

**THE EFFECTS OF PROPORTIONAL REPRESENTATION ON  
ELECTION LAWMAKING IN AOTEAROA NEW ZEALAND**

by

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## ABSTRACT

It is widely recognized that most politicians are self-interested and desire election rules beneficial to their reelection. Although partisanship in electoral system reform is well-understood, the factors that encourage or constrain partisan manipulation of the other democratic “rules of the game”—including election administration, franchise laws, campaign finance, boundary drawing, and electoral governance—has received little scholarly attention to date. Aotearoa New Zealand remains the only established democracy to switch from a non-proportional to a proportional electoral system and thus presents a natural experiment to test the effects of electoral system change on the politics of election lawmaking. Using a longitudinal comparative case study analysis, this thesis examines partisan and demobilizing election reforms passed between 1970 and 1993 under first-past-the-post and between 1997 and 2018 under mixed-member proportional representation (MMP). Although partisan election reforms have not diminished under MMP, demobilizing reforms have become less common. Regression analysis uncovers evidence that partisan election lawmaking is more likely when the effective number of parties in parliament is lower, when non-voters have more leverage, and when reforms are pursued that diminish electoral participation.

To *Arthur Klatsky*,  
with all my love

## PREFACE

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## CHAPTER 1: INTRODUCTION

On June 20, 2019, Justice Minister Andrew Little announced a series of election reforms the government intends to enact before the 2020 general election (Devlin 2019a). Among Labour's proposed changes are provisions allowing voting booths in malls and supermarkets, extending voter registration to election day, and treating special ballot declarations as applications for registration. Despite most of these reforms mirroring recommendations made by the Electoral Commission in its report on the 2017 election (Electoral Commission 2018),<sup>1</sup> the proposals quickly came under fire from the opposition. The National party's electoral reform spokesperson, Nick Smith, called the proposals a "stitch-up", arguing that "[t]he government is simply cherry-picking electoral law changes that will improve its own chances of re-election in 2020" (McCulloch 2019). Smith also argued that the government was playing "fast and loose" with the country's election laws by breaching a "convention" for changes to follow the Justice Select Committee's triennial election inquiry (Smith 2019; Interview AG). Little shot back, arguing that the select committee ran out of time to make changes before the next election so the government decided to move forward with recommendations that were not particularly controversial and that make it easier for people to vote (Devlin 2019a, 2019c).

A few months later, partisan tempers flared again when Little announced the intention to pass a partial restoration of prisoner voting rights before the 2020 election

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<sup>1</sup> The Electoral Commission suggested that extending enrollment to election day would increase voter enfranchisement but stopped short of endorsing the change. Rather, it noted that more study needs to be undertaken to ensure that election day registration is administratively feasible. It appears that further examination of the issue has led the commission to conclude that implementation of election day registration in 2020 is feasible but would delay the official election results by up to ten days (Interview AG).

(Little 2019). This was in part a response to a report by the Waitangi Tribunal declaring a 2010 ban on prisoner voting to be in violation of the Treaty of Waitangi (Waitangi Tribunal 2019; see also Geddis 2019). Opposition leader Simon Bridges quickly responded by promising to repeal the reform after the next election (RNZ 2019).

These recent spats show that inter-party wrangling over the democratic “rules of the game” (Massicotte et al. 2004) are a modern reality in Aotearoa New Zealand. Indeed, there was nothing particularly special about these episodes. Although the triennial review of election law led to relatively uncontroversial reforms in 2017,<sup>2</sup> this was not the case three years earlier. The Electoral Amendment Act 2014, shepherded by a National-led government, was passed in a divided vote amid partisan objections. Recent party-line fights over election rules raise questions about how long such disagreements have existed, to what extent they occur, and in what ways they have materialized. Has Aotearoa New Zealand’s election machinery always been the subject of partisan discord, or have there been fluctuations over time? Are non-consensual changes rare or common? Have political parties constantly sought to expand the vote, or have politicians used election laws to push marginalized communities to the sidelines in favor of a politically beneficial status quo?

This thesis explores elements of all these questions. However, its focus is on the underlying factors that encourage and constrain politicians in amending the democratic rules of the game, or in my terminology, engaging in “election lawmaking”. I distinguish between two types of election lawmaking: “partisan” reforms lack consensus, whereas “demobilizing” reforms increase barriers to participation and diminish voter turnout. The

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<sup>2</sup> New Zealand First opposed ending the requirement to use allocated broadcasting funds for opening and closing addresses and the maintenance of current broadcasting allocation criteria.

political considerations that come into play when politicians attempt to change election rules are the “politics” of election lawmaking. One such factor is of foremost interest: the electoral system. Aotearoa New Zealand switched from a non-proportional to a proportional representation (PR) electoral system in 1996, making it the only established democracy to do so (Renwick 2010). This presents a natural experiment to test the relationship between electoral system and the manipulation of election laws (Shugart 2005). Two central hypotheses are tested: (1) that Aotearoa New Zealand’s switch to mixed-member proportional (MMP) has reduced the incidence of partisan election lawmaking, and (2) that the switch to MMP has reduced the incidence of demobilizing election lawmaking.

Although partisanship in electoral system reform is well-understood, the factors that encourage or constrain partisan manipulation of other types of election laws, including election administration, franchise rules, campaign finance, boundary revision, and electoral governance, have received little attention to date. Some scholars have suggested that the overt partisan manipulation of election laws experienced in the United States is an anomaly (Kohler and Rose 2010) or have assumed that “minor” election reforms are not worthy of consideration (Lijphart 1994; Renwick 2010). Others have called for a reconceptualization of election reform as including all types of changes to election law (Jacobs and Leyenaar 2011; Leyenaar and Hazan 2011; Katz 2005). Researchers have theorized that proportional electoral systems reduce the incentives to engage in partisan (James 2012; Kohler and Rose 2010) and demobilizing (Minnite 2010; Piven et al. 2009) election reforms but have not yet tested these relationships empirically.

This study uses a longitudinal comparative case study analysis to examine whether there was more partisan and demobilizing election lawmaking in Aotearoa New Zealand's last 24 years of first-past-the-post (FPTP) parliaments (1970 to 1993) than in its most recent 22 years of MMP parliaments (1997 to 2018). Each piece of election-related legislation passed during these periods is analyzed and classified into a novel six-part matrix of partisanship and participatory effect. This scheme demonstrates that MMP has coincided with a reduced incidence of demobilizing election reforms. Coupled with the strong theoretical argument for a causal relationship between electoral system and demobilizing election lawmaking, I conclude that switching to MMP caused the reduction in passage of demobilizing election reforms in Aotearoa New Zealand and that, in general, PR systems discourage demobilizing election lawmaking.

The data indicates that MMP has not coincided with a reduction in the number of partisan reforms. However, statistical tests reveal a relationship between partisan election lawmaking and fewer effective number of parties in parliament.<sup>3</sup> Considering the strong link between electoral system and party system evidenced by existing scholarship, I conclude that PR systems indirectly discourage partisan election lawmaking by increasing party fragmentation in parliaments.

Questions around electoral integrity and barriers to participation are of increased importance in an era of democratic backsliding. Countries around the world are facing eroding faith in democratic institutions, diminishing electoral participation, and a rise in

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<sup>3</sup> The “effective number of parties” accounts for the relative size of each party in parliament, providing a direct measure of the degree of fragmentation in a party system (Laakso and Taagepera 1979). Except for where all parties are of equal size, the effective number of parties will be lower than the number of parliamentary parties. It is not a measure of which parties are politically “effective” or a proxy for the actual number of parties in parliament. The metric is further explained in Chapter 4.



polarization and extremism (Freedom House 2019). In this environment, it is more vital than ever for scholars to study which electoral arrangements best inoculate democracies against deleterious electoral politics. This is especially so in Aotearoa New Zealand, where elections are the only real line of defense against virtually unfettered parliamentary sovereignty (Geddis 2016, 2017). Research into the politics of election lawmaking has thus far been hindered, however, by the belief that a norm of consensus-based election reform exists in this country. Politicians, journalists, and scholars alike have assumed that American-style election shenanigans and voter suppression do not take place in Aotearoa New Zealand, and thus have not devoted effort to studying the phenomenon. My analysis demonstrates that, contrary to common belief, partisan election reforms are a regular occurrence throughout Aotearoa New Zealand's parliamentary history. I also find that politicians have occasionally enacted election reforms that prevent or discourage democratic participation.

The thesis proceeds as follows: Chapter 2 analyzes existing scholarship on the effects of electoral system reform, applying lessons learned from electoral system change to sketch a broad view of the politics of election lawmaking. Chapter 3 examines what makes Aotearoa New Zealand a valuable case study. Chapter 4 details my central hypotheses, data, and methodology. Chapter 5 concerns the core data analysis, including assessments of descriptive data, chi squared and logistic tests of partisan and demobilizing election lawmaking, and multiple linear regression (MLR) analysis of a complex measure of partisanship. The chapter also includes an analysis of proposed election reforms, the relationship between party and election lawmaking, and an examination of the types of election laws passed. Chapter 6 puts the pieces of this analysis together, evaluating the

evidence for Aotearoa New Zealand's supposed consensus-based election lawmaking, the core hypotheses and causal mechanisms, and a variety of other explanatory factors. Chapter 7 concludes by reevaluating the claims made in Chapter 4, examining the implications of these findings, and exploring areas for future study.

## CHAPTER 2: THE POLITICS OF ELECTION LAWMAKING

Over the past few decades, the literature on comparative electoral systems has expanded to become one of the most mature subfields in political science (Gallagher and Mitchell 2005b; Shugart 2005). Its primary goals have been to explain the effects of various electoral system changes on politics (in Gallagher and Mitchell's words the "political science of electoral systems") and to explain when and why electoral system change takes place (the "politics of electoral systems"). More recently, a United States-focused field of scholarship has examined a broader set of election laws beyond electoral system reform, including voter administration, franchise rules, and campaign finance (see James 2012). This body of work has also focused on the effects and causes of such laws. These threads of scholarship have previously been siloed, yet much can be learned from their connection.

I present a framework in this chapter for understanding the politics of partisan and demobilizing election lawmaking in the context of electoral systems. By "election lawmaking" I mean the legislative process of amending the democratic rules of the game. The "politics" of election lawmaking refers to the political considerations that come into play when politicians change or attempt to change the rules of the game. Partisan in this context means reforms that lack consensus, whereas demobilizing means rules that increase barriers to voter participation and diminish voter turnout. By presenting this framework, I identify an important gap in electoral systems research concerning its effects on the politics of election lawmaking. I also reconsider the presently confused definition of "electoral reform", arguing for terminological exactness and demonstrating the importance of a broader consideration of election laws in the study of the politics of election reform. These

propositions are vital to the broader point of the chapter: establishing the structural factors that encourage election lawmaking that is partisan and demobilizing. I conclude by explicating a theoretical foundation blending elite agency and neo-institutionalism and illuminating the importance of studying the politics of election lawmaking.<sup>4</sup>

### *The Political Science of Electoral Systems*

Scholarship examining the comparative effects of electoral systems has proliferated since the 1980s, quickly growing from a neglected field to one of the most developed in political science (Lijphart 2005). A survey of this literature reveals a paradox: despite the vast breadth and depth of scholarship on electoral systems, the effects of electoral systems on the politics of election lawmaking remain largely ignored.<sup>5</sup> The core question of previous scholarship has been the role electoral systems play in concentrating or dispersing political authority, especially through such metrics as proportionality, the number of parties, and governing arrangements (Shugart 2005).<sup>6</sup> Studies have considered the effects of electoral systems on governability, representation, accountability, and participation (Bogdanor and Butler 1983; Gallagher and Mitchell 2005b; Klingemann 2009; Leyenaar and Hazan 2011; Lijphart 2012; Norris 2004; Powell 2000; Shugart 2005). The ‘psychological’ effects of electoral systems on voters’ strategic decisions has been studied (Benoit 2002; Cox 1994;

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<sup>4</sup> “Elites” and “political elites” refer to all politicians. It is used to emphasize their agency as actors, their divergent interests from the rest of the population, and their privileged concentration of power. I explore these points in greater detail near the end of this chapter.

<sup>5</sup> Book-length treatments of the effects of electoral systems include edited volumes by Lijphart (1994), Cox (1997), Katz (1997), Farrell (2001), Norris (2004), and Gallagher and Mitchell (2005b) and books by Jones (1995), Lijphart (2012), Powell (2000), Shugart and Carey (1992), Colomer (2004), and Klingemann (2009).

<sup>6</sup> See also Amorim Neto and Cox 1997; Duverger 1954; Lijphart 1984; Ordeshook and Shvetsova 1994; Riker 1982; Taagepera and Grofman 1985; Taagepera and Shugart 1989.

Lijphart 1994; Taagepera and Shugart 1989, 1993), as well as the partisan biases of certain electoral designs (Grofman and Lijphart 2002; Rae 1967).<sup>7</sup> Scholars have also examined the intraparty effects of electoral systems, or the internal organization of parties and the ways in which individual legislators and candidates relate to constituents.<sup>8</sup> This line of inquiry includes the demographics of MPs (Duverger 1955; Matland and Studlar 1996; Norris 1985; Rule 1981), the level of turnover (Darcy et al. 1994; Henig and Henig 2001; Matland and Brown 1992; Norris 2004), and the cultivation of the “personal vote” (Cain et al. 1987; Carey and Shugart 1995; Shugart et al. 2005).

More recent literature has moved to less direct and harder-to-measure variables such as the effects of electoral systems on regime stability (Goldstone and Ulfelder 2004), the management of ethnic conflict (Reilly 2001, 2006), and government performance (Lijphart 2012). The problem with examining indirect factors—and perhaps the reason why research has yet to further explore additional promising connections—is the increasing difficulty in identifying the theoretical link between electoral systems and these second-order effects. In the words of Shugart, it becomes harder to identify “how mechanical effects of the electoral system generate incentives for politicians to behave in certain ways, once elected” (2005: 50). This has not stopped scholars from trying to disentangle the theoretical chain of causality, nor should it: it is the very point of scholarship to attempt to unearth previously unknown relationships. In practical terms, the increased difficulty in measuring the indirect effects of electoral systems has meant that only recently have scholars moved on from the low-hanging fruit of proportionality and party systems and

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<sup>7</sup> For instance, see Iversen and Soskice 2006 (left-leaning and redistributive bias of PR); Elklit and Roberts 1996; Monroe and Rose 2002; Calvo and Murillo 2004 (urban/rural bias in districted PR systems); Samuels and Snyder 2001 (malapportionment in PR).

<sup>8</sup> See generally Grofman 1999; Haspel et al. 1998; Katz 1986; Marsh 1985; Stratmann and Baur 2002.

begun trying to discern such effects as committee assignments (Stratmann and Baur 2002), pork-barreling (Ames 1995; Carey and Shugart 1995; Ramseyer and Rosenbluth 1994; Samuels 2002), corruption (Golden and Chang 2001; Reed 1994), and overall democratic quality (Doorenspleet 2005; Gallagher 2005; Lijphart 2012).

Despite the broadening research focus of electoral system outcomes, the relationship between electoral systems and the politics of election lawmaking remains paradoxically understudied. Previous scholarship has concentrated on only the most major cases of reform (see Lijphart 1994; Renwick 2010).<sup>9</sup> When studies have considered lesser election reforms, they have usually eschewed an explanation of their politics of change, instead analyzing their effects. Rare exceptions include reports by Katz (2005) and Leyenaar and Hazan (2011). Even Toby James' (2012) book on the politics of election administration excludes all other types of election laws from consideration.<sup>10</sup>

*A More Expansive View of Election Laws: From "Electoral Reform" to "Election Reform"*

It seems the reasons for the above paradox are due to both terminological confusion and a general devaluation in the study of election laws beyond electoral system reform. As previously mentioned, the lion's share of scholarship on election lawmaking concerns electoral systems, especially electoral reform. But "electoral reform" has been used to mean both the type of election law that alters the translation of votes into seats (electoral

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<sup>9</sup> A typical definition for "major" reform is wholesale between-category change (i.e., proportional representation, single-member plurality, and mixed systems) or within-category reform that substantially alters either the degree of disproportionality in elections or the number of parties in parliament (see Benoit 2004; Blais 2008; Rahat 2008; Lundell 2009; Renwick et al. 2009; Renwick 2010).

