolutions and Rules*. Canberra: National Secretariat.
- Australian Labor Party, 2000. *Rules*. Rule 16 a. (Photocopy)
- Australian Labor Party Australian Capital Territory, 1997. *Rules and Regulations*. Canberra: ACT Branch.
- Australian Labor Party Members for Democratic Change, 2000. *Democracy: The Newsletter of ALP Members for Democratic Change*. (Victoria) (Mimeo)
- Australian Labor Party National Executive, 1987. *Procedural Guidelines For Appeals Committee*, Minutes, 12 November. Canberra: National Secretariat. (Mimeo)
- Australian Labor Party National Executive Arbitration Panel, 1988. *Interim Report*, Minutes, 9 December. Canberra: National Secretariat. (Mimeo)
- Australian Labor Party National Executive, 1991. *Recommendations and Options of the Organisational Review Committee*, referred to the 1991 National Conference. Canberra: National Secretariat. (Mimeo)
- Australian Labor Party National Executive, 1983–1994. *Minutes of National Executive Meetings*. Canberra: National Secretariat. (unpublished)
- Australian Labor Party New South Wales, 1992. *NSW Preselections: A Time for Reform?*, Organisational Reform Options Paper No. 1. Sydney: NSW Branch. (Mimeo)
- Australian Labor Party New South Wales, 1996–97. *Platform and Rules*. Sydney: NSW Branch.
- Australian Labor Party Northern Territory, 1996. *Rules*. Darwin: NT Branch.
- Australian Labor Party Queensland, 1997. *Rules*. Brisbane: Queensland Branch.
- Australian Labor Party South Australia, 1993. *Committee of Review Report*. Adelaide: SA Branch (Mimeo)
- Australian Labor Party South Australia, 1994. *Constitution and General Rules*. Adelaide: SA Branch.
- Australian Labor Party South Australia, 1995. *Rule Changes*, State Convention. (Mimeo)
- Australian Labor Party South Australia, 1996. *Rule Amendments*, State Convention. (Mimeo)
- Australian Labor Party Tasmania, 1997. *Rules*. Hobart: Tasmania Branch.
- Australian Labor Party Victoria, 1996. *Rules*. Melbourne: Victorian Branch.
- Australian Labor Party Western Australia, 1994. *Constitution, Rules and Standing Orders: Draft Changes*. (Mimeo)
- Australian Labor Party Western Australia, 1995. *Platform, Constitution and Rules*. Perth: WA Branch.
- Beahan, M. 1994. *The WA Branch Senate Preselection*. Draft Submission to [ALP] National Executive. (Mimeo)
- Country Liberal Party Northern Territory, 1997. *Constitutional Requirements and Central Council Guidelines for Preselection of Candidates*. Darwin: Northern Territory.
- Crichton-Browne, N. (undated). *Appeal Against the Expulsion from the Liberal Party of WA Division (Inc)*. Submission to the Liberal Party WA State Executive. (Mimeo)
- Dreyfus, M. 1998. *Panel of Review 1998*. Melbourne: Australian Labor Party, Victorian Branch. (Mimeo)

Ferguson, M. 2000. Federal Member's Report, *Batman Report* Issue 13 page 1, October. (Mimeo)

Hogg, R. 1989. 'A Report and Assessment of ALP Preselection Systems and Long Term Organisational Questions', Canberra: ALP National Executive Minutes, 22 September. (Mimeo)

Lenders, J. 1994. *The Labor Star*, June edition.

Liberal Party of Australia, 1998. *Federal Constitution*. Canberra: Federal Secretariat.

Liberal Party of Australia Australian Capital Territory, 1997. *Constitution*. Canberra: ACT Division.

Liberal Party of Australia New South Wales, 1997. *Constitution and Regulations*. Sydney: NSW Division.

Liberal Party of Australia New South Wales, 1998. *Selection Guide*. Sydney: NSW Division.

Liberal Party of Australia Queensland, 1990. *State Constitution*. Brisbane: Queensland Division.