<sup>10</sup> See Table 4.1 for a typology of election laws.

*system* reform) and every kind of election law change (including voting administration, franchise rules, and electoral governance). Renwick uses the former definition of electoral reform, defining it as “concerning the nature of the vote and its translation into seats” (2010: 3; see also Celis et. al 2011; Gallagher and Mitchell 2005a; James 2012; Lijphart 1994; Massicotte et al. 2004). On the other hand, Jacobs and Leyenaar use the latter meaning when they define it as (2011: 500; see also Katz 2005):

... a change in the legislation (versus practice) that regulates the process of voting, which includes who can vote, what voters are allowed to do in the voting booth (e.g. voting for a party or a person), what they vote for (e.g. national, provincial, local, executive, recall elections) and how these votes are afterwards translated into seats.

Compounding the situation is that there is no agreement on categories for the degree of reform—that is, what constitutes “major”, “minor”, or “technical” changes (Katz 2005; Jacobs and Leyenaar 2011). Sometimes “major reform” has referred simply to major *electoral system* reform (Lijphart 1994; Renwick 2010), while in other cases it has referred to multiple types of election rule changes that all happen to be particularly impactful in some way (Katz 2005; Jacobs and Leyenaar 2011). Even when the same general definition of “major” reform is used, the specific criteria applied is unique.

There is also no consensus over the categorization of types of election reform. Massicotte et al. (2004) define the components of election laws to include electoral systems, the right to vote and be a candidate, the registration process, who conducts elections, how people vote, and how winners and losers are sorted out. Alternatively, James (2011) groups scholarship into election administration, suffrage legislation, election boundaries, electoral finance, electoral systems, and electoral governance (2011, 2012). Jacobs and Leyenaar, in attempting to establish clear terminology, propose the dimensions of electoral reform to be the proportionality of the electoral system, ballot structure,

inclusiveness of the electoral legislation, election level, and practical organization of an election (2011: 500). But these dimensions are far afield from previous typologies, thus making their use limited. To make matters worse, “election administration” is itself just as terminologically confused as “electoral reform”, with its meaning ranging from encompassing voting and registration procedures (James 2011, 2012), to electoral governance laws (Massicotte et al. 2004), to the actual running of elections (Hayduk 2005).

The best way to cut through such terminological confusion is to eschew any usage of “electoral reform” altogether.<sup>11</sup> Rather, I define “electoral system reform” as a dimension of election reform concerning the preferences voters can express and the translation of votes into seats (à la James, Lijphart, and Renwick). “Election reform” and “election lawmaking” refer to the full gamut of rules concerning democratic elections. I also use James’ (2012) categorization of election laws as the basis for my own classification scheme (detailed in Chapter 4). I make no attempt to classify laws by their degree of importance.

The lack of terminological uniformity may have contributed to the lack of linkages between scholarship on electoral systems and scholarship on other election laws.<sup>12</sup> This missed connection is also likely due to the general devaluation given to election law changes that are not considered “major” (however defined) or do not concern electoral systems. Up until now, only electoral systems—and particularly only the most impactful

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<sup>11</sup> Future quoted material using “electoral reform” is clarified as either electoral system reform or election reform. Note that “electoral law” and “election law” *are* used interchangeably throughout to refer generally to the rules that govern democratic elections.

<sup>12</sup> With this terminology, I am able to neatly demarcate the four bodies of research on the democratic rules of the game: the political science of electoral systems, the politics of electoral system reform, the political science of election laws, and the politics of election lawmaking. This study examines one aspect of the political science of electoral systems: their effect on the politics of election lawmaking.



elements of electoral system reform—have received the lion’s share of scholarly attention focused on election laws. Lijphart (1994) provides a typical example, only examining election reforms that substantially affect the electoral formula, district magnitude, or electoral threshold. Similarly, Renwick (2010) limits his study to wholesale shifts between one of 14 electoral system categories.

Some scholars have recently argued for a more expansive view of election laws beyond major electoral system reform, both in terms of the degree (i.e., minor versus major) and type (i.e., voting administration, campaign finance, electoral governance) of reform (Celis et al. 2011; Farrell 2001; Jacobs and Leyenaar 2011; Katz 2005). As argued by Leyenaar and Hazan (2011: 447, 499):

... there is no reason, nor has there ever been, why changes in legislation regarding the (financing of) campaigns, pre-voting and smart voting systems, ballot access or polling, etc. should not be defined as electoral [election] reform and included within the scope of research on this topic....Those who stubbornly cling to the study of only ‘major’ reform have overlooked the fact that there have actually been a large number of ‘minor’ changes, sometimes in quick succession, that in combination not only culminate in ‘major’ reforms, but in their own right have also had significant political consequences.

This concentration of scholarship on only the most major instances of electoral system change has started to disperse. Some scholars have expanded research into sub-national electoral systems (Bowler and Donovan 2008; Dalton and Gray 2003), while others have looked at less wholesale electoral system reform (Celis et al. 2005; Jacobs and Leyenaar 2011) or gone beyond electoral systems to consider other types of election law (Elklit and Reynolds 2001; James 2012; Massicotte et al. 2004).<sup>13</sup> A large body of American scholarship has examined state-level voting administration changes, though as mentioned

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<sup>13</sup> See also Handley and Grofman 2008; Hartlyn et al. 2008; López-Pinter 2000; Mozaffar and Schedler 2002; Parkinson 2001; Qvortrup 2005; van Biezan 2004.

this literature has had little cross-pollination with comparative electoral system scholarship.<sup>14</sup>

The broadening of the research agenda is an encouraging development in the field. It has started to uncover the importance of so-called “minor” electoral system reforms and previously neglected areas of election law such as election administration, campaign finance, redistricting, and the franchise. These laws have been shown to affect voter turnout, representation, electoral outcomes, election integrity, and voter confidence in the legitimacy of the system (see generally James 2011, 2012). They also occur with much greater frequency than major changes to the electoral system. Lijphart (1994) counts 30 electoral system reforms in 27 countries between 1945 and 1990, Katz (2005) counts 14 instances of major electoral system reform in advanced democracies between 1950 and 2005, and Renwick (2010) identifies only six cases between 1985 and 2005. By way of comparison, Jacobs and Leyenaar (2011) identify no fewer than 32 changes to national election law in the Netherlands *alone* between 1989 and 2007 when considering all types and degrees of election reform. A study of Aotearoa New Zealand using a similarly inclusive definition tallied 66 changes to national electoral law between 1927 and 2007 (Christmas 2010), whereas more than 100 election reforms that affect voter turnout were passed in the United States between 2011 and 2017 (Ferrer 2017).

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<sup>14</sup> A sampling of this literature includes: Bentele and O’Brien 2013; Piven and Cloward 1988, 2000; Schlozman and Yohai 2008; Uggen and Manza 2002; Wolfinger and Rosenstone 1980.

### *The Politics of Election Lawmaking*

An expanded consideration of election reform reveals the great frequency with which it occurs, underscoring its importance as an area of study. I now move to exploring the politics of election lawmaking, or the political factors that affect how and when politicians reform election rules. To do so, scholarship on the politics of electoral system reform and on state election reforms in the United States is incorporated. I pay particular attention to the potential for election laws to change electoral outcomes, as this is assumed to be the primary reason why such laws are passed. My goal is to explain why politicians change election laws, the factors that make partisan election reforms more likely to occur, and the factors that make demobilizing election reforms more frequent. To do so, it is first necessary to examine the roots of partisan interest in election lawmaking.

#### Can Election Laws Shape Electoral Outcomes?

A wide range of scholarship has shown that election laws affect turnout. Voter administration laws have received a great deal of attention in this regard.<sup>15</sup> Scholars have found turnout effects for changes to voter registration (Ansolabehere and Konisky 2006; Groarke 2000; Neiheisel and Burden 2012),<sup>16</sup> polling places (Amos et al. 2017; Brady and McNulty 2011), voter identification (Alvarez et al. 2008; Stewart 2013), voting by mail (Gronke and Miller 2012), and compulsory voting (Banducci and Karp 2009; Birch 2009, 2016; Franklin 1999; McAllister 1986; Norris 2004). Franchise laws (The Sentencing

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<sup>15</sup> See generally Hayduk 2005; James 2011, 2012; King and Hale 2016; Massicotte et al. 2004; Rosenstone and Wolfinger 1978, 1980

<sup>16</sup> See also Brians and Grofman 1999, 2001; Burden et al. 2014; Hall 2013; Highton 2004; Goel et al. 2019; Hanmer 2012; Larocca and Klemanski 2011; Street et al. 2015

Project 2016; Uggen and Manza 2002) and electoral systems (Kostadinova 2003; Massicotte 2008) have also been examined. On the contrary, some scholars argue that the effects of election laws on turnout are typically small or overstated (Alvarez et al. 2012; Calvert and Gilchrist 1993; Erikson and Minnite 2009; Hershey 2009; Voris 2016).

For election laws to shape electoral outcomes, it is not enough for them to simply increase or decrease turnout. They must also shape *who* votes—the composition of the electorate that participates in elections (James 2012: 50–61). This might be due to the general characteristics of low-turnout voters (as not being represented in current electorates) and to the discriminatory effects that barriers imposed by election laws have on different segments of the electorate. The theoretical link connecting turnout and electoral outcome is the relationship between socioeconomic status, turnout, and partisanship. Low-socioeconomic status (SES) electors—those who are low-income, less-educated, and racial or ethnic minorities—generally support left-wing parties and generally vote at lower rates (Lijphart 1997; Schattschneider 1960; Verba et al. 1995). Lutz and Marsh have gone so far as to call the link between lower turnout and lower support for left-wing parties and policies the “standard view” (2007: 540).

Several studies in the United States have found that higher turnout benefits Democrats (Brunell and DeNardo 2004; Citrin et al. 2003; DeNardo 1980; Herron 1988; Martinez and Gill 2005; Wattenberg and Briens 2002). Similar trends have been found in Eastern Europe (Bohrer et al. 2000), Germany (Kohler 2011), the United Kingdom (McAllister and Mughan 1986), Australia (McAllister 1986), New Zealand (Nagel 1988), and developing countries (Aguilar and Pacek 2000). But other scholars have argued that no clear relationship between turnout and partisanship exists—or at least not across time

and geography (Bernhagen and Marsh 2007; Birch 2009; DeNardo 1980; Erikson 1995; Fisher 2007; Grofman et al. 1999; Kohler and Rose 2010; Radcliff 1994, 1995; Rose 1974; Rubenson et al. 2007; van der Eijk and van Egmond 2007). Neiheisel and Burden (2012) have even found these effects to run in the opposite direction, with increased turnout benefiting right-wing parties. Some scholars argue that non-voters have unformed or fluid policy positions and thus cannot be depended upon to consistently swing elections in a certain direction when they turn out (Banducci and Karp 2009; Bennett and Resnick 1990; Berinsky et al. 2005; Brians and Grofman 1999; van der Eijk and van Egmond 2007; Fieldhouse et al. 2007; Highton 2004; Nagel and McNulty 1996; Schmitt 2009; van der Brug et al. 2007; Wattenberg 2002).

If there are indeed demographic and partisan differences between voters and non-voters, then increased or decreased turnout caused by election reforms can alter the demographic and partisan composition of the voting population. A large body of scholarship has found evidence that election reforms affect the composition of the electorate (for a meta-analysis specific to the United States, see Ferrer 2017). As with research on turnout, the scholarly focus has been on the effects of election administration procedures.<sup>17</sup> Studies have found partisan and compositional effects for changes to registration procedures (Rigby and Springer 2011; Rugeley and Jackson 2009; Wolfinger and Rosenstone 1980), voter identification requirements (Ansolabehere and Konisky 2005; Barreto et al. 2009; Brady and McNulty 2011; Overton 2007; Stewart 2013), early voting (Herron and Smith 2014; Weaver 2015), polling place locations (Brady and McNulty 2011), the franchise (The Sentencing Project 2016; Uggen and Manza 2002), and

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<sup>17</sup> See generally Avey 1989; Cunningham 1991; James 2012; Hershey 2009; Piven and Cloward 1988.

compulsory voting (Hooghe and Pelleriaux 1998; Irwin 1974; Irwin and van Holsteyn 2005). Alternatively, some scholars have discerned the partisan/compositional effects of certain election laws to be small or nonexistent (Calvert and Gilchrest 1993; Citrin et al. 2003; Grimmer et al. 2017; Rocha and Matsubayahsi 2014; Southwell and Burchett 2000; Teixeira 1992; Wolfinger and Rosenstone 1980) or to run counter to initial expectations (Berinsky 2005; Neiheisel and Burden 2012; Voris 2016).

The last step in the causal chain between election laws and electoral outcomes is for reforms to shift the partisan composition of the electorate enough to prove determinative on election day. This is a difficult task to answer empirically because it involves a counterfactual: what would the electorate have looked like if *ceteris paribus* the election reform had not happened?<sup>18</sup> This is especially tricky because parties adapt their behavior in the face of changes to the rules of the game, which could mitigate or even reverse the intended partisan outcomes of reform (Rocha and Matsubayashi 2014; Schaffer 2008; Valentino and Neuner 2017; Voris 2016). Kohler and Rose conclude that (2010: 132):

The conjunction of conditions [in which maximizing turnout could alter an election result] are relatively rare: it is an accident of history that low turnout and close elections tend to occur most frequently in American presidential elections, where the largest amount of research is conducted on voting behaviour. The conjunction of conditions...are not often found in European proportional representation parliamentary election systems.

But the very fact that voting laws can change the composition of the electorate might mean they influence politics in other ways, fragmenting the party system (Jensen and Spoon

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<sup>18</sup> This is more easily discernible in the case of franchise laws where those affected by reforms can be readily identified. For instance, Manza and Uggen (2008) conclude that felon disenfranchisement statutes in the United States have altered the outcome of a presidential election and several Senate and gubernatorial races.

2011), altering policy decisions (Hicks and Swank 1992; Martin 2003), and shifting the degree of inequality (Birch 2009; Chong and Olivera 2005).

There is both a substantial body of scholarship showing that election reforms can have partisan effects and substantive criticisms of that finding. But in moving toward a politics of election lawmaking, it is important to recognize that perceptions can matter just as much as reality. Politicians are imperfect human beings making decisions based on their understanding of the world. The widespread perception that changing certain election laws will confer a partisan benefit and pave the way to electoral victory will shape politicians' actions, even if that belief is erroneous. There is certainly enough scholarship supporting a "partisan gain" view of election laws that it would be reasonable for politicians to assume election lawmaking to be an electoral strategy worth pursuing. The fact that politicians regularly change election laws<sup>19</sup> (Christmas 2010; Jacobs and Leyenaar 2011; James 2012) lends credence to this argument and makes election lawmaking worthy of study, regardless of whether reforms in fact prove electorally determinative.

### Constraints and Non-Constraints: Lessons from the Politics of Electoral Systems

It is necessary here to make a distinction between the factors that affect variations in the politics of election lawmaking (such as the amount of partisan and demobilizing bills passed) and the context-specific triggers that bring instances of election reform onto the political agenda (such as administrative failure, technological advancements, and judicial

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<sup>19</sup> Contrary to Richard Katz's (2005) claim that "minor" election reforms happen infrequently, although the claim was made without attempting a systematic search for instances of such lawmaking.

decisions). Although the literature on the politics of electoral system reform has covered both topics, the triggers of major electoral system reform are not generalizable to election lawmaking (Jacobs and Leyenaar 2011).<sup>20</sup> Therefore, this thesis centers on the factors that affect the incidence of election lawmaking rather than the reasons that specific bills are brought onto the legislative agenda.<sup>21</sup>

The oldest and simplest argument from scholars of electoral system reform is that politicians are self-interested, rational actors who will seek to change electoral systems for personal gain (Benoit 2004; Boix 1999; Brady and Mo 1992; Kellner 1995; Lisbon 1959; Riker 1984; Rokkan 1970). In this formulation, the primary goal of politicians is to maximize the seat share of their party. They will thus seek electoral changes that benefit them to the greatest extent possible. Benoit (2004) provides a small modification to the self-interest argument, recognizing the agency of individuals as separately self-interested and thus behaving strategically to maximize both their individual chances of electoral success and the party's overall political fortunes.

If naked electoral self-interest were the only part of the equation, then we might expect electoral system change to be a frequent occurrence. But as noted earlier, major change is exceedingly rare (Lijphart 2012; Katz 2005; Renwick 2010). Scholars have complicated this theory of self-interest in three major ways: (1) by expanding the arena of power and value considerations politicians face, (2) by expanding the number of actors

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<sup>20</sup> For an analysis of electoral system triggers, see Renwick 2010.

<sup>21</sup> The policy triggers that have brought election reform onto the legislative agenda in Aotearoa New Zealand are considered briefly in Chapter 6.



involved in decision-making beyond politicians, and (3) by utilizing an institutionalist framework to recognize the barriers faced by these actors. Each is examined in turn.

First, recent scholarship has recognized that politicians have more complex self-interest matrices—and face more obstacles to reform—than was previously understood (Renwick 2010). Some scholars have questioned the degree to which politicians single-mindedly pursue their own electoral goals, arguing that normative (democratic) values are also important to these actors (Andrews and Jackman 2005; Blais and Massicotte 1997; Katz 2005; Nagel 2004). In changing the rules of the game, politicians may seek ideological goals such as fairness, equality, representation, accountability, and maximum participation—values that may clash with electoral self-interest. Even when actors try to pursue naked self-interest, they face numerous complications. Politicians are not omnipotent, but rather must deal with imperfect information about the effects of reform. This is especially true in the case of major reforms, as the rarity of such changes means that there is greater uncertainty about their electoral impact. In some circumstances, this makes it impossible to predict the electoral outcome of legislative action (Andrews and Jackman 2005). Limited information also means that politicians are not able to consider all potential reform options and define the most optimal one. Rather, they are limited by which options they readily know about (Renwick 2010). Politicians also usually have short time horizons, only considering the immediate impacts of electoral changes and discounting longer-term effects (Renwick 2010; Rose 1983). Rarely will they worry about any election beyond the next one, yet rule changes that aid them in the short run may prove detrimental in future election cycles. In multiparty and minority government situations, parties must also consider a more complex playing field. Bargaining and negotiation are necessary steps

in crafting a legislative majority. Election reform can be used as a bargaining chip to win another party's support.

Politicians additionally must consider public opinion when engaging in election lawmaking (Renwick 2010). This can broadly be termed “act-contingent considerations”, or the effects of the act of legislating itself, which contrasts with “outcome-contingent considerations”—the effects of the law change (Reed and Thies 2001; see also James 2012; Shugart and Wattenberg 2001). Politicians can be constrained by act-contingent considerations in two ways: being forced to support reforms they would otherwise oppose, and not being able to pass reforms that they would otherwise support. As Richard Katz puts it, “[e]ven when a reform would clearly be costly to the parties in power, they may expect resistance to be even more costly; even when parties have the capacity to tweak the rules to their advantage, the expected benefits may be outweighed by the potential backlash” (2005: 75). The more substantial the reform, the higher the act-contingent considerations. This is because the electoral changes are more visible, increasing the chances that the next election becomes a referendum on those changes (Quintal 1970). The public's values may also come into play with substantial reform proposals. If the public views certain options as illegitimate, they can impose harsh electoral penalties on politicians who enact them (Leyenaar and Hazan 2011).

Second, scholars have recognized that a greater number of actors are involved in decision-making than originally considered. The recognition of act-contingent considerations is the recognition that actors besides politicians exert power. Politicians cannot just care about themselves; if their goal is to maximize their electoral control, then

they must care about how the (voting) electorate views them. Katz writes eloquently on the matter (2005: 73):

It is not necessarily the case that parties in power fail to pursue their self-interest, but rather that, paradoxically (perhaps the true paradox), it is not in their self-interest to pursue their self-interest because other actors in the political process—including many voters—react badly to excessive partisanship. In other words, even if parties are simply motivated by self-interest, and unrestrained by any normative commitment to democratic principles, they might still find abstaining from even the appearance of electoral manipulation to be to their advantage.

In other words, politicians will be constrained in manipulating the rules of the game for their benefit when they fear public backlash for being viewed as manipulators of the system. This is because the broader effects of such a move may prove more deleterious to their electoral prospects than the advantage gained through the reform. Similarly, supporting popular reforms that mechanically hurt a party may bring them more electoral support than preventing the wanted changes would. Other external actors may play a role as well. Academic and government experts can help determine the menu of reform options considered, judges can provide an independent check on legislative power, and NGOs can mobilize publics for or against reform proposals. All these actors are outside the direct control of parties and politicians and thus present additional barriers to reform.

Finally, some scholars have utilized an institutionalist approach to electoral system reform, putting the constraints imposed by political institutions front and center. This framework starts with the proposition that politicians' actions are constrained by the structure of the system within which they operate. For politicians to achieve desired reforms, they must overcome every procedural obstacle imposed by the system, for "if they do not successfully overcome each and every one of them they will fail" (Rahat and Hazan 2011: 480; see also van der Kolk 2007). These barriers can include the procedural superiority of the status quo, political tradition, systemic balance and efficiency of the

system, actors' vested interests, and coalition politics (Jacobs and Leyenaar 2011). In the language of Tsebelis, politicians face a number of veto players who can prevent legislative action from taking place (2002). The more veto players exist (in the form of second chambers, judges, executives, supermajority requirements, and even public opinion via referendums), the more difficult it is for politicians to achieve their desired ends.

In sum, scholarship on electoral system reform has found that a variety of factors inhibit politicians from altering the rules of the game for their personal benefit. Political actors have complex self-interest and value matrices, contest power with other actors and the public, and face institutional barriers to action. Now I will adapt the lessons learned from studies of electoral system reform to the unique terrain of election lawmaking.

#### From The Politics of *Electoral System* Reform to The Politics of *Election* Reform

The existing scholarship on the politics of electoral system reform has provided a great deal of insight into the incentives and constraints faced by actors in passing these changes. Many of these lessons hold true for the study of election reform beyond major electoral system change, including the recognition of complex power and value considerations, act-contingent constraints, multiple actors and veto players, and the imperatives of coalition politics. But there are a few critical differences between a phenomenon that occurs only a few times a decade worldwide and one that occurs on a yearly basis in a typical country. With the greatly expanded number of cases that can be considered, there is also the opportunity to develop a more systematic theory of election lawmaking than the politics of electoral system reform allows (Jacobs and Leyenaar 2011).

When comparing broadly defined “election reform” with major electoral system reform, perhaps the biggest difference is that the barriers to change are significantly lower. This is because both act-contingent and outcome-contingent constraints to lawmaking are diminished. Act-contingent constraints are lower because there is less public interest in election reforms than in major electoral system change, and therefore greater invisibility of political manipulation. Academics have long noted how the subject of election law causes people’s eyes to glaze over (see Gallagher 2005). Even wholesale electoral system change rarely garners broad public interest (Katz 2005; Renwick 2010); it should therefore be no surprise that changes to registration provisions and voting procedures are even further from people’s minds. As the public is less likely to notice or care about minor changes to election rules, politicians will feel less constrained by fears of public backlash at being viewed as manipulators of the system. Therefore, they are more easily able to manipulate election laws for their benefit. This is normatively worrisome. Representative democracies supposedly function by allowing voters to choose politicians to represent them, who are then held accountable for their actions when they face reelection. If politicians can game the system without repercussions, this marks a fundamental breakdown in the contract between voter and officeholder.

Election reforms are also easier to pass than major electoral system because they face less opposition from politicians. By their very nature, non-major changes to the rules of the democratic game are less likely to alter the outcome of that game. Kohler and Rose (2010) theorize that only in rare cases would any type of election change alter an electoral outcome. It follows that small changes to voting administration rules, polling hours, or prisoner voting rights will rarely make the difference on election night. As there is less to

be lost from small rule changes, politicians opposed to them will be more likely to allow the majority to have its way without a fight. This also means that politicians may be less motivated by pure electoral self-interest when considering minor election reforms as there is less to be gained electorally. Instead, they will care more about ideology, democratic norms, and public opinion—in other words, act-contingent considerations trumping outcome-contingent ones.<sup>22</sup> As put by Jacobs and Leyenaar, “it seems that, when it comes to minor reforms, the costs of opposing the reform are more easily outweighed by the costs of supporting it when the reform ‘increases democracy’” (2011: 509). This suggests that non-partisan election reforms might be a common occurrence, especially ones that expand participation. Reduced information barriers for politicians may also play a role. Because there are more cases of election reform than major electoral system reform, legislators generally have a more accurate picture of what impact the reform will have. The presence of better information can make politicians more eager to pursue legislative changes.

The fact that barriers to election reform outside major electoral system changes are relatively low has led Katz to question why “minor” election reforms do not happen more frequently: “[s]ince [parties] could gain partisan advantage by changing the rules of the game, why do parties not do so more often?” (2005: 69). One possible answer is that the combination of constraints remains significant. Fears of public backlash, complex coalition politics, imperfect information, and the desire to use precious legislative time to focus on other policy priorities may all combine to create an environment that is quite inhospitable to frequent election law changes. Another possible answer is that election reforms are

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<sup>22</sup> Less potential gain from election reforms should also theoretically reduce the ruling party’s interest in pursuing such changes. However, the extensive record of election lawmaking stands as strong evidence that this is not the case.

rarely likely to prove determinative in an electoral outcome. In the vein of Kohler and Rose (2010), minor election reforms are simply too unlikely to make much of a difference to be worth pursuing. It is an accident of history, in their reckoning, that the only country where the combination of factors happens to make minor election reforms worthwhile—the United States—is also the one where most political science scholarship takes place. The most plausible response to Katz, however, is that “minor” election reforms *do* occur with greater frequency but that this has been ignored by most existing scholarship. The paucity of studies on election lawmaking means it is hard to say which is the case for sure, but the scholarship that has been undertaken points to this reason as the most compelling. When scholars have closely examined cases of election lawmaking in single-country studies, they have found frequent instances of legislative change.<sup>23</sup>

### Partisan Election Lawmaking

Given that politicians face fewer barriers in enacting minor election reforms and that they engage in election lawmaking on a routine—even “politics as usual”—basis (Jacobs and Leyenaar 2011: 504), the study of the politics of election lawmaking lends itself much more readily to general theorizing than does the politics of major electoral system reform. One important research topic concerns the factors that encourage or discourage the manipulation of election laws for partisan interest. Although this topic has received substantial attention within the United States (where studies compare states with one

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<sup>23</sup> For the Netherlands, see Jacobs and Leyenaar 2011; for New Zealand, see Christmas 2010; for the United States, see Ferrer 2017.

another), it has unfortunately received scant attention elsewhere, leading James to label most scholarship in the field as “parochial” (2011: 221).

In the United States, a wave of highly partisan election lawmaking across dozens of states has led scholars to examine which factors lead to the passage of voting restrictions, or reforms that increase the burden on electors and decrease opportunities to cast a ballot. These studies have found the passage of restrictions to be driven by politicians, strategic in nature, and highly racialized (Bateman 2016; Bentele and O’Brien 2013; Biggers and Hanmer 2017; Hicks et al. 2015; Hicks et al. 2016; McKee 2015; Rocha and Matsubayashi 2014; Vandewalker and Bentele 2015; Voris 2016). Scholars have found relationships between restrictive law proposal/passage and electoral competitiveness, Republican legislative and executive control, and racial and class factors (Bentele and O’Brien 2013; Vandewalker and Bentele 2015). In terms of race, larger African American populations, increases in minority turnout, and greater prevalence of anti-black stereotyping are all correlates of restrictive election bills. By identifying the determinants of voting restriction passage, these studies have detected which political and demographic factors make partisan election lawmaking more likely. They face two major shortcomings. The narrow concern of the literature on voting restrictions to the exclusion of voting expansions and participatorily neutral reforms has left an incomplete picture of the politics of election lawmaking in the United States. And the inherent limitations of within-country analysis have meant that these studies are unable to test the effects of electoral and party systems on the partisanship of election reforms.

To my knowledge, James is the only scholar outside the United States to undertake an empirical study of the correlates of partisan election lawmaking (2011, 2012).



Comparing Ireland, the United Kingdom, and the United States, James identifies five “systematic legal and political features” that make partisan election lawmaking more likely: greater constitutional control given to legislatures over election procedure, a federalized constitutional system, a less proportional electoral system, a two-party political system, and the presence of a left-right SES cleavage (2012: 216–19). Kohler and Rose (2010) analyze the factors that make higher turnout more likely to determine electoral outcomes, which should closely relate to greater incentives for parties to pass partisan election laws. In addition to the importance of the electoral and party systems mentioned by James, they propose that higher turnout is more likely to be determinative in the following circumstances: (1) when turnout is lower and therefore non-voters have more leverage, (2) when there is greater divergence between the party preferences of non-voters and voters, and (3) when the electoral environment is more competitive.

Existing scholarship has suggested a few additional factors. Partisan election lawmaking may become more likely under increased economic inequality (Minnite 2010; Interview B), within divisive and polarized political cultures (Minnite 2010; Interview B), when legislative procedures are more streamlined (Christmas 2010), and when the desirability of consensual lawmaking is diminished (Christmas 2010; McLeay 2018). The importance of a government mandate for action can make previously promised election reforms easier to pass and previously unmentioned reforms more difficult to achieve (Christmas 2010; Interview H). Coalition formation dynamics are also important, though they are closely related to the electoral system (Malone 2008; McLeay 2018). Finally, the specific politics of election lawmaking will be shaped by the type (James 2012), degree (Jacobs and Leyenaar 2011), and participatory direction (Ferrer 2017) of change. Franchise

laws will be treated differently than voter identification reforms, major changes to early voting will be looked at more closely than technical changes, and expansions of the electorate will bring into play different value and ideological considerations than will contractions to the voting population.

Of the factors listed, the electoral system has most consistently been suggested as playing a critical role in affecting the politics of election lawmaking (James 2011, 2012; Kohler and Rose 2010; Minnite 2010; Piven et al. 2009; Interview B). Previous studies have usually only hinted at this connection rather than testing it explicitly. Where it has been tested empirically, only one aspect of election reform—election administration—has been considered (James 2011, 2012).

### Demobilizing Election Lawmaking

An important component of election reform study is examining when politicians manipulate the rules of the game to prevent or discourage electors from participating. This kind of legislative action has been called “voter suppression” or “voting restrictions” in American contexts (Ferrer 2017; Minnite 2010; Overton 2007; Piven et al. 2009; Roth 2016; Wang 2016), but more generally can be referred to as “demobilization” (Cunningham 1991; Valentino and Neuner 2017).<sup>24</sup> The existence of demobilizing election laws is counter to the traditional view of party competition, which held that parties constantly seek new ways to mobilize voters and expand the electorate in order to win

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<sup>24</sup> Non-legislative procedures and campaign tactics have also been included in the definitions of voter suppression and voter demobilization, but I focus here only on legislative actions. For a typology of election administration restrictions, see James 2011, 2012.

additional support (Dahl 1967; Rosenstone and Hansen 1993; Schattschneider 1942). The substantial body of scholarship documenting cases of voter demobilization in the United States clearly refutes this theory (Hayduk 1996, 2005; Keyssar 2009; Minnite 2000, 2010; Piven and Cloward 1988, 2000). Responding to an environment where restrictions are passed on a nearly daily basis and a history where black Americans have routinely been prevented from voting, Piven et al. (2009) theorize that pursuing voting restrictions is a rational political strategy in polities that contain marginalized subjects with discordant preferences. If the inclusion of an easily identifiable underrepresented group were to force policy changes that would antagonize existing members of a party's electoral coalition, the party may seek to avoid upsetting the current members of its coalition by continuing to exclude the group. The authors also posit that the same factors that increase partisan election lawmaking should encourage voter demobilization, including non-proportional electoral systems, fewer parties, close elections, high inequality, and a large divergence in the preferences of voters and non-voters (Piven et al. 2009: 16–17; Minnite 2010; Interview B).