Liberal Party of Australia Queensland, 1993a. *Proposed Constitution Changes*, Brisbane: Queensland Division. (Mimeo)

Liberal Party of Australia Queensland, 1993b. *Proposed Constitutional Changes: Explanatory Memorandum*. Brisbane: Queensland Division. (Mimeo)

Liberal Party of Australia Queensland, 1996. *State Constitution*. Brisbane: Queensland Division.

Liberal Party of Australia Queensland, 1997. *State Constitution*. Brisbane: Queensland Division.

Liberal Party of Australia South Australia, 1996. *Constitution*. Adelaide: SA Division.

Liberal Party of Australia Tasmania, 1996. *Constitution and General Standing Orders for Meetings*. Hobart: Tasmanian Division.

Liberal Party of Australia Victoria, 1997. *Constitution*. Melbourne: Victorian Division.

Liberal Party of Australia Western Australia, 1997. *Constitution and Rules*. Perth: WA Division (Incorporated).

Minchin, Senator Nick. 1994. *Plebiscites: Questions and Answers*, paper prepared for the South Australian Liberal Party State Council, 12–13 August. (Mimeo)

Murray, Senator Andrew, 1998. *Submission to Senate Finance and Public Administration Committee on Electoral and Referendum Bill (No.2)*, June. (Mimeo)

National Party of Australia, 1988a. *Federal Constitution*. Canberra: Federal Secretariat.

National Party of Australia, 1988b. *The Future: A Report by the Committee of Review into the Future Direction of the National Party of Australia*. Canberra: Federal Council.

National Party of Australia New South Wales, 1996. *Constitution and Rules*. Sydney: NSW.

National Party of Australia Queensland, 1995. *Constitution*. Brisbane: Queensland.

National Party of Australia Victoria, 1997. *Constitution and Rules*. Melbourne: Victoria. (Photocopy)

Norrish, S. Written advice to ALP NSW, 27 February 1997. (Unpublished)

Valder, J. *The Valder Report and Plebiscites*, Address to party members, undated. (Mimeo)

Sources for Table 7.1

Germany:

Akalin, O. 1987. *The Law on Political Parties*. Cologne: Internationales, 3rd Edition, 19–24.

Grundgesetz, 1949. *BasicLaw* (German Constitution) (Last amended August 31, 1990, (English translation) <http://www.lib.byu.edu/~rdh/eurodocs/germ/ggeng.html>)

Landfried, C. 1992. 'The Judicialisation of Politics in Germany.' *International Political Science Review* 15(2): 113.

USA:

Epstein, L. 1986. *Political Parties in the American Mold*. Madison: University of Wisconsin Press.

Lowenstein, D. 1993. 'Associational Rights of Major Political Parties'. *Texas Law Review* 71: 1771–80.

Canada:

Canada Electoral Act (as amended 1998) sections 24, 39, 208 and 241.

Courtney, J. 1978. 'Recognition of Canadian Political Parties in Parliament and in Law.' *Canadian Journal of Political Science* 11(1): 56.

Gagnon, A. 1989. 'Impact of the 1974 Election Expenses Act.' In A. Gagnon, and A. Tanguay, *Canadian Parties in Transition*. Ontario: Nelson, 355.

Australia:

Commonwealth Electoral Act 1918 (reprint December 1995) sections 59(10), 90–1, 99, 105, 114, 155–7, 163, 206–7, 219, 233, 263, 326. Parts VII, XXI, XXII.

New Zealand:

New Zealand Electoral Act 1993. *Reprinted Statutes* Vol. 35, 93 [New Zealand] sections 71, 210, 213 and 214.

Chen, M. and G. Palmer, 1993. *Public Law in New Zealand*. Auckland: Oxford University Press, 705, 848.

Britain:

Blackburn, R. 1995. *The Electoral System in Britain*. New York: St. Martin's Press, 317, 332, and 352.

McDermott, J. 1997. 'Can Political Parties and Politicians Sue for Libel?' *Communications Law* 2(3): 86.