Demobilizing election lawmaking can at times be synonymous with partisan election lawmaking, as when one party attempts to push through voting restrictions that other parties oppose. But it can also be distinct, for instance when all parties with legislative representation agree to implement barriers to the ballot box that disproportionately burden the most marginalized and politically disengaged communities. Even more common is a form of passive demobilization, where parties tacitly approve maintaining a series of election rules designed to exclude certain minorities from democratic participation.

Although the extensive amount of American scholarship on the subject has uncovered important lessons, it has failed to shed light on the role electoral systems play in encouraging or discouraging demobilizing election reforms. The study of demobilizing election lawmaking is even more neglected than partisanship, as even James' (2011, 2012) studies fail to analyze the correlates of demobilizing reforms. To my knowledge, no research has empirically examined the link between electoral systems and demobilization. This thesis brings the issue of voter restrictions front and center, disentangling them from partisan election lawmaking and empirically testing the relationship between electoral systems and demobilizing election lawmaking.

*Theoretical Foundation: Elite Agency, Statecraft Theory, and Neo-Institutionalism*

Rather than adhering to specified formal political theories, I emphasize certain theoretical elements that form the basis of this work. The first is a recognition that politicians are “political elites” who (1) hold divergent interests from the mass public (generally skewing wealthy and conservative), (2) possess the agency to set the political agenda and shape public debate (à la Lukes 2005), and (3) use power to achieve their own interests to the detriment of society. Murray Edelman shows how politicians, acting as political elites, utilize mass media and rhetoric to shape the public's perceptions of reality and achieve/maintain ingrained political and economic inequalities (1960, 1975, 1977, 1988). Because the stakes of elections are so high—and the spoils of office so (personally) large—political elites value winning elections and being reelected above virtually all else. They achieve these goals through successful “statecraft”, which involves party management, a

winning electoral strategy, the predominance of elite debate, and governing competence. This theory was initially developed by Jim Bulpitt (1986, 1996), but has been more fully developed by James, who added “bending the rules of the game” as a viable statecraft strategy (2012: 81–85; see also James 2016). Two elements of this theory are particularly relevant for my purposes: the understanding that political elites care very deeply about winning elections, and the recognition that election lawmaking is a viable strategy that politicians can use to achieve this goal.

Neo-institutionalism is concerned with the role institutions play in the determination of social and political outcomes (Hall and Taylor 2003). It is a recent evolution from the much older theory of institutionalism, which focused on institutional structures to the exclusion of the role of actors and narratives of change. More specifically, neo-institutionalism concerns the historical context and temporal development of institutions, the concept of critical junctures as creating path dependencies that shape future events and decisions, and a theory of actor motivations that assumes self-interest and rationality (James 2016). Whereas statecraft theory focuses on *actors* (i.e., political elites), neo-institutionalism focuses on *institutions*. An analysis of the politics of election lawmaking must recognize the role of both politicians and the institutional structures they shape and are shaped by. These legislative and electoral structures constrain and incentivize the actions taken by political elites, who also may change those structures to further their own self-interested ends. In this thesis, therefore, neo-institutionalism is used as a framework to study the effects of institutional change on politicians’ ability to carry out additional institutional change.

*The Importance of Studying the Politics of Election Lawmaking in an Era of Democratic Decline*

The world is undergoing a period of democratic decline (Dalton 2004; Hay and Stoker 2009; Marsh and Miller 2012). Many countries are facing diminishing participation rates, increasingly disengaged electorates, and backslides into semi-democratic and non-democratic states. According to Freedom House (2019), the world has experienced 12 consecutive years of declining global freedom, spanning countries in every region and at every level of democratization. In their words, “the pattern is consistent and ominous. Democracy is in retreat” (2019: 1). Given that elections are the keystone of modern democracies (Powell 2000), understanding how and when politicians change the rules that govern elections is of critical importance. This chapter has developed a framework for analyzing the politics of election lawmaking. It concludes by examining the implications of both partisan and demobilizing election reforms.

Partisan election lawmaking is deleterious because it erodes faith in the democratic process (James 2011, 2012). The legitimacy to bestow collective decision-making power on certain representatives is the primary purpose of elections. When politicians are (seen as) manipulating the rules of the game for their benefit, this can lead to the delegitimization of election results and a rejection of the democratic process. One example of this delegitimization is a body of scholarship linking partisan voter identification laws passed in the United States with an erosion of Democratic voter confidence in elections (Bowler and Donovan 2016; King 2017; Hasen 2014; Stewart et al. 2016).

In addition to eroding confidence in the democratic process, demobilizing election lawmaking skews electorates, leading to unrepresentative government, unrepresentative

policies, and greater inequality (Bentele and O'Brien 2013; Lijphart 1997; Mueller and Stratmann 2003; see also Wong 2017). Discouraging participation and exacerbating political inequalities are also undesirable for normative reasons (Barber 1984; Lacroix 2007; Pateman 1970; Verba 1996). Excluding marginalized groups from participation means their needs will not be adequately considered by decision-makers, leaving them materially worse off. The resultant inequality ends up leaving the entire society worse off (Guinier and Torres 2002).

Distinguishing between partisan and demobilizing election lawmaking permits the unique negative effects of each to be examined. Previous scholarship has failed to clearly make this demarcation. Doing so allows me to analyze normatively ambiguous situations such as partisan election laws that mobilize voters, identifying the deleterious effects of controversial passage along with the beneficial effects of increased participation. The utility of this distinction becomes evident when considering cases such as Labour's election bill mentioned in Chapter 1. A matrix of election lawmaking utilizing this distinction is presented in Chapter 5.

Considering the positive and normative factors at stake, it is vital to better understand which institutional structures encourage partisan and demobilizing election lawmaking. It is clear this area has been neglected by scholars thus far. It is equally clear that the existing scholarship on electoral system change has left clues to analyze the politics of election lawmaking: as a phenomenon characterized by self-interested politicians seeking electoral advantage but constrained by the institutions they operate within. This thesis uses these clues as the basis for empirical analysis, testing the effects of systemic

institutional change on the ability of politicians to manipulate the democratic rules of the game.



### CHAPTER 3: WHY AOTEAROA NEW ZEALAND?

Aotearoa New Zealand presents a unique case as the best opportunity to test the relationship between a nation's electoral system and partisan/demobilizing election reforms. This is because it is the only established democracy in the world to permanently switch between a non-proportional and a proportional electoral system (Renwick 2010). This chapter explores the implications of Aotearoa New Zealand's 1996 move from FPTP to MMP for studying the politics of election lawmaking. It also explores a few other unique characteristics of the country, including extreme party cohesion, the concentration of executive power, and the presence of a large marginalized indigenous population. Aotearoa New Zealand's reputation as a model democracy is also scrutinized.

#### *Aotearoa New Zealand's 1996 Electoral System Reform*

A summary of the differences between the FPTP and MMP electoral systems in Aotearoa New Zealand is provided in Table 3.1 (below). The narrative of how and why Aotearoa New Zealand went about fundamentally transforming its electoral system has been extensively covered elsewhere.<sup>25</sup> The process was long and complex, involving a Royal Commission, multiple broken political promises, misread debate notes, and two national referendums. The aftershocks of reform led to a binding referendum on retaining MMP in 2011 that was approved. It has also led to two official reviews of the MMP system, in 2001

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<sup>25</sup> See Aimer 2008; Atkinson 2003: 201–33; Boston et al. 1996; Denmark 2001; Geddis 2014; Hawke 1993; Jackson and McRobie 1998; Mackerras 1994; Malone 2008; Nagel 1994, 2004; Palmer 2014; Renwick 2007, 2010; Vowles 1995; Vowles et al. 1995.

and 2012, both of which have failed to result in legislative reforms (on the 2001 review, see Church and McLeay 2003; on the 2012 review, see Geddis 2013). By all indications, MMP is here to stay (Palmer and Butler 2016).

<b>Electoral Provision</b>	<b>FPTP</b>	<b>MMP</b>
Size of Parliament	99	120, with overhangs <sup>26</sup>
Number of electorates	99, allocated on a FPTP basis	65, allocated on a FPTP basis <sup>27</sup>
Voting Method	One vote, for electorate candidate	Two votes, one for electorate candidate and one for party
List seats	None	55, allocated to make each party's parliamentary representation proportional to their nationwide party vote <sup>27</sup>
Threshold	N/A	5% or win at least one electorate seat
Māori electorates	Fixed at 4	Proportional to size of Māori electoral population
Governance	No Electoral Commission <sup>28</sup>	Electoral Commission established to regulate parties and conduct public information campaigns
Representation Commission	Membership includes representation from each major party	Unchanged
Entrenched statutes	FPTP method of voting	MMP method of voting

The rarity of the occurrence is particularly relevant. Aotearoa New Zealand is unusual simply for being considered an established democracy, which Lijphart defines as

<sup>26</sup> Overhangs occur when a party wins more electorate seats than its share of the party vote entitles it to. In Aotearoa New Zealand, parties keep the extra seat(s) won but other parties are still awarded the number of seats they would otherwise be entitled to. This means that the size of parliament is temporarily increased by the number of overhung seats.

<sup>27</sup> The number of South Island general seats are fixed at 16. This number is used to determine the number of North Island and Māori electorates. If the North Island or Māori electoral population grow disproportionately to the South Island general population, then additional electorate seats are added at the expense of list seats. “Northern drift” has resulted in a significant increase in the number of electorate seats and a significant reduction in the number of list seats. There are currently 71 electorate seats (comprised of 64 general and seven Māori) and 49 list seats. The repercussions of fewer list seats are explored in Chapter 7.

<sup>28</sup> Regardless of MMP, the Electoral Commission was established in 1993 to conduct public information campaigns.

a country rated by Freedom House as being “free” for at least the past 20 years (2012: 46–52). Lijphart identifies only 36 countries that meet this criterion.<sup>29</sup> Scholars have focused their study of democratic institutions on established democracies, partially because of Eurocentrism (devaluing research in non-Western countries) and partially because these are the only countries where certain types of studies of electoral systems can take place. As explored in the previous chapter, only a handful of these countries have experienced significant changes to their electoral system since WWII. Major electoral changes to long-running democracies are nearly unprecedented. A categorical change to the proportionality of an electoral system *is* unprecedented; as already noted, Aotearoa New Zealand is the only established democracy to permanently switch between non-proportional and proportional electoral systems. In a study of major electoral system reforms among established democracies, Renwick describes Aotearoa New Zealand’s change as the “most momentous” of them all (2010: 6):

Aside from brief use of a two-round system in 1908 and 1911, New Zealand had never deviated from plurality rule, and single-member plurality became universal there before even in the UK. In 1993, however, New Zealand broke all Westminster tradition. Not only did it adopt proportional representation: it also opted for a form of PR—MMP—never before used in the Westminster world. A country that previously had shown exceptional electoral system conservatism stepped decisively into the unknown.

In short, Aotearoa New Zealand is special.

This shift has by no means been ignored by the academic community. In addition to providing a narrative of electoral transformation and examining why the change took place (Jackson and McRobie 1998; McRobie 1997; Renwick 2007, 2009, 2010; Vowles

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<sup>29</sup> Note that countries with populations of less than a quarter of a million are excluded. This number has remained the same in both the 1999 and 2012 editions of *Patterns of Democracy* because Argentina, Uruguay, and Korea aged into the “established” democracy status in the latter edition while Colombia, Venezuela, and Papua New Guinea no longer had free and fair democracies. Worldwide democratic decline might perpetuate this trend, demoting previously longstanding democracies as newer democracies reach maturity.

1995), scholars have studied the effects of electoral system change. The most immediate and direct effects have been to political parties and parliament. MMP has significantly decreased the degree of disproportionality in elections, or the degree to which the percentage of votes the parties receive diverge from the percentage of seats they win. Between 1946 and 1993, Aotearoa New Zealand's average disproportionality was 11.10 according to the Gallagher index, but between 1996 and 2014 (under the MMP system) this sharply declined to 3.00, indicating that seats are now allocated to political parties mostly proportional to the number of votes each party receives (Arseneau and Roberts 2015; Lijphart 2012). Electoral system reform has increased both the number of parties that contest elections and the number of parties that are represented in parliament (Barker and McLeay 2000), brought legal recognition and statutory obligations to political parties (Geddis and Morris 2004; Geddis 2014), and arguably increased the fairness and legitimacy of the democratic process (McRobie 1997; Nagel 2012). MMP has also increased the gender and ethnic diversity of MPs (Maoate-Cox 2018; McRobie 1997) and has shifted the focus of political campaigns from a handful of swing voters in marginal electorates to the nationwide party vote (Vowles 2010). Parties must now find coalition partners to govern and minority governments are frequently formed (Boston and Bullock 2009; Boston 2011). Select committees are oftentimes controlled by the opposition party (Malone 2008), while public and parliamentary deliberation have become part of the natural legislative process (Aroney and Thomas 2012; Malone 2008). These factors have slowed the legislative process and diluted executive power—which several scholars recognize was the primary goal of switching to MMP (Malone 2008; Palmer and Palmer 2004). Electoral system reform has also seemed to increase public faith in Aotearoa New Zealand's democracy and

governance. Trust and confidence in parliament had atrophied from 32 percent in 1975 to only 4 percent in 1992 (McLeay et al. 1996), but this had rebounded to 49 percent in 2018 (Institute for Governance and Policy Studies 2018). On the other hand, electoral system reform has not turned the tide in falling turnout rates (Vowles 2002, 2010), nor has it cleaned up “dirty” campaign tactics (Hager 2006, 2014; Interview O), improved the level of government accountability (Aroney and Thomas 2012), reduced the level of polarization between political parties (Gibbons 2011; Interview C), or reinvigorated mass participation in parties (Miller 2005). The effects of electoral system reform on the politics of election lawmaking itself has yet to be examined.

Scholars have begun to recognize that major electoral system reform provides important opportunities for study. Shugart labels studies that examine the effects of electoral system reform within a single country as comparative, calling them “outstanding examples of theoretically significant research inasmuch as they allow much to be held constant, and thus help us understand both the power of electoral rules and their limits to changing political behavior” (2005: 29). Instances of electoral system change can be thought of as natural experiments (or, in Shugart’s words, “crucial experiments”) where the variable of interest is manipulated by nature, allowing more direct causal relationships to be formed. Although studies of electoral systems that focus on within-country reform are still observational in nature, they cut out much of the noise inherent in between-country observational studies. Shugart details this phenomenon (2005: 34):

In the case of electoral [system] reform, the crucial experiment allows us to see in one country how electoral politics responds to changes in the electoral system. Thus we can hold constant numerous other factors that might confound the relationship being tested for when we are using observations from separate countries with distinct political histories, cultures, and so on. Of course, it is not a perfect control, as other factors—for example, demographic changes, or the rise or

decline of issue cleavages—may have been the underlying cause of the change of electoral system in the first place. Nonetheless, electoral [system] reform offers a more controlled environment than we normally confront. The cases of New Zealand and Italy have proven especially fruitful for this type of controlled experiment.

As such, Aotearoa New Zealand is thrice unique for scholarly study: one of only 36 established democracies in the world, one of only six established democracies that has recently experienced major electoral system reform, and the only established democracy to experience an electoral system reform that has wholly shifted its democracy between non-proportionality and proportionality. Aotearoa New Zealand is thus the only possible case study of an established democracy shifting from a non-proportional electoral system to a proportional one and the only natural experiment available for testing the effects of proportional electoral systems on the politics of election lawmaking.<sup>30</sup>

It is worth making the broader point that Aotearoa New Zealand provides the best grounds for doing studies that examine the indirect effects of proportional representation. Nowhere else can a study pinpoint the effects of a sudden change in the degree of proportionality on any number of indicators—whether it be the level of divisiveness and partisanship in politics, the responsiveness of government to public opinion, the budgeting process and provision of public goods (Boston and Church 2002), or the degree to which election laws are manipulated for partisan purposes. It has now been 24 years since New Zealanders voted in the first election using MMP and 27 years since New Zealanders voted for MMP via popular referendum. As the country’s FPTP era slides ever further into the past, it is becoming increasingly difficult to conduct research comparing the FPTP and MMP eras, and therefore more difficult to pinpoint the effects of electoral systems on a

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<sup>30</sup> There is in fact no case of wholesale, long-lasting electoral system reform from proportionality to non-proportionality among established democracies.

wide array of political, economic, and social phenomena. As it is unclear when the next such opportunity will arise around the world, now is the time for scholars to take full advantage of the country's singular political history.

*Beyond Electoral System Reform: Aotearoa New Zealand's Unique Political System*

While electoral system reform makes Aotearoa New Zealand worthy of study, it is important to consider several other factors that make this country an outlier compared to other established democracies. The country was long considered to be the purest example of the Westminster model of government, or the concentration of power in the executive (Lijphart 2012). The absence of a written constitution and (since 1951) a second chamber, the unitary concentration of power in the central government, and the lack of judicial review of legislation—coupled with a FPTP, two-party parliamentary system—meant that executive government was virtually unchecked (Palmer 1990). The only mitigating factor was an unusually brief three-year term of office. Furthermore, political parties in Aotearoa New Zealand exhibit extreme party cohesion, with party leadership demanding unanimous member support on almost all legislative votes (Duncan and Gillon 2015). It was largely to restrain such unbridled executive power that academics and the public supported the switch to MMP, and consequently proportionality, multiparty representation, and coalition parliaments (Malone 2008; Palmer and Palmer 2004). There are other countervailing trends to the concentration of executive power. The Central Bank has grown more independent over the past several decades (Lijphart 2012) and the judicial system has strengthened (Joseph 2014)—a movement toward “juristocracy” in line with other Western democracies

(Hirschl 2004). Although these developments mean Aotearoa New Zealand is no longer the purest example of the Westminster system, the country remains an outlier for its unusual concentration of executive power (Geddis 2016; Lijphart 2012; Palmer and Butler 2016). In terms of election lawmaking, this means that the legislative and judicial branches are unlikely to prove very stringent checks on the goals of the executive, which might open the door to more frequent partisan changes to national election laws. The lack of parliamentary and constitutional constraints are explored further in Chapter 6.

Aotearoa New Zealand is also distinct for its biculturalism. Māori currently comprise 15 percent of the total population. As tangata whenua, the indigenous inhabitants of the land, Māori have faced systemic racism and endured numerous atrocities committed by Pākehā (white European) colonizers, including being stripped of nearly all their land, treated as second-class citizens, and forcibly assimilated (Hamilton 2018). The Treaty of Waitangi, signed in 1840, established a formal relationship between Māori and the Crown. In the decades that followed, the Crown regularly infringed on Māori treaty rights, leaving Māori with few resources and even fewer options for political recourse by the turn of the twentieth century (King 2003). The Treaty of Waitangi Act 1975 has helped to facilitate the negotiation and settlement of some historical claims of Treaty breaches (Hayward 2019). Although Māori were given token representation in parliament starting in 1867, Māori election administration was treated with indifference and neglect by Aotearoa New Zealand's government (Atkinson 2003; Geddis 2014).<sup>31</sup> “Full blood” Māori were not

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<sup>31</sup> Four Māori electorates were set aside in 1867 even though the size of the Māori population should have earned them 14 or 15 seats (King 2003: 257; see also Geddis 2006a). The number of Māori electorates remained fixed at four until 1996.



allowed to vote on the general electoral roll until 1975, and Māori were not represented in proportion to their population until 1996.

There has been something of a renaissance in Māori culture since the 1970s, with a celebration of Māori history, language, art, food, ideas, and traditions, as well as growing acceptance of biculturalism (Derby 2011; Hill 2009; Kennedy 2016). The adoption of MMP and changes to the Māori electoral option have facilitated Māori representation in parliament and the formation of indigenous rights-based parties such as the Mana Māori Movement and the Māori party (Sullivan 2016). Aotearoa New Zealand is increasingly becoming multicultural as well, with growing Asian (12 percent) and Pasifika (7.5 percent) populations, as well as recent immigration from the Middle East and Africa (Phillips 2015; Singham 2006). Non-Pākehā New Zealanders face a range of economic, social, and political barriers to full inclusion in society (Marriott and Sim 2015; Walters 2018), including income and wealth inequality (Easton 2010; Stats NZ 2016b); inferior health, housing, professional, and educational outcomes (Pearson 2018); harsher criminal penalties (Independent Police Conduct Authority 2016); elevated incarceration rates (NZ Department of Corrections 2019); and political underrepresentation (Fitzgerald et al. 2007; Vowles et al. 2017). These inequities are due to both the past effects of racial and ethnic discrimination and the continuing effects of present-day racism. In short, these communities are marginalized. The presence of marginalized groups within the country provides an important opportunity to test theories about the determinants of demobilizing election lawmaking, as the existing literature on the subject has drawn a connection between the two (Minnite 2010; Piven et al. 2009).

Finally, Aotearoa New Zealand has had one of the most radical economic transformations of any other Western democracy. In the aftermath of World War II, the country enjoyed a postwar Keynesian consensus, including generous social spending, strong state intervention in the economy, a large public sector, and robust labor unions. This abruptly changed in the 1980s and 1990s with the advent of “Rogernomics”, Aotearoa New Zealand’s version of neoliberal ideas simultaneously sweeping many other postindustrial countries. Both major parties supported a series of economic reforms that resulted in market liberalization, privatization of state industry, lower taxes, reduced social spending, and weaker labor unions (Kelsey 1997). The ultimate effect of these policy changes was ballooning income inequality, which has persisted to the present (Dalziel 2002; Vowles et al. 2017: 25–47). Currently, 10 percent of households in Aotearoa New Zealand hold 53 percent of all wealth, while the country’s Gini coefficient has skyrocketed from 0.27 in 1982 to 0.35 in 2015 (Fyers 2017).<sup>32</sup> This transformation immediately preceded electoral system reform—in fact, it was likely one of the impetuses for that reform (Renwick 2010)—but neoliberal policies have continued under MMP. The timing of these policy changes makes it difficult to disentangle the effects of elevated inequality from the politics of election lawmaking.

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<sup>32</sup> The Gini coefficient measures how unequal the distribution of income is within a country. Higher values indicate a less equal distribution, such that 0 represents perfect equality and 1 indicates maximal concentration of income (i.e., one person has all the income).

*A Model Democracy or an Imperfect One?*

Aotearoa New Zealand has widely been considered a model democracy, as one of the most stable, robust, participatory, and transparent governing systems. Freedom House (2019) ranks Aotearoa New Zealand's democracy sixth best out of 195 countries, behind only Sweden, Finland, Norway, the Netherlands, and Canada. The country granted universal women's suffrage in 1893, making it the first in the world to do so. Lijphart considers Aotearoa New Zealand to have the best claim as the "first genuinely democratic [system] of government", as it had also granted universal suffrage for Māori by 1893, albeit with gross underrepresentation (2012: 47). Although turnout has declined in recent decades, it remains high compared to most other countries, with 75 percent of voters casting ballots in the 2017 general election (Desilver 2018). Aotearoa New Zealand has very strong anti-corruption, campaign finance, and transparency laws (Geddis 2014), as well a free press and public deliberation as part of the normal legislative process.

Other elements of Aotearoa New Zealand's democracy are commendable. Since 1956, core components of the country's election infrastructure have been entrenched, requiring supermajority parliamentary support or a majority referendum to alter (McLeay 2018). This mechanism provides one line of protection against the concentration of executive power and parliamentary supremacy. The innovation of an independent Representation Commission since 1956 has meant that redistricting is mostly done free

from partisan imperatives (Geddis 2014).<sup>33</sup> And as of 2012, Aotearoa New Zealand's election management body (EMB), the Electoral Commission, is a fully independent Crown entity. These provisions provide robust protections to the country's democracy that limit the potential for corrosive partisanship.

Indeed, using Aotearoa New Zealand as a case study in some ways creates a baseline for the presence of partisan and demobilizing tendencies in election lawmaking. Its democracy is viewed as so strong—and the protections against partisan manipulation so robust—that partisan election rulemaking could not possibly be a problem. As one scholar put it bluntly, “you’ve chosen the wrong country to do this study in”. This sentiment reflects a widespread belief among the country's political science community that its election reforms are largely consensual and that voter demobilization does not occur here (Arseneau and Roberts 2015; McLeay 2018; Interviews D, E, H, I, O, S). This belief persists despite clear evidence that election laws are not always changed consensually (Christmas 2010; Edgeler 2013; Geddis 2008, 2014, 2017), and despite the common understanding among academics, election officials, and campaign operatives that parties' worries about the political effects of increased turnout color debates on rule changes (Geddis 2014: 299; Interviews D, F, G, J, L, M, S, T, X, Z, AA, AB, AD, AF).

Considering that systematic study of the politics of election lawmaking has only been undertaken in five countries—Ireland, the Netherlands, New Zealand, the United

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<sup>33</sup> The Representation Commission has been nominally independent since 1887, but governments regularly altered the membership, country quota, and population tolerance provisions until the entrenchment of these rules in 1956 (McLeay 2018). Labour and National representatives still have voting member status on the commission, although they are outvoted by statutorily independent members and have little leeway to gerrymander considering a low tolerance for differences between electorate populations (Interviews H, J, AE, AG).

States, and the United Kingdom—it is impossible to determine the degree to which deleterious forms of election lawmaking take place in most nations around the world.<sup>34</sup> That being said, four of those countries were found to have frequent and consequential changes to election rules, and high levels of politicization have been found in three of them—New Zealand (Christmas 2010), the United States (James 2012), and the United Kingdom (James 2012). Recognizing Aotearoa New Zealand’s reputation as one of the oldest and strongest democratic systems in the world and its reputation as a place where consensual election lawmaking is a norm, if this study turns up problematic instances of election lawmaking it might indicate the ubiquitous nature of such legislative politics. In layman’s terms, if it happens here, it happens everywhere. Such a finding would certainly underscore the need to take the politics of election lawmaking seriously.

Even the world’s supposedly “best” democracies are far from perfect. As described in Chapter 2, worldwide democratic decline has touched virtually every country—and Aotearoa New Zealand is no exception. At least 25 percent of those eligible to vote routinely do not participate in elections. In the 2017 election, this equated to more than 930,000 people (Electoral Commission 2018).<sup>35</sup> Non-voters are disproportionately low-income and non-Pākehā; in fact, as general turnout has decreased, Māori turnout has sunk even lower (Vowles 2014). The political values of these communities skew away from

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<sup>34</sup> The systematic study of Ireland, the United States, and the United Kingdom only considered changes to election administration (James 2011, 2012). The study of the Netherlands focused its analysis on a singular reform episode (Jacobs and Leyenaar 2011), whereas the study of New Zealand failed to analyze the relationship between electoral system and the politics of election lawmaking (Christmas 2010).

<sup>35</sup> This figure is derived from the Electoral Commission’s *Report on the 2017 General Election* by taking into account the number of votes cast (2.63 million), the turnout rate as a percentage of enrolled voters (79.8 percent), and the percentage of eligible voters enrolled (92.4 percent). This breaks down into approximately 670,000 people who are enrolled but did not vote, and an additional 270,000 people who are eligible to vote but not enrolled. See Appendix G for a list of VEP turnout since 1969.

National and toward small parties (Vowles et al. 2017: 252), and thus are underrepresented in parliament. Widespread disengagement with democracy and government continues to be prevalent, especially among younger generations (Stats NZ 2018). The country's local democracies are weak, with limited authority and extremely low participation rates (Drage and Cheyne 2016), while political parties contain little grassroots activism or input (Miller 2005). New technologies have also contributed to a lack of civic engagement (Putnam 2000) and open public deliberation (Fishkin 2009). Additionally, several of the country's present election laws inhibit full participation and further marginalize disadvantaged communities. Most notable are the disenfranchisement of all prisoners, a high threshold level that shuts out minor parties from representation, the absence of automatic voter enrollment, and the lack of a meaningful public ballot initiative (Geddis 2014). The absence of a written constitution also means that there is no judicially protected positive right to vote (Palmer and Butler 2016, 2018; Interview M).

Other factors have played a role in the country's democratic erosion. High inequality is corrosive to democracy, as it can exacerbate rates of nonparticipation, skew policy discussions to the well-off, and erode the legitimacy of democratic governments (Ferejohn 2009). In the case of Aotearoa New Zealand, income-based turnout disparities skew tax and social policies in favor of the wealthy, further exacerbating inequality and reinforcing low turnout (Vowles 2015b). Lingering racial tensions have also created fault lines in society (Pack et al. 2016), which has repercussions for democratic unity and the legitimacy of its elections (Gelbman 2007). The presidentialization of politics has meant more campaigning occurs on sound bites rather than substantive policy proposals, while

the news media has shifted its focus from policy concerns to the “game” of campaigns and elections (Bahador et al. 2016).

Considering the reality of Aotearoa New Zealand’s imperfect democracy, it is important to find ways to improve and revitalize the country’s election system. The concentration of power within the executive makes elections for representatives incredibly important, as these are the moments when virtually all decision-making power is conferred on a select group of politicians for the next three years. This is doubly so considering the retention of parliamentary sovereignty, which means that such decision-making power is practically limitless. The all-important nature of elections in these conditions increases the threat of political manipulation in the electoral process, as it can easily translate into tarnished democratic legitimacy, unrepresentative decision-making, and further exacerbated inequality. In Geddis’ words, “...given the role that elections play as the key—perhaps even the only—legitimizing feature in New Zealand’s constitutional arrangements, how changes to its election laws occur matters a great deal” (2017: 229). It is therefore vital to understand if and when manipulation of the rules of the game occurs—for Aotearoa New Zealand, to ensure fair elections and improve a democracy struggling with the modern realities of disillusionment and disengagement; and for the rest of the world, to discover which electoral systems best protect elections against manipulation by the politicians who participate in them.





## CHAPTER 4: HYPOTHESES, METHODOLOGY, AND DATA

The first part of this thesis has explored the underexamination of the politics of election lawmaking and the importance of studying the Aotearoa New Zealand case. I now turn to an empirical examination of the politics of election lawmaking in Aotearoa New Zealand over the past 50 years. This chapter establishes the groundwork for that examination, explaining the central hypotheses tested, methods employed, and data utilized.

### *Hypotheses*

This study contains two central hypotheses. Both concern the relationship between the electoral system and the politics of election lawmaking.

**Hypothesis 1:** Aotearoa New Zealand's switch from a plurality to a proportional electoral system has reduced the incidence of partisan election lawmaking.

Considering the close relationship between proportionality and the number of parties, it is also hypothesized that switching from a two-party to a multiparty system has reduced partisan manipulation of election laws. There are two proposed causal mechanisms: (1) that PR has reduced the incentives to pursue marginal electoral shifts, and (2) that PR has increased the number of veto players. The first proposition posits that the reason for reduced partisanship lies in decreased demand for partisan election lawmaking. Rather than one vote tipping the difference between the spoils of office and zero representation, in MMP each vote (usually) matters an equal amount in calculating the parliamentary

representation of parties. Mathematically, it is the difference between 50 percent plus one vote equaling 100 percent of the representation and 50 percent plus 1 vote equaling 50 percent of the representation. Because individual electoral districts matter less, small shifts in turnout are less likely to alter the election outcome. This diminishes the importance of the marginal voter and reduces the chance that election reforms could prove electorally determinative. The second causal mechanism focuses on the ability of politicians to achieve election reforms. Because proportionality tends to lead to multipartyism and coalition governments, there are more political players standing in the way of partisan election changes. An increased number of veto players should translate into a decreased likelihood of legislative success (Tsebelis 2002). Rather than a select group of senior cabinet officials or a single party leader having their way, under MMP governments must garner the consent of multiple parties with divergent views and interests to pass legislation. This should make partisan election rule changes more difficult to adopt.

Electoral competitiveness and leverage of non-voters are directly tested as explanatory factors. It is expected that partisan election lawmaking is more likely when elections are competitive and when the leverage of non-voters is higher. A number of additional explanatory factors are examined but not directly tested. I predict partisan election lawmaking is more likely with a left-right SES cleavage structure, a high level of inequality, a large preference gap between non-voters and voters, a high degree of federalism, and few procedural or constitutional constraints. Finally, I also examine whether Aotearoa New Zealand's switch to MMP has shifted the areas of election lawmaking that are partisan. Whereas earlier attention might have focused on manipulating

marginal electorate seats, MMP might be expected to focus attention upon the rules regarding the representation quota and the regulation of political parties.