All Other References

- Abjorensen, N. 1993. *John Hewson: A Biography*. Melbourne: Lothian Books.
- Aitkin, D. 1972. *The Country Party in NSW: A Study of Organisation and Survival*. Canberra: ANU Press.
- Allan, L. 2000. 'Ethnic Recruitment or Ethnic Branch Stacking?: Factionalism and Ethnicity in the ALP.' *People and Place* 8(1): 29–38.
- American Political Science Association, 1950. 'Toward a More Responsible Two-Party System.' *American Political Science Review* 44 (2), 1–14.
- Appleton, A. 1994. 'The Formal Versus Informal Rules of French Political Parties.' In *How Political Parties Work: Perspectives From Within*, ed. K. Lawson. Westport, CT: Praeger.
- Australian Bureau of Statistics, *Interest Groups, Australia, 1995–96* (8639.0).
- Australian Electoral Commission 1998a. *Electoral Atlas: House of Representatives—Electoral Status Two Party Preferred*
<http://www.aec.gov.au/pubs/atlas/summary/stat2.htm>
- Australian Electoral Commission] 1998b. *1998 Election Results: Use of Group Voting Tickets*. http://www.aec.gov.au/results/1998/tally_room/senate/group_voting.htm
- Australian Electoral Commission 2000a. *Federal Registration of Political Parties 1999*. http://www.aec.gov.au/disclosure/federal_registration/main.htm
- Australian Electoral Commission 2000b. *Funding and Disclosure Report Following the Federal Election Held on 3 October 1998*. <http://www.aec.gov.au/pubs/reports/disclosure98/main.htm>
- Avnon, D. 1995. 'Party Laws in Democratic Systems of Government.' *The Journal of Legislative Studies* 1(2): 283–300.
- Bachrach, P. 1969. *The Theory of Democratic Elitism: A Critique*. London: University of London Press.
- Bartolini, S. 1983. 'The Membership of Mass Parties: The Social Democrat Experience 1889–1978.' In *Western European Party Systems: Continuity and Change*, eds. H. Daalder and P. Mair. California: Sage.
- Bartolini, S. and P. Mair, 1990. *Identity, Competition and Electoral Availability: The Stabilisation of European Electorates 1885–1985*. Cambridge: Cambridge University Press.
- Bean, C. 1997. 'Parties and Elections.' In *New Developments in Australian Politics*, eds. B. Galligan *et al.* Melbourne: Macmillan.

- Bean, C. and I. McAllister, 1989. 'Factions and Tendencies in the Australian Political Party System.' *Politics* 24(2): 79–99.
- Blewett, N. 1999. *A Cabinet Diary: A Personal Record of the First Keating Government*. Adelaide: Wakefield Press.
- Bochel, J. and D. Denver, 1983. 'Candidate Selection in the Labour Party: What the Selectors Seek.' *British Journal of Political Science* 14: 45–69.
- Brennan, G. 1995. 'Australia's Parliamentary Democracy: One Cheer for the Status Quo.' *Policy (Centre for Independent Studies)* Autumn: 17–22.
- Brennan, G. and L. Lomasky, 1993. *Democracy and Decision*. Cambridge: Cambridge University Press
- Brown, N. 1993. *On the Other Hand: Sketches and Reflections From Political Life*. Canberra: The Poplar Press.
- Budge, I., I. Crewe and D. Farlie, eds. 1976. *Party Identification and Beyond: Representations of Voting and Party Competition*. London: John Wiley and Sons.
- Budge, I. and H. Keman, 1990. *Parties and Democracy: Coalition Formation and Government Functioning in Twenty States*. Oxford: Oxford University Press.
- Burger, A. 1979. *Neville Bonner: A Biography*. Melbourne: Macmillan.
- Carey, J. and T. McCrae, 1982. *Peacock M.P.* Adelaide: Rigby.
- Carter, A. and G. Stokes, 1998. 'Introduction.' In *Liberal Democracy and its Critics*, eds. A. Carter and G. Stokes. Cambridge: Polity Press.
- Catley, R. 2000. 'The Knowledge of the World is the Enemy of God.' *Quadrant* 366(5): 12–18.
- Catley, R. and B. McFarlane, 1974. *From Tweedledum to Tweedledee: The New Labor Government in Australia: A Critique of its Social Model*. Sydney: ANZ Book Company.
- Childe, V.G. 1964. *How Labour Governs: A Study of Workers' Representation in Australia*. 2nd ed. London: Melbourne University Press.
- Chipp, D. and J. Larkin, 1978. *Don Chipp: The Third Man*. Melbourne: Rigby.
- Costar, B. and D. Woodward, eds. 1985. *Country to National: Australian Rural Politics and Beyond*. Sydney: Allen and Unwin.
- Costar, B. 1996. 'The Future of the National Party.' In *The Paradox of Parties: Australian Political Parties*, ed. M. Simms. Sydney: Allen and Unwin.