**Hypothesis 2:** Aotearoa New Zealand's switch from a plurality to a proportional electoral system has reduced the incidence of demobilizing election lawmaking.

As with Hypothesis 1, the expectation is that increasing the number of parties in parliament also reduces the incidence of legislative voter suppression. The two proposed causal mechanisms are (1) a reduction in the incentives to change marginal votes, and (2) an increased difficulty in passing reforms intended to decrease participation. The mechanisms work largely the same as described above, with an important caveat for the second one. The flip side of additional veto players is greater barriers to passing election reforms that increase participation. It is therefore expected that switching to MMP has reduced the incidence of both mobilizing and demobilizing election reforms. This reveals a key irony of proportionality: electoral systems that protect against voter demobilization also inhibit reforms that expand participation.

Electoral competitiveness and leverage of non-voters are directly tested as explanatory factors. It is expected that demobilizing election reforms are more likely when elections are competitive and when non-voters have increased leverage. The relationship between political party and demobilization is also examined, with the expectation that right-leaning parties will be more likely to pass demobilizing bills than left-leaning ones. The presence of marginalized subjects with discordant preferences is indirectly examined as an explanatory factor.

*Methods*

A mixed methods longitudinal comparative case study analysis is employed. Mixed methods analyses incorporate both quantitative and qualitative data to produce stronger evidence than could be mustered with the consideration of only one type of data (Creswell 2018; see also Malone 2008). Qualitative data sources include parliamentary debate transcripts, legislative texts, newspaper articles, and interviews. Quantitative data sources include opinion polls, election results, turnout rates, and measures of party system. A few qualitative metrics are transformed into quantitative indicators, including measures of partisanship and participatory effect. The study takes place within a single country—Aotearoa New Zealand—and compares two roughly equal time periods, 1970–93 (referred to as the FPTP era) and 1997–2018 (referred to as the MMP era). The intervening years are skipped because they were an unstable interim between electoral systems characterized by party fragmentation. This is a case study in the sense that the findings are applicable to other countries around the world.

The unit of analysis is each piece of legislation concerning election law. There are 55 enactments in total and an additional 28 proposed bills that were debated in the House. A description of each election enactment is found in Appendix A and a description of each proposed bill in Appendix B. This project follows a three-step analysis procedure. First, a micro analysis of each piece of legislation is conducted to determine its degree of partisanship and participatory effect. All bills and enactments from within each era are then pooled to discern overall levels of partisanship and participatory effect. Finally, these overall levels are compared between eras. In addition to descriptive data analysis, chi-squared tests and logistic and MLR regressions are employed.

### *Scope of Analysis*

There are three dimensions to the scope of this study: jurisdictional, legislative content, and longitudinal. This is a study of proposed and enacted legislative changes to Aotearoa New Zealand's national parliamentary elections. Judicial decisions, executive actions (such as Orders in Council, regulations, and non-statutory changes), and local/regional bodies are excluded from analysis.

In terms of legislative content, the study consists of all pieces of parliamentary legislation that concern general elections or the ballot initiative process. This includes both those that originated as government bills and as members' bills. The rules governing by-elections are excluded from analysis, except for legislation that affects whether a by-election is held altogether. There is unfortunately no scholarly consensus over a typology of election laws, reflecting the general neglect of their study. As shown in Table 4.1 (below), I categorize election laws into a nine-part typology derived in part from James' (2011, 2012) and Christmas' (2010) classifications: electoral system (subdivided into major and minor reforms), registration administration, voting administration, franchise, boundaries, finance and electioneering, governance, member qualifications, and ballot initiatives. A full explanation for each type is provided in Appendix C. This categorization of election laws is expansive compared with other scholars' groupings. Virtually all changes to the rules governing elections are included, even indirect reforms. For instance, the New Zealand Bill of Rights 1990 has been included as establishing formal electoral rights, even though this change failed to make any substantive difference to existing election law. There are a few exceptions worth noting. Bills making parliamentary procedural changes have been excluded from analysis, even where their bill title might

indicate relevant changes to election law. Such is the case with the Electoral Amendment Bill 1976, which proposed changes to the number of parliamentary sitting days and transfer of power rules.<sup>36</sup> Legislation that simply amalgamates previous acts (such as the Constitution Act 1986) and constitutional changes that do not alter election laws (such as the Human Rights Act 1993) are both excluded from analysis.

The study includes both successful and failed attempts at reform, analyzed separately. Acts are included because they alter the legal-institutional rules of the game. Proposed bills that were introduced and debated in the House but were not enacted into law are used to capture failed attempts at reform. Unsuccessful bills serve three purposes: as a sign of aspirational reforms to election law, as a sign of partisan disagreement in election lawmaking, and as a proxy for instances of inaction. Most bills that failed to become acts are members' bills, whereas most enactments originated as government bills. The instances when politicians are given the opportunity to act but choose not to are important to incorporate in analysis, but also notoriously difficult to research (Bachrach and Baratz 1963; Interviews G, H, I).<sup>37</sup> This is because most non-decisions happen in private cabinet or caucus discussions, resulting in no written record. Members' bills are admittedly not a perfect proxy for such non-decisions, but they do demonstrate the times when members have felt strongly about the need for various election reforms.

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<sup>36</sup> Bills have short titles, but do not formally have years attached to them. They are instead allocated a number in the order they are introduced each parliamentary session. They can also be informally associated with their year of introduction. For consistency, I name each bill using its year of introduction.

<sup>37</sup> See Andrew Geddis' (2013b) analysis of National's refusal to take up the Electoral Commission's review of MMP recommendations in 2012.

Category	Scope	Example Law	Example Provision
Electoral system (major)	The mechanism by which votes are translated into seats (i.e., FPTP or MMP).	Electoral Act 1993	Replaced the FPTP voting system with MMP.
Electoral system (minor)	The mechanics of the translation of votes into seats, such as the number of seats, the number of Māori electorates, the electoral quota, and the parliamentary term length.	Electoral Amendment Act 1975	Allowed for fluctuations in the number of Māori electorates based on the size of the Māori electoral population.
Registration administration	The rules governing the registration of electors.	Electoral Amendment Act 2014	Implemented online registration.
Voting administration	The rules governing the administration of voting.	Electoral (Finance Reform and Advance Voting) Act 2010	Implemented no-excuse absentee voting.
Franchise	The criteria for determining eligibility to vote.	Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010	Extended the disenfranchisement of prisoners from those with sentences of greater than three years to all currently serving prisoners.
Boundaries	The drawing and redistricting of electoral seats.	Electoral Amendment Act 1981	Required the Representation Commission to consider feedback from minor parties.
Finance and electioneering	The rules governing campaign finance, broadcasting, and promotion of political parties and candidates.	Electoral Finance Act 2007	Placed extensive limits on political party electioneering and third-party advertising.
Electoral governance	The regulation of institutions and persons that oversee and adjudicate elections.	Electoral (Administration) Amendment Act 2010	Merged the Electoral Commission with the Chief Electoral Office.
Member qualifications	The circumstances under which elected representatives lose their office outside elections.	Electoral (Integrity) Amendment Act 2018	Allowed the party leader to replace MPs who leave their political party while in office.
Ballot initiatives	The rules governing direct democracy including the holding of initiatives and referendums.	Citizens Initiated Referenda Act 1993	Instituted procedures for the holding of non-binding citizens initiatives.

In terms of longitudinal scope, the study covers the periods 1970–93 and 1997–2018. Aotearoa New Zealand’s binding referendum replacing FPTP with MMP took place alongside the 1993 election. The first election using MMP occurred in October 1996, although a coalition did not form until December of that year. The three intervening years, 1993–96, present something of a conundrum for study. Members of Parliament had been elected under the non-proportional FPTP rules in 1993 but knew they would face a proportional electoral system at the next election. This altered their parliamentary behavior (Interview W). Several parliamentary parties fragmented, while dozens of new parties formed. The period includes several notable instances of election lawmaking. However, its in-between nature does not fit well with the parameters of this study. It has therefore been excluded from analysis to create clearer non-proportional and proportional groupings. The last 24 years of FPTP-era Aotearoa New Zealand and the 22 most recent MMP-era years are covered. These dates are chosen to balance the benefits of a longer time period providing more bills for inclusion with the disadvantages of fewer primary sources further back in time. The dates are also chosen to roughly balance FPTP and MMP eras, allowing for easier comparison of each period’s election lawmaking.

### *Data*

This thesis integrates several primary data sources to analyze election lawmaking in Aotearoa New Zealand, including legislative texts, debate transcripts, select committee and Electoral Commission reports, newspaper articles, interviews, and opinion polls.



Most important are the legislative primary sources directly related to election law changes. Parliamentary bills, acts, and Supplementary Order Papers (last-minute bill amendments) are from the New Zealand Legal Information Institute (NZLII) and the New Zealand Parliament website.<sup>38</sup> Parliamentary debate is recorded in the Hansard Reports, and can occur upon a bill's first reading,<sup>39</sup> upon receipt of a select committee report, at its second reading, at the committee of the whole House stage, and at its third and final reading. Select committee reports are from the Hansard Appendix to the Journals I series. Certain select and special committee reports and the Electoral Commission's committee submissions and external reports are from the Electoral Commission's archives. Parliamentary select committee reviews fall into three categories: those that occur on a triennial basis as part of a routine post-election review, those that occur as part of the normal legislative process of scrutinizing proposed legislation, and those that occur in response to an election-related crisis or some broader political directive. Extraparliamentary committees have sometimes been created as well, such as the 1986 Royal Commission that initially recommended the switch to MMP. Since the passage of the New Zealand Bill of Rights Act 1990, all legislation has received Bill of Rights Act (BORA) compliance advice from the Attorney General, determining whether the proposed legislation is consistent or inconsistent with the Bill of Rights. This advice is non-binding, with the Attorney-General only required to advise the House if they conclude that a bill is

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<sup>38</sup> The Elections and Polls Bill 1978, the Electoral Amendment Bill 1980, the Second Ballot Bill 1980, and the Popular Initiatives Bill 1983 were unavailable from these sources but could be located by the Parliamentary Information Service. The text of the MMP Representation Poll Bill 1990 could not be found.

<sup>39</sup> Prior to 1997, the first reading debate was sometimes referred to as a bill's "introduction". See Footnote 47.

BORA inconsistent.<sup>40</sup> BORA reports are collected from the Department of Justice website and NZLII. Additionally, since 2013 the Justice Department has produced Disclosure Statements and Regulatory Impact Statements for proposed bills. These are collected from the New Zealand Legislation Disclosures website. Bill digests, providing a summary of legislative texts, are collected for each bill going back to 1997.<sup>41</sup>

Contemporaneous newspaper articles also provide a valuable source of information, indicating the level of public awareness of election reforms and whether they were viewed favorably at the time of passage. All major Aotearoa New Zealand newspapers are used for analysis from 1997 to 2018 and were located using Factiva and the ProQuest Australia & New Zealand Newstream online databases. Newspaper articles from 1970 to 1993 are only available on microfilm, forcing a more judicious selection.<sup>42</sup> Three of the country's largest-circulation newspapers are used for this earlier period: the *New Zealand Herald*, the *Otago Daily Times*, and the *Evening Post* (which merged with the *Dominion* to become the *Dominion Post* in 2002). The *Herald* and the *Evening Post* microfilms are from the National Newspaper Collection held at the National Library of New Zealand, while the *Otago Daily Times* microfilms are located at the Hocken Collections, University of Otago. Microfilm articles were located by examining the dates surrounding major legislative progression.<sup>43</sup>

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<sup>40</sup> Adverse reports have frequently resulted in the infringing provision being amended or dropped. This was the case with the Electoral Amendment Act 2002, which originally included a provision banning the publication of public opinion polls in the month before an election. On the other hand, the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 passed despite being ruled inconsistent with the Bill of Rights Act.

<sup>41</sup> Those prior to 2007 are located by the Parliamentary Information Service. Those produced since 2007 are available on parliament's website.

<sup>42</sup> The only exception being a small number of *New Zealand Herald* articles that are available online as far back as 1989.

<sup>43</sup> These dates were identified from both the Parliamentary Bulletin and the Hansard Reports.

Interviews were conducted with key actors involved with or otherwise knowledgeable about Aotearoa New Zealand election lawmaking.<sup>44</sup> These sessions probed individual's memories of specific instances of election lawmaking, their general thoughts on partisanship in the election reform process, changes caused by the introduction of MMP, and relevant non-electoral changes such as shifts in parliamentary procedure and the use of manifesto pledges. Those interviewed include current and former MPs, a former Prime Minister, former Ministers of Justice, and members of the Justice and Electoral Committee. They also include Justice Department civil servants, members of the Electoral Commission and the Chief Electoral Office, and those involved with the Royal Commission on Electoral Reform. Academics, journalists, and historians were also interviewed. A list of interviewees and corresponding interview reference letters can be found in Appendix D.<sup>45</sup>

A few additional primary sources are used. The Electoral Commission produces a review of each general election, including recommendations for reform. Opinion polling data from Colmar Brunton provides a regular and consistent measure of the political environment going back to 1974. This data is used to calculate an electoral competitiveness index. Unfortunately, little polling has been conducted on election laws themselves (except for the 1992, 1993, and 2011 referendums on electoral system reform), preventing their use as a fruitful data source. Turnout data from the Electoral Commission and Stats NZ is used to calculate the leverage of non-voters.

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<sup>44</sup> Ethics approval from the University of Otago was obtained for these interviews. Participants were informed of the nature of the project and signed consent forms agreeing to an open-questioning interview technique and acknowledging that the results of the study will be made publicly available. Participants were offered the choice to remain anonymous and to not be audio taped.

<sup>45</sup> Several interviewees requested anonymity considering the politically sensitive nature of questioning.

### *Explanation and Operationalization of Variables*

Due to the multistage nature of analysis, several variables are considered that cannot be easily grouped together. For instance, electoral competitiveness fluctuates on a day-to-day basis whereas inequality fluctuates on a yearly to decennial basis. Some variables cannot be quantified within the scope of this analysis, including parliamentary procedures, the desirability of consensual lawmaking, and the degree of federalism. Even where this is the case, it is still valuable to consider these variables. I operationalize variables where possible and consider non-operationalizable variables where appropriate. This section first examines dependent variables, and then explanatory variables at the individual bill, within-era, and between-era levels of analysis.

#### Dependent Variables

Because partisanship is central to this thesis, it is important to clarify its meaning before examining its operationalization. Previous scholarship has focused on partisanship in one of three ways: at the individual level, examining party identification and individuals' voting history (Converse and Pierce 1985; Dalton and Weldon 2007; Holmberg 2007; Wright et al. 1985); at the legislature level, examining balance of power (Klarner 2003) and party discipline via the voting behavior of elected representatives (Cox and Poole 2002; Hetherington 2001; Krehbiel 2000); and within a specific policy area, such as environmentalism (Farstad 2016; Gershtenson et al. 2006; McCright 2014). I am concerned with a combination of the last two cases, specifically the degree of legislative party-line disagreement for a specific policy area. The literature on partisanship in the Aotearoa New

Zealand context is relatively thin. Most of it focuses on individual voting behavior and party identification (see Aimer and Miller 2002; Karp et al. 2002; Lamare 1984; Leithner 1997; Medeiros and Noël 2014; Vowles 1994, 1997). A handful of studies examine partisanship in certain policy areas, including Māori affairs (Barber 2006) and nuclear-free foreign policy (Capie 2019). The only other examples of Aotearoa New Zealand scholarship on partisanship that I am aware of are Matthew Gibbons' (2011) analysis of polarization using party manifestos and Christmas' (2010) examination of consensus in election reforms.

In terms of measuring legislative partisanship, the most common route taken by previous scholarship is to examine the voting record of individual legislators (see Cox and Poole 2002; Krehbiel 2000). This provides a measure of the strength of party influence on lawmakers. It does not work well in Aotearoa New Zealand, where MPs virtually always vote along party lines. One method used to test partisanship in a policy area is to measure differences in the degree of issue saliency between parties as expressed, for instance, in party manifestos (Farstad 2016). This also proves unhelpful, as I am interested in the degree of overall unity for a specific policy area rather than the saliency of election issues for each party. Christmas (2010) proves the closest approximate to the task at hand. His study uses original measures of the level of contention and vote outcome to examine the dichotomy between politicians' self-interest and altruism in changing the rules of the game. Christmas does not utilize the language of partisanship. I view party-line disagreement as the crux of the issue, and therefore use Christmas' model as a point of departure to construct an original measure of partisanship.

It is important to note that there is nothing inherently wrong with partisan lawmaking. In fact, parties are a central ingredient in responsive, accountable governments. In societies with competing interests and priorities, political parties provide voters with clear choices at the ballot box and can carry out coordinated legislative programs (Schattschneider 1942). Partisanship is the force that attracts voters to parties and binds parties together to carry out a shared legislative agenda. Partisan lawmaking can simply be a sign that difficult decisions are being made, for instance in allocating scarce resources and pursuing certain ideological values. As explored in Chapter 2, however, partisanship presents inherent objective and normative problems in the case of election law that makes it deleterious to democracy and worthy of study.

Two measurements of partisanship are used for election-related parliamentary enactments, one a simple binary and one a complex ordinal metric. They are constructed and analyzed separately. The simple binary measure is based on the third reading vote as recorded in Hansard Reports. Bills that receive only government support are marked as partisan, while those that receive support from non-coalition parties or do not receive a division are marked as non-partisan.<sup>46</sup> This measure is extremely parsimonious, providing an easy and consistent way to gauge the level of party-line disagreement at a bill's passing.

The complex measure of partisanship is a composite of three elements of partisan lawmaking: as characterizing the legislative process, as reflected in the outcome of recorded votes, and as demonstrated by the intended electoral effects of the legislation. A partisan legislative process is one marked by contention, disagreement, and divisiveness.

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<sup>46</sup> For vote-based measures of partisanship, "government" includes all parties that hold confidence-and-supply agreements. This is a more inclusive definition than simply counting parties with cabinet or ministerial positions.

This is judged based on the Hansard debate record. Is there partisan disagreement expressed in deliberation? Are the arguments technical in nature and conducted in a matter-of-fact manner, or is debate intensely emotional and concerns core values? Are matters of privilege invoked against members in the course of the debate? Are there claims that the bill is partisan or a gerrymander? Using a combination of these factors, a four-point ordinal score for the degree of partisanship in the legislative process is constructed with levels none, low, moderate, and high. As the content of bills can change significantly from introduction to passage, the latter stages of debate are privileged above earlier ones when making this determination.

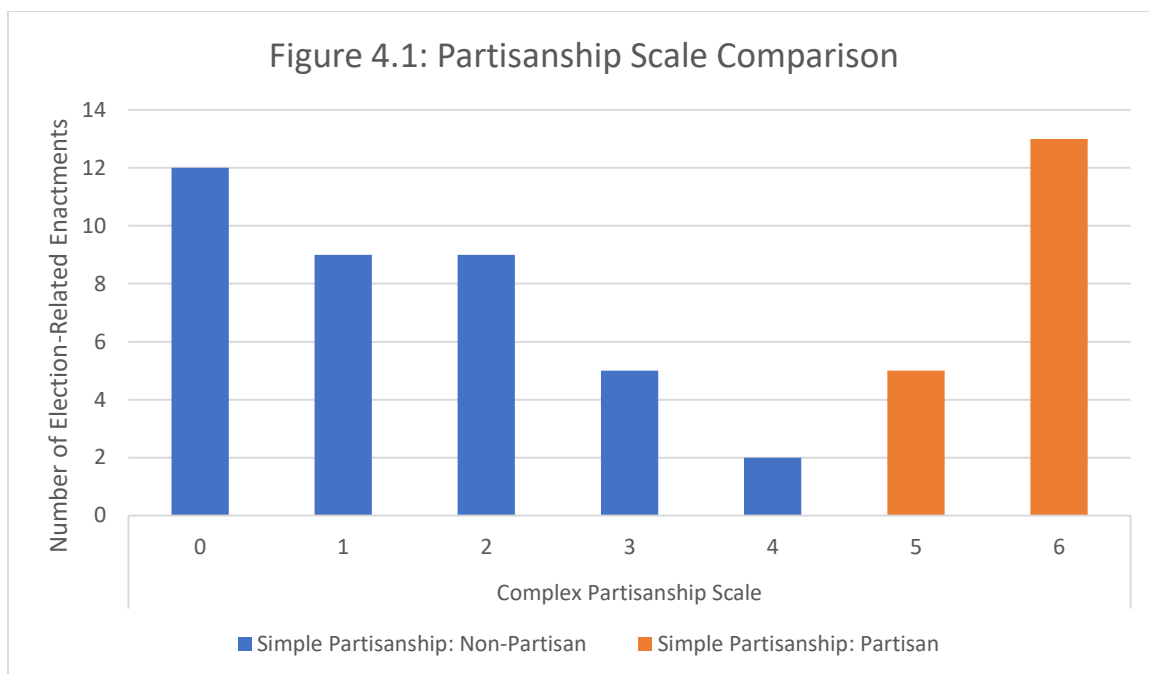
The record of votes is the most direct measure of the level of disagreement among parties. Votes may be recorded at the first reading, in select committee, on the report of the select committee to the House, at the second reading, in committee of the whole House, and at the third reading. The last recorded vote is most reflective of the divisions on the act as passed, so the third reading vote is used. A three-part ordinal scale of partisanship is constructed, distinguishing unanimous (no division), multiparty, and government only support.

The intended or likely electoral effects of legislation can indicate partisan election lawmaking. Electoral effects in this sense do not refer to participatory impact per se but rather benefits to a party in contesting elections. If a reform clearly benefits certain parties over others, it is likely that the reforms will not be agreeable to all parties. The existence of electoral effects can be indicated within legislative debates (where politicians directly claim a bill will benefit the other party), by contemporaneous newspaper articles, through

interviews, or by an examination of the bill's provisions using existing scholarship as an indicator. A yes/no binary measurement for electoral effects is used.

These three components of partisanship are transformed into numerical measures, with legislative process on a 0–3 scale, recorded vote on a 0–2 scale, and electoral effects on a 0–1 scale (with high numbers indicating more partisanship). They are then added together, creating a 0–6 complex partisanship scale for each election law. This numerical measurement is then divided into levels of partisanship for analysis: 0 indicating no partisanship, 1–2 indicating a low level of partisanship, 3–4 indicating a moderate level of partisanship, and 5–6 indicating a high level of partisanship. Even though the simple and complex partisanship scales are constructed separately, Figure 4.1 shows they match closely when compared with one another. Every election law measured as partisan in the simple binary is measured as a having a high level of partisanship on the complex scale. Furthermore, there are only two acts that are truly borderline cases with scores of 4. This indicates a good degree of robustness between both measures, and a sign that the simple measurement of partisanship could be easily replicated in other contexts.





Unsuccessful election bills necessitate a different measurement of partisanship. Bills that are proposed but fail indicate disagreement over voting laws and thus are almost always instances of partisan election lawmaking. In most cases, these are members' bills introduced by opposition MPs. There still are discernible gradations in the level of partisanship. The degree of legislative advancement is used to discern less partisan cases from highly partisan ones. This is based on a binary classification: passed first reading and died at first reading.<sup>47</sup> The first reading debate is designed to focus on the basic premise of the policy proposal. Rejection at this early stage is an indication that the bill is not even

<sup>47</sup> Note that prior to 1997, the first reading was labeled as the "introduction" debate and therefore members' bills voted down at first reading were "refused introduction". This terminology is confusing because the procedural act of placing a bill on the order paper for debate can also be referred to as the bill's introduction. This administrative step is not voted upon and cannot be stopped by a government (although governments can prevent all members' bills from being debated by passing urgency motions). The procedure changed in 1992 from allocating order paper slots for members' bills on a "first come, first served" basis to a random draw. Due to the terminological confusion, I refer to this "introduction" debate as the first reading and to being "refused introduction" as dying at the first reading. Also note that between 1997 and 1999, changes to the standing orders meant that no debate occurred at the first reading. Instead, it too became a simple procedural event, with the first debate occurring at the "second reading". For the three members' bills concerning election rules introduced over that period, their "second reading" is coded as the first reading for the purposes of this analysis.

regarded as being worth a select committee's time (Interview AD). Allowing members' bills from the opposition to proceed past their first reading is therefore a gesture of goodwill, even if both parties know the legislation will not ultimately be enacted. Members' bills that fail their first reading division are considered highly partisan, while those that pass are considered less partisan.<sup>48</sup>

The participatory effect of each election law and proposed bill is determined by identifying each provision that affects voter turnout, determining whether it is likely to increase or decrease democratic participation, estimating the magnitude of the change, and summing the effects (see Appendix E for a list of identified provisions in election enactments and Appendix F for a list of identified provisions in proposed bills). Legislative texts, debate transcripts, select committee reports, newspaper articles, bill digests, and interviews are used in combination with existing scholarship to discern participatory effect. As few election provisions studied have Aotearoa New Zealand-specific scholarship on their turnout effects, I rely on international research into the effects of various election laws, especially James' (2011, 2012) classification of election administration changes. A three-part ordinal division is used for the participatory effect of each piece of legislation: demobilizes (likely to decrease turnout), neutral (likely to have no effect on turnout), and mobilizes (likely to increase turnout). I also create two binary metrics, one measuring whether legislation demobilizes participation overall, and another measuring whether legislation contains any provision that demobilizes turnout. The magnitude of participatory

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<sup>48</sup> There are five cases of members from a government or support party introducing election-related bills that passed their first reading on a divided vote. The Proportional Representation Indicative Referendum Bill 1990 received mixed support from both major parties. The Electoral Access Fund Bill 2018 has passed its second reading without a division and appears likely to be enacted in 2020. Although the advancement distinction works less clearly for the remaining three cases, these are still instances where a government has allowed non-government policy to receive additional deliberation. As such, these are coded as less partisan.

effect measures the estimated absolute percentage point change in turnout at parliamentary elections.<sup>49</sup> A three-part categorical scheme is employed. Marginal changes impact turnout by less than 2 percentage points, minor changes alter turnout by 2 to 5 percentage points, and major changes alter turnout by greater than 5 percentage points. Due to the difficulty in estimating the magnitude of participatory effects, this metric is not used in logistic or MLR regressions. Indirect participatory effects compound the difficulty of this classification. Election bills can reduce participation by signaling to certain populations that their democratic participation is unwanted. Parties might attempt to counteract the electoral effects of such bills by increasing the intensity and altering the focus of their voter mobilization efforts (Galicki 2017, 2018; Interview AA). These indirect effects are noted where relevant.

#### Explanatory Variables at the Legislative Level

Three explanatory variables vary enough to measure at the individual legislation level: leverage of non-voters, electoral competitiveness, and number of parties. All three metrics are measured based on the date of each act's introduction. Leverage of non-voters is calculated by subtracting voting eligible population (VEP) turnout at the prior election from 100 percent (see Appendix G for a data table of turnout and leverage).<sup>50</sup> VEP is a more accurate measure of turnout than simply taking the percentage of registered voters,

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<sup>49</sup> Ballot initiative reforms are assigned participatory directions but not magnitude scores. This is because the amount of direct democracy can be clearly seen to increase or decrease democratic participation but does not map clearly onto changes in the amount of turnout for legislative elections.

<sup>50</sup> Note that for ease of interpretation, this figure is multiplied by 100 for use in regression analysis in Chapter 5. Leverage is otherwise expressed as a percentage.

as some eligible voters do not register to vote (Holbrook and Heidbreder 2010).<sup>51</sup> The degree of electoral competitiveness is measured by the electoral gap between the two biggest parties (Kohler and Rose 2010), as indicated by the latest election result or opinion poll released prior to the legislation’s introduction. The effective number of parties is measured for each election law (Laakso and Taagepera 1979),<sup>52</sup> in addition to three additional measures used for robustness checks: the number of parties represented in parliament, the number of parties with at least one percent support at the ballot box (Kohler and Rose 2010), and the number of parties on the ballot (see Appendix H for a data table of these measures).

Several legislative-level variables are used as controls. The presence of a provision that specifically affects Māori voters and the presence of an entrenched clause are both recorded. The former case includes reforms to the Māori roll, the Māori electoral option, and the formula for determining the number of Māori electorates. The latter case includes reforms to the ballot paper, the membership of the Representation Commission, and the legal voting age. The government or sponsoring party and the era (FPTP or MMP) of each piece of legislation are also collected.

A number of data points are recorded for each piece of legislation that do not constitute explanatory variables but help inform their analysis. This includes identifier

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<sup>51</sup> This formulation is different from Kohler and Rose (2010), who use a supposed “maximum” turnout rate calculated to be 85.8 percent. They argue that using maximum turnout reflects a more accurate measure of the power of non-voters to alter an electoral outcome, given that even with compulsory election rules not everybody votes and that a percentage of those who vote invariably produce invalid or spoiled ballots. I take issue with the idea that 100 percent turnout—full participation—could not theoretically be achieved.

<sup>52</sup> The formula for the effective number of parties is  $N = \frac{1}{\sum_{i=1}^n p_i^2}$  where  $n$  is the number of parties in parliament and  $p_i^2$  is the square of each party’s proportion of all seats (with all proportions normalized to fractions of 1).

variables such as the legislation's name, year, and bill/act number; the Parliament and Prime Minister under which it is proposed; the introducer of the legislation; the bill's classification as members' or government; and the select committee that the legislation is referred to. The "type" of each bill measures which area(s) of election law it affects (see Table 4.1; Appendix C). Bills frequently alter multiple types of election law.

#### Explanatory Variables at the Within-Era Level

Several explanatory variables change infrequently enough to be considered at the within-era level. These variables are measured as two data points, one describing 1970–93 and the other 1997–2018. The proportionality of the electoral system is measured as the average degree of disproportionality between the two eras. Inequality is measured as the average Gini coefficient for each era. Other within-era explanatory variables are more difficult to measure. Political culture refers to the level of divisiveness in society and the level of polarization within politics. One aspect of this is measured by the degree of polarization between parties based on their campaign manifestos (Gibbons 2011). The percentage of fulfilled manifesto pledges is used as a proxy to measure the importance of the government mandate (Gibbons 1999; McCluskey 2008). Institutional changes to the legislative process have also occurred, most importantly to the role of select committees but also to parliamentary session length, the order of legislative steps, the length of debates and "stand down" periods, urgency procedures, and the treatment of members' bills. Some of these changes are endogenous to electoral system change, but many are exogenous (Martin 2004; McGee 2017). Although not directly operationalized, these changes are referenced in the analysis where appropriate.

### Explanatory Variables at the Between-Era level

A few explanatory variables have not changed over the past 50 years or have changed so marginally as to be considered de facto constants. The presence of a left-right SES cleavage structure has undergone some fluctuations in strength but has retained its primacy in Aotearoa New Zealand politics (Aimer 2015; Gibbons 2011; Miller 2005). It can be measured as the relationship between SES status (income, education, occupation, assets) and voting. The presence of marginalized subjects can be measured as the degree of economic and social inequality between Māori and Pasifika minorities and the Pākehā majority. Whether marginalized subjects hold discordant preferences is measured by the degree of political preference divergence between these groups. The preference gap between non-voters and voters in Aotearoa New Zealand is more difficult to discern, but recent scholarship has led to some quantitative measurements (Vowles et al. 2017). The degree of parliamentary constitutional control over election procedures, the degree of federalism, and the desirability of consensual lawmaking as a norm are all vitally important to the topic of study and best considered through descriptive analysis.

This chapter has presented hypotheses that MMP has reduced the incidence of partisan and demobilizing election lawmaking. It has also theorized several additional variables that affect the politics of election lawmaking. The following two chapters use the methods and data described above to evaluate the evidence for these assertions.