Courtney, J. 1978. 'Recognition of Canadian Political Parties in Parliament and in Law.' *Canadian Journal of Political Science* 11(1): 33–60.

Crisp, L.F. 1978. *The Australian Federal Labour Party, 1901–1951*. Sydney: Hale & Iremonger.

Cumming, F. 1991. *Mates: Five Champions of the Labor Right*. Sydney: Allen and Unwin.

D'Alpuget, B. 1984. *Robert J. Hawke*. Melbourne: Penguin Books.

Davis, H. 1995. 'All-Women Shortlists in the Labour Party.' *Public Law Summer*: 207–14.

Department of Justice [New Zealand], 1993. *Electoral Reform Bill Report*, 3 May. (Mimeo)

Department of the Parliamentary Library, 1993. *Parliamentary Handbook of the Commonwealth of Australia*. 26th ed. Canberra: AGPS.

Department of Parliamentary Library, 1996–97. *Federal Elections 1996*. Background Paper No. 6. Canberra: Parliamentary Research Service.

Department of the Parliamentary Library, 1998–99. 'House of Representatives Elections: Australia 1949–1998.' In *Federal Elections Results 1949–1998*. Research Paper No. 8. Parliament of Australia. <http://www.aph.gov.au/library/pubs/rp/1998-99/99rp08.htm#Major>

Department of the Parliamentary Library, 1999. *Parliamentary Handbook of the Commonwealth of Australia*, 28th ed. Canberra: Department of the Parliamentary Library.

de Tocqueville, A. [1840] 1953. *Democracy in America*. New York: Alfred A. Knopf, vol. II.

Downs, A. 1957. *An Economic Theory of Democracy*. New York: Harper and Row.

Duthie, G. 1984. *I Had 50,000 Bosses: Memoirs of a Labor Backbencher 1946–1975*. Melbourne: Angus and Robertson.

Duverger, M. 1959. *Political Parties: Their Organisation and Activity in the Modern State*. Translated by B. and R. North. 2nd English ed. London: Methuen.

Drucker, H. 1979. *Doctrine and Ethos in the Labour Party*. London: George Allen and Unwin.

Electoral Law Committee on the Electoral Reform Bill 1993 [New Zealand], *Report*, Second session, Forty-Third Parliament, Tabled House of Representatives.

- Ellis, U. 1963. *A History of the Australian Country Party*. Melbourne: Melbourne University Press.
- Epstein, L. 1989. 'Will American Political Parties Be Privatized?' *Journal of Law and Politics* 5(2): 239–74.
- Fay, J. 1982. 'Legal Regulation of Political Parties.' *Journal of Legislation* 9: 263–81.
- Fisher, J. 1997. 'Donations to Political Parties.' *Parliamentary Affairs* 50(2): 235–45.
- Fletcher, K. 1996. 'Developing Appropriate Organisational Structures for Non-profit Associations.' In *Legal Issues for Non-Profit Associations*, eds. M. McGregor-Lowndes, K. Fletcher and A. Sievers. Sydney: Law Book Company.
- Forbes, J.R.S. 1996. 'Judicial Review of Political Parties.' *Research Paper 21*. Department of Parliamentary Library, Commonwealth of Australia.
- Gallagher, M. and M. Marsh, eds. 1988. *Candidate Selection in Comparative Perspective: the Secret Garden of Politics*. London: Sage.
- Gibson R. and R. Harmel, 1998. 'Party Families and Democratic Performance: Extraparliamentary vs. Parliamentary Group Power.' *Political Studies* XLVI: 633–50.
- Gould, F. 1969. 'Pre-selecting the Candidates.' In *Australian Politics: A Second Reader*, ed. H. Mayer. Melbourne: Cheshire.
- Gow, N. 1971. 'The Introduction of Compulsory Voting in the Australian Commonwealth.' *Politics* 6(2): 201–10.
- Grundgesetz, 1949. *BasicLaw* (German Constitution) (Last amended August 31, 1990, (English translation) <http://www.lib.byu.edu/~rdh/eurodocs/germ/ggeng.html>)
- Hancock, K. 1985. *The Report of the Committee of Review into Australian Industrial Relations Law and Systems*, Australian Government Publishing Service. Vol 2
- Harmel, R. and K. Janda, 1994. 'An Integrated Theory of Party Goals and Party Change.' *Journal of Theoretical Politics* 6(3): 259–87.
- Harvard Law Review eds, 1963. 'Judicial Control of Actions of Private Associations.' *Harvard Law Review* 76: 983–1100.
- Healy, E. 1993. 'Ethnic ALP Branches: The Balkanisation of Labor.' *People and Place* 1(40): 37–43.
- Hermann, A. 1993. *Alan Missen: Liberal Pilgrim*. Canberra: The Poplar Press.
- Hirschman, A.O. 1970. *Exit, Voice, and Loyalty*. Massachusetts: Harvard University Press.

Horvarth, S. 1999. *The ALP and LPA are Evolving into Cartel Parties*. Honours Thesis, Department of Government, University of Queensland.

Houghton, Lord, 1976. *Report of the Committee on Financial Aid to Political Parties*. London: HMSO.

Howson, P. 1984. *The Howson Diaries: The Life Of Politics*. ed. D. Aitkin. Melbourne: The Viking Press.

Jaensch, D. 1989. *The Hawke–Keating Hijack: the ALP in Transition*. Sydney: Allen and Unwin.

Jaensch, D. 1994a. *Power Politics: Australia's Party System*. Sydney: Allen and Unwin.

Jaensch, D. 1994b. *The Liberals*. Sydney: Allen and Unwin.

Jaensch, D and D.S. Mathieson, 1998. *A Plague on Both Your Houses: Minor Parties in Australia*. Sydney: Allen and Unwin.

Johns, G. 1996. 'Divided Loyalties: Party and Conscience.' In *Accountability and Corruption: Public Sector Ethics*, eds. G. Clark, E. Prior Jonson and W. Caldow. Sydney: Allen and Unwin.

Johns, G. 1997. 'The Arrogance of the Unelected', *Proceedings of the Australasian Political Studies Association Conference*. Adelaide. 391–408.

Johns, G. 1998. 'Does Compulsory Voting Distort Electoral Outcomes?' *Agenda* 5: 367–72.

Joint Standing Committee on Electoral Matters, 1997. *Report of the Inquiry into the Role of the Australian Electoral Commission in Conducting Industrial Elections*, Parliament of the Commonwealth of Australia.

Katz, R. 1990. 'Party as Linkage: A Vestigial Function?' *European Journal of Political Research* 18: 143–161.

Katz, R. and P. Mair, 1992. 'The Membership of European Parties in European Democracies 1960–1990.' *European Journal of Political Research* 22: 329–45.

Katz, R. S. and P. Mair, 1995. 'Changing Models of Party Organization and Party Democracy: the Emergence of the Cartel Party.' *Party Politics* 1(1): 5–28.

Kirchheimer, O. 1966. 'The Transformation of the Western European Party Systems.' In *Political Parties and Political Development*, eds. J. LaPalombara and M. Weiner. Princeton: Princeton University Press

Koole, R. 1996. 'Cadre, Catch-All or Cartel? A Comment on the Notion of the Cartel Party.' *Party Politics* 2(4): 507–23.

- Lawson, K. and P. Merkl, 1988. *When Parties Fail: Emerging Alternative Organisations*. Princeton: Princeton University Press.
- Leser, D. 1994. *Bronwyn Bishop: A Woman in Pursuit of Power*. Melbourne: Text Publishing.
- Lindsay, S. 1987. 'Jurisdiction to Review Expulsion from a Political Party.' *Melbourne University Law Review* 16: 326–47.
- Lipow, A. and P. Seyd, 1996. 'The Politics of Anti-partyism.' *Parliamentary Affairs* 49(2): 273–84.
- Lipset, S. 2000. 'The Indispensability of Political Parties.' *Journal of Democracy* 11(1): 48–55.
- Lloyd, C. 2000. 'A Quest For National Rules.' In *The Machine: Labor Confronts the Future*, eds. J. Warhurst and A. Parkin. Sydney: Allen and Unwin, 49–73.
- Lloyd, C. and W. Swan, 1987. 'National Factions and the ALP.' *Politics* 22(1): 100–10, 22(2): 103–4.
- Lowenstein, D.H. 1993. 'Associational Rights of Major Political Parties: A Skeptical Inquiry.' *Texas Law Review* 71: 1741–1792.
- Lyons, M. 1999. 'Special Article—Australia's Nonprofit Sector.' *ABS Australia Now: A Statistical Profile (YearBook Australia)* <http://www.abs.gov.au/websitedbs/OpenView>
- MacIvor, H. 1996. 'Do Canadian Political Parties Form a Political Cartel?' *Canadian Journal of Political Science* 29(2): 317–33.
- Mackerras, M. 1996. *General Election, 2 March 1996: Statistical Analysis of the Results*. 1–24. Unpublished.
- McAllister, I. 1991. 'Party Adaptation and Factionalism within the Australian Party System.' *American Journal of Political Science* 35(1): 206–27.
- McAllister, I. 1992. *Political Behaviour: Citizens, Parties and Elites in Australia*. Melbourne: Longman Cheshire.
- McAllister, I. 1997. 'Australia.' In *Passages To Power: Legislative Recruitment in Advanced Democracies*, ed. P. Norris. Cambridge: Cambridge University Press.
- McAllister, I. 1998. "'Keeping the Bastards Honest": Public and Elite Perceptions of Ethical Conduct Among Legislators.' A Paper Prepared for the Australasian Political Studies Association meetings, Christchurch, New Zealand, 28–30 September, 17.
- McAllister, I. and C. Bean, 1996. *Long Term Electoral Trends and the 1996 Election*. 1–24. Unpublished.

- McKinlay, B. 1979. *A Documentary History of the Australian Labour Movement 1850–1975*. Melbourne: Drummond.
- McLelland, J. 1988. *Stirring the Possum: A Political Autobiography*. Melbourne: Penguin.
- Maddox, G. 1990. *The Hawke Government and Labor Tradition*. Ringwood: Penguin Books.
- Mair, P. 1997. *Party System Change: Approaches and Interpretations*. Oxford: Clarendon Press.
- Mair, P. with R. Katz, 1997. 'Party Organisation, Party Democracy, and the Emergence of the Cartel Party.' In *Party System Change: Approaches and Interpretations*. P. Mair. Oxford: Clarendon Press.
- Marinac, A. 1995. *The Secret Paddock of Australian Politics: Preselection Procedures in the National Party in Queensland and Victoria*. Honours Thesis, Monash University.
- Marsh, I. 1995. *Beyond the Two Party System: Political Representation, Economic Competitiveness and Australian Politics*. Melbourne: Cambridge University Press.
- Mercuro, N. and S. G. Medema, 1997. *Economics and the Law: from Posner to Post-modernism*. Princeton NJ: Princeton University Press.
- Michels, R. [1915] 1958. *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy*. Trans. E. and C. Paul. Glencoe, Illinois: Free Press.
- Nelson, H. and L. Watson, 1969. 'Party Organisation.' In *Australian Politics: A Second Reader*, ed. H. Mayer. Melbourne: Cheshire.
- Neumann, S. [1956] 1975. 'Germany: Changing Patterns and Lasting Problems.' In *Modern Political Parties*, ed. S. Neumann. Chicago: University of Chicago.
- Norris, P. 1997. 'Introduction: Theories of Recruitment.' In *Passages To Power: Legislative Recruitment in Advanced Democracies*, ed. P. Norris. Cambridge: Cambridge University Press.
- Norris, P. and J. Lovenduski, 1993. 'If Only More Candidates Came Forward: Supply Side Explanations of Candidate Selection in Britain.' *British Journal of Political Science* 23: 373–408.
- Oliver, D. 1981. 'The Constitutional Implications of the Reforms of the Labour Party.' *Public Law* Summer: 151–63.
- Oliver, D. 1997. 'Regulating the Conduct of MP's: the British Experience...' *Political Studies* 45: 539–58.

- O'Reilly, D. 1998. *Cheryl Kernot: The Woman Most Likely*. Sydney: Random House.
- Olson, M. 1971. *The Logic of Collective Action*. Massachusetts: Harvard University Press.
- Ostrogorski, M. [1902] 1964. *Democracy and the Organisation of Political Parties: Volume 1: England*. Garden City: Anchor Books.
- Ostrogorski, M. [1902] 1964. *Democracy and the Organisation of Political Parties: Volume 2: The United States*. Garden City: Anchor Books.
- Overacker, L. 1968. *Australian Parties in a Changing Society: 1945–67*. Melbourne: Cheshire.
- Panebianco, A. 1988. *Political Parties: Organisations and Power*. New York: Cambridge University Press.
- Parkin, A and J. Warhurst, eds. 1983. *Machine Politics in the Australian Labor Party*. Sydney: George Allen and Unwin.
- Pateman, C. 1970. *Participation and Democratic Theory*. Cambridge: Cambridge University Press.
- Petterson, P. 1995. *The Supreme Court and the Legal Status of Political Parties*. Ph. D. Thesis, University of Mass.
- Phillips, A. 1995. *The Politics of Presence*. Oxford: Clarendon Press.
- Pomper, G. 1992. *Passions and Interests: Political Party Concepts of American Democracy*. Kansas: University Press of Kansas.
- Putnam, R. 1993. *Making Democracy Work: Civic Traditions in Modern Italy*. Princeton: Princeton University Press.
- Queensland Constitutional Review Commission, 1999. Issues Paper: for the Possible Reform of and Changes to the Acts and Laws that Relate to the Queensland Constitution. Brisbane: QCRV.
- Railton, P. 1983. 'Judicial Review, Elites and Democracy.' In *Liberal Democracy*, eds. J. Pennock and J. Chapman. New York: New York University Press.
- Ranney, A. 1975. *Curing the Mischiefs of Faction: Party Reform in America*. Berkeley: University of California Press.
- Rawson, D.W. 1966. *Labor in Vain? A Survey of the Australian Labor Party*. Croydon: Longmans.
- Reid, G.S. and M. Forrest, 1989. *Australia's Commonwealth Parliament 1901–1988: Ten Perspectives*. Carlton: Melbourne University Press.

- Rich, P. 1999. 'American Voluntarism, Social Capitalism, and Political Culture.' *The Annals of the American Academy of Political and Social Science* 565: 15–34.
- Richardson, G. 1994. *Whatever It Takes*. Sydney: Bantam.
- Richardson, J. 1995. 'Interest Groups and Representation.' *Australian Journal of Political Science* 30: 61–81.
- Robinson, S. 1996. 'Remarks' In *The Paradox of Parties: Australian Political Parties*, ed. M. Simms. Sydney: Allen and Unwin.
- Royal Commission on the Electoral System [New Zealand], 1986. *Towards a Better Democracy*, Appendices to the Journal of the House of Representatives, H3.
- Salamon, L. and H. Anheier, 1996. *The Non-Profit Sector: A New Global Force*. Working Paper 21, Baltimore: Johns Hopkins University Institute for Policy Studies.
- Sartori, G. 1976. *Parties and Party Systems: A Framework for Analysis*. Vol 1. New York: Cambridge University Press.
- Seyd, P. 1998. 'In Praise of Party.' *Parliamentary Affairs* 51(2): 204.
- Schattschneider, E. 1942. *Party Government*. New York: Holt, Rinehart and Winston.
- Schlozman, K.L., S. Verba and H.E. Brady, 1995. 'Participation's Not a Paradox: From a Study of American Activists.' *British Journal of Political Science* 25: 1–36.
- Sievers, A.S. and R. Baxt, 1984. 'The Rights of Members of an Un-Incorporated Association.' *Company and Securities Law Journal* 2(1): 3–12.
- Simms, M. 1982. *A Liberal Nation: The Liberal Party and Australian Politics*. Sydney: Hale and Iremonger.
- Simms, M. 1994. 'Party Structures and Pre-selection in Australia: Selectorates, Federalism and the "Ideal" Member of Parliament.' Paper presented at the 16th World Congress of the International Political Science Association, Berlin, Germany.
- Snedden, B. and M. Schedvin, 1990. *Billy Snedden: An Unlikely Liberal*. Melbourne: Macmillan.
- Somes, T. 1996. 'The Legal Status of Political Parties.' In *The Paradox of Parties* ed. M. Simms. Sydney: Allen and Unwin.
- Starr, G. 1980. *The Liberal Party of Australia*. Melbourne: Drummond/Heinemann.
- Stewart, G. and I. Ward, 1996. *Politics One*. 2nd ed. Melbourne: Macmillan.
- Strom, K. 1990. 'A Behavioural Theory of Competitive Political Parties.' *American Journal of Political Science* 34(2): 565–98.

- Taylor, P. and R. Johnston, 1979. *Geography of Elections*. London: Croom Helm.
- Uren, T. 1994. *Tom Uren: Straight Left*. Sydney: Random House.
- Vallinder, T. 1994. 'The Judicialization of Politics: A World-Wide Phenomenon.' *International Political Science Review* 15 (2): 91–9.
- Verba S., K. Schlozman and H. Brady, 1996. *Voice and Equality, Civic Volunteerism in American Politics*. Cambridge: Harvard University Press.
- Walsh, P. 1995. *Confessions of a Failed Finance Minister*. Sydney: Random House.
- Warhurst, J. ed. 1997. *Keeping the Bastards Honest: The Australian Democrats First Twenty Years*. Sydney: Allen and Unwin.
- Warhurst, J. and A. Parkin, eds. 2000. *The Machine: Labor Confronts the Future*. Sydney: Allen and Unwin.
- Ward, I. 1991. 'The Changing Organisational Nature of Australia's Political Parties.' *The Journal of Commonwealth and Comparative Politics* 29(2): 153–74.
- Ware, A. 1979. *The Logic of Party Democracy*. London: Macmillan.
- Ware, A. 1988. *Citizens, Parties and the State*. Princeton: Princeton University Press.
- Ware, A. 1992. 'Activist-Leader Relations: "Exchange" Models and Vote-Seeking Behaviour in Parties.' *British Journal of Political Science* 22: 71–92.
- Ware, A. 1995. 'Party Systems in the 1990's: A Decade of Transformation?' *Government and Opposition* 30(3): 312–26.
- Webb, P.D. 1995. 'Are British Political Parties in Decline?' *Party Politics* 1(3): 299–322.
- West, K. 1968. *The Australian Liberal Party*. Melbourne: Longmans.
- Whiteley, P. and P. Seyd, 1998. 'The Dynamics of Party Activism in Britain: A Spiral of Demobilization?' *British Journal of Political Science* 28: 113–38.
- Williams, G. and G. Chin, 2000. 'The Failure of Citizens' Initiated Referenda Proposals in Australia: New Directions for Popular Participation?' *Australian Journal of Political Science* 35(1): 27–48.
- Zappala, G. 1997. *Four Weddings, a Funeral and a Family Reunion: Ethnicity and Representation in Australian Politics*, Department of the Parliamentary Library: Commonwealth of Australia.