## CHAPTER 5: DATA ANALYSIS

In this chapter I lay out a conceptual framework of election lawmaking, analyze descriptive data of passed election reforms, and conduct a series of chi-squared, logistic, and MLR tests on the correlates of partisan and demobilizing election lawmaking. Both simple and complex measures of partisanship are analyzed. The relationship between the party in power and election lawmaking, the types of election laws passed, and proposed members' bills are also examined.

### *Matrix of Election Lawmaking*

The core analysis is conducted using a six-part matrix developed to classify election-related parliamentary enactments by partisanship and participatory effect. This matrix is detailed in Table 5.1, with examples of each provided in Tables 5.2 and 5.3 (below). The categorization of every enactment is found in Appendix I and of every proposed bill in Appendix J.

Table 5.1: Matrix of Election Lawmaking		Participatory Effect		
		Demobilizing	Neutral	Mobilizing
Partisanship	Partisan	A	B	C
	Non-partisan	D	E	F
<p>Key:</p> <p>Partisan election lawmaking: A, B, C</p> <p>Demobilizing election lawmaking: A, D</p> <p>Deleterious election lawmaking: A, B, C, D</p> <p>Neutral/potentially positive election lawmaking: E</p> <p>Positive election lawmaking: F</p>				

- A. Partisan demobilizing:** This category includes legislation that is passed along party lines and diminishes electoral participation. It is normatively the least desirable. Only three such bills have been passed over the period of analysis. One example is the Electoral Amendment Act 1977. Passed by National under Robert Muldoon, it repealed many provisions that were implemented in Labour's Electoral Amendment Act 1975. The legislation increased the residency requirement in an electorate from one month to three months, disqualified all prisoners from voting, and disqualified unregistered but otherwise qualified electors from voting. National had promised in its 1976 election manifesto to repeal most of Labour's election revisions. Even so, the strongly demobilizing effect of the overall package and its likely electoral effects (benefiting National at the expense of Labour) led the opposition to vehemently oppose the legislation at all three of its readings.
- B. Partisan neutral:** This category consists of enactments that are partisan but do not affect turnout. Most of the 10 identified acts concern either finance and electioneering laws or MP qualifications. One example is the Electoral Finance Act 2007. This wide-sweeping enactment was passed by Labour in the aftermath of the 2005 election funding scandal, after both major parties were accused of illicit electioneering practices. It placed extensive limits on third-party advertising, strengthened rules for political donations and election expenses, and implemented a new regime of compliance and enforcement. The National party strongly opposed these changes and pledged to repeal the measure if elected in 2008, which they subsequently followed through on.



- C. Partisan mobilizing:** These acts mix good and bad, increasing participation but doing so in a way that diminishes faith in the democratic system (this clash of normative values is further explored in Chapter 7). There have been only five such acts over the period of analysis. One example is the Electoral Amendment Act 2002, which was the first substantive reform to election law since 1996. Passed by the Labour party under Helen Clark, it included many uncontroversial amendments to election administration, finance, and governance. Several mobilizing provisions were hotly contested by National, including counting the party vote of those who vote in the wrong electorate and implementing continuous enrollment.
- D. Non-partisan demobilizing:** These enactments are a particularly worrisome case where politicians agree to discourage participation. They can be a warning sign that representatives are disadvantaging marginalized communities by preventing their democratic inclusion (Piven et al. 2009). There have only been four examples over the period of analysis. One case is National's Electoral Amendment Act 1976, which returned the number of Māori electorates to four after the Electoral Amendment Act 1975 had allowed them to vary according to the size of the Māori electoral population. The Labour party put up token opposition to the first two readings but little substantive debate. They allowed the bill to receive a third reading without division in recognition of National's manifesto pledge to enact the legislation. This act reinstated the discriminatory underrepresentation of Māori voters, who would continue to receive four fixed electorates in parliament until the introduction of MMP in 1996.

- E. Non-partisan neutral:** This category includes legislation that is neither controversial nor affects participation. It is the most common group, with 18 such acts, and primarily consists of omnibus, technical, and administrative bills. A typical example is the Electoral (Administration) Amendment Act 2010. This bill combined the Chief Electoral Office with the Electoral Commission and established the commission as an independent Crown entity. It was the first step in a two-stage process to centralize the country's electoral governance under a single independent agency. The legislation was passed through all its stages without division.
- F. Non-partisan mobilizing:** This category consists of normatively ideal cases of election lawmaking: consensus-based legislation that increases democratic participation. It is fortunately one of the most common kinds of election reform in Aotearoa New Zealand, with 15 acts over the period of analysis. One such case is National's Electoral Amendment Act 1974, which lowered the voting age from 20 to 18. This move had been desired by Labour for some time, but because the voting age is an entrenched provision passage required support from both major parties. National eventually acceded to the franchise expansion, and the bill passed through all its stages without division.

Category	Example Law	Key Provisions
A: Partisan demobilizing	Electoral Amendment Act 1977	Increased residency length requirement, disqualified prisoners from voting, disqualified unregistered but otherwise qualified electors from voting.
B: Partisan neutral	Broadcasting Amendment Act (No 2) 1990	Established a new system and procedures for the handling of election broadcasting.
C: Partisan mobilizing	Electoral Amendment Act 1989	Created more leniency for voters to determine their place of residency for purposes of enrollment.
D: Non-partisan demobilizing	Electoral Amendment Act 1976	Fixed the number of Māori electorates at four.
E: Non-partisan neutral	Electoral Amendment Act 1972	Prevented a candidate from being nominated under a new name assumed less than six months before nominations close.
F: Non-partisan mobilizing	Electoral Amendment Act 1974	Lowered the voting age from 20 to 18.

Category	Example Law	Key Provisions
A: Partisan demobilizing	Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010	Disenfranchised all currently serving prisoners.
B: Partisan neutral	Electoral Amendment Act 2007	Placed extensive limits on third-party advertising, strengthened rules on political donations and election expenses.
C: Partisan mobilizing	Electoral Amendment Act 2002	Counted the party vote of those who voted in the wrong electorate, implemented continuous enrollment.
D: Non-partisan demobilizing	None	None
E: Non-partisan neutral	Electoral (Administration) Amendment Act 2010	Amalgamated the Chief Electoral Office with the Electoral Commission.
F: Non-partisan mobilizing	2017 Electoral Amendment Act	Implemented same-day enrollment for advance voting.

*Descriptive Analysis*

The descriptive data provides initial evidence to evaluate whether switching to MMP has reduced the incidence of partisan and demobilizing election reforms. There is no evidence to support Hypothesis 1, of a supposed decrease in partisan election lawmaking from FPTP to MMP. Rather, the descriptive data reveals more partisan election lawmaking under a PR electoral system. Seven partisan acts affecting electoral law were passed during the FPTP era, whereas there were 11 such changes in the MMP era. In relative terms, 24 percent of FPTP-era acts affecting electoral law were partisan compared with 42 percent of MMP-era acts. The increase in partisan electoral acts passed under MMP is entirely due to an increased number of partisan neutral laws. Two such acts were passed under FPTP, while seven have been passed under MMP—a jump from 7 percent to 27 percent of all electoral acts passed during each era. In fact, the number of partisan acts that affect participation decreased slightly from five to four. This means that under MMP, partisan election lawmaking has concentrated on rules that do not affect participation.

The descriptive numbers do provide evidence to support Hypothesis 2, that MMP has diminished the amount of demobilizing election lawmaking. Five demobilizing acts passed in the FPTP era, whereas only two have passed under MMP. This trend is similar when expressed as a percentage of all election laws. In the FPTP era, 17 percent of election enactments demobilized participation, while under MMP only 8 percent of election enactments demobilized voter turnout. The entirety of this decline is attributable to fewer non-partisan demobilizing enactments. The same number of partisan demobilizing acts passed in each era (two), but whereas three non-partisan demobilizing acts passed under FPTP, none of this category have passed thus far under MMP. This data also evidences a

decline in the incidence of election enactments that mobilize voters. Twelve mobilizing election laws passed under FPTP, but only seven have passed under MMP. Expressed as a percentage of all election-related enactments, 41 percent of FPTP-era election acts mobilized participation compared with only 27 percent of MMP-era enactments. As with demobilizing enactments, most of this decrease comes from a reduction in the number of non-partisan mobilizing acts passed under MMP. A similar number of partisan mobilizing acts were passed in both eras. The combination of participatory effect data reveals a decrease in the passage of participatorily impactful acts under MMP, as predicted in a corollary to Hypothesis 2. Seventeen election enactments in the FPTP era affected participation compared with only nine enactments in the MMP era.

Tables 5.4 and 5.5 and Figure 5.1 detail electoral acts passed under the FPTP era. Tables 5.6 and 5.7 and Figure 5.2 detail electoral acts passed under the MMP era. Table 5.8 and Figure 5.3 show the total counts of each era for the normative categories of election lawmaking explained above in Table 5.1.

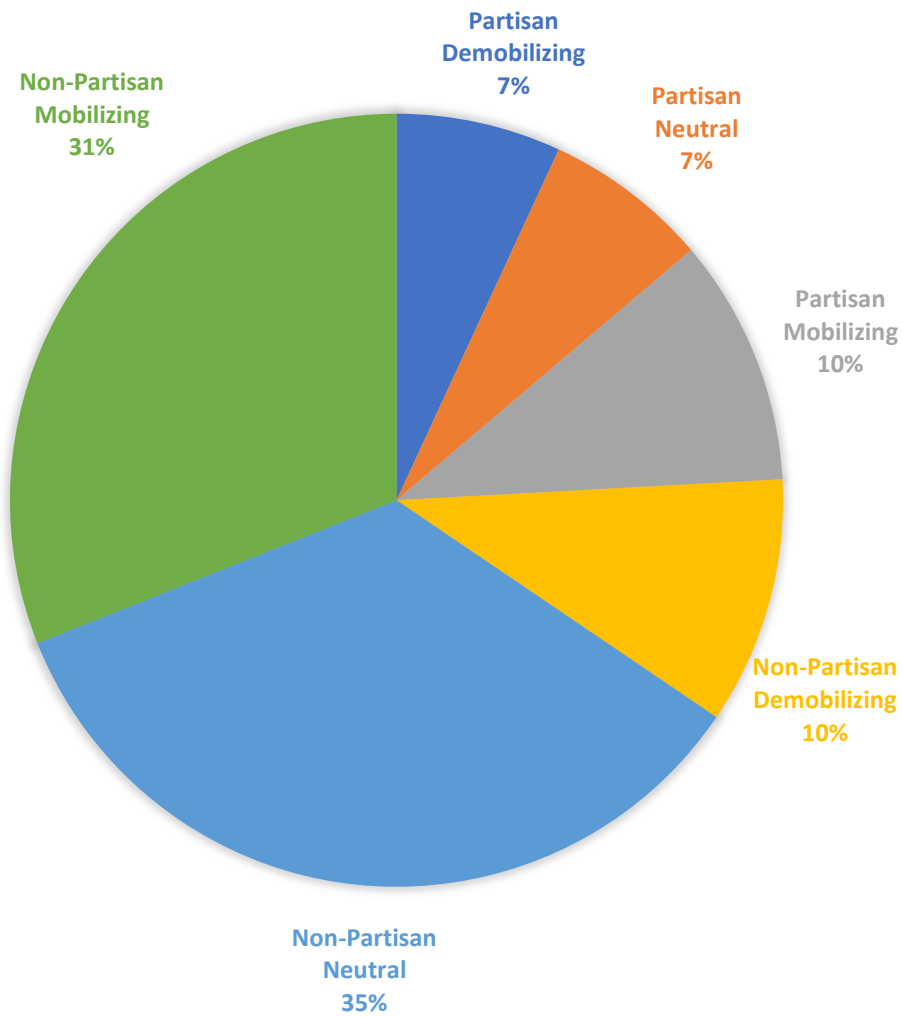
Table 5.4: FPTP-Era Election Lawmaking— Number of Election Enactments		Participatory Effect			Total
		Demobilizing	Neutral	Mobilizing	
Partisanship	Partisan	2	2	3	7
	Non-partisan	3	10	9	22
Total		5	12	12	29

Table 5.5: FPTP-Era Election Lawmaking— Percentages		Participatory Effect			Total
		Demobilizing	Neutral	Mobilizing	
Partisanship	Partisan	7%	7%	10%	24%
	Non-partisan	10%	34%	31%	76%
Total		17%	41%	41%	100%

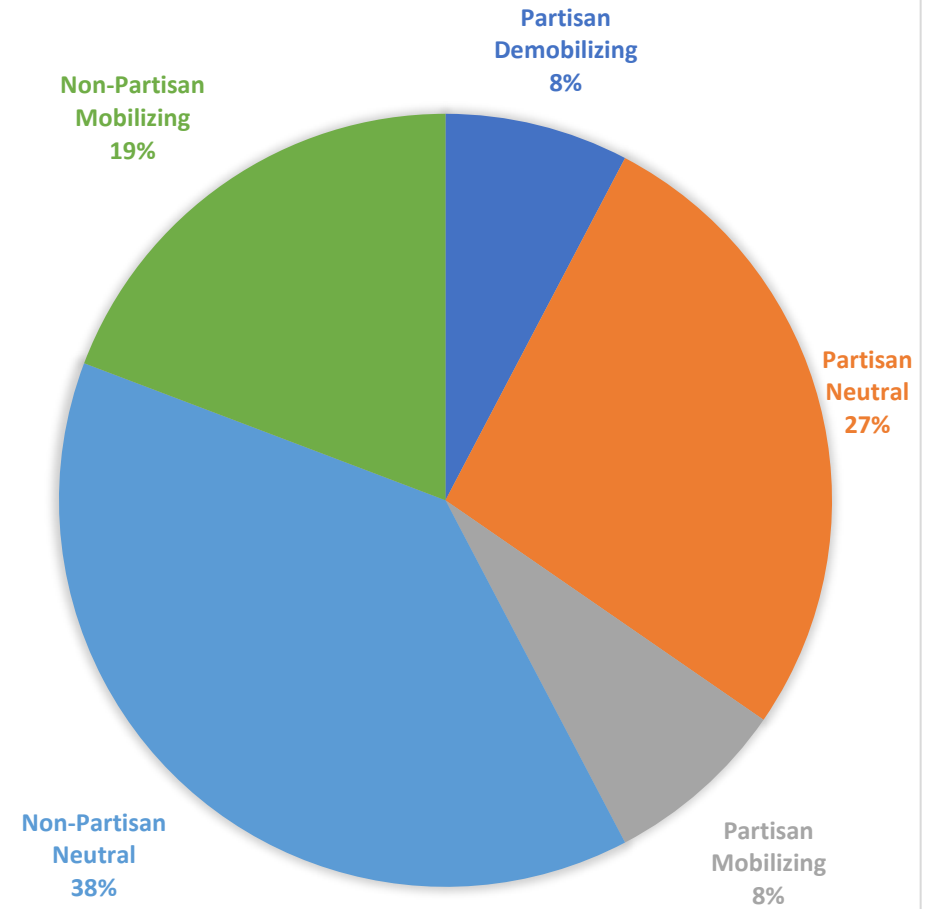
Table 5.6: MMP-Era Election Lawmaking— Number of Election Enactments		Participatory Effect			Total
		Demobilizing	Neutral	Mobilizing	
Partisanship	Partisan	2	7	2	11
	Non-partisan	0	10	5	15
Total		2	17	7	26

Table 5.7: MMP-Era Election Lawmaking— Percentages		Participatory Effect			Total
		Demobilizing	Neutral	Mobilizing	
Partisanship	Partisan	8%	27%	8%	42%
	Non-partisan	0%	38%	19%	58%
Total		8%	65%	27%	100%

**FIGURE 5.1: FPTP-ERA ELECTION  
LAWMAKING**



**FIGURE 5.2: MMP-ERA ELECTION  
LAWMAKING**



Three additional observations are apparent from the descriptive data. First, partisan election lawmaking is far from uncommon. Of the 55 electoral enactments passed over the period of analysis, 18 were highly partisan. This means that nearly one out of every three election-related enactments have been passed in a partisan fashion—a clear sign that partisan election lawmaking is a regular occurrence in Aotearoa New Zealand. Second, cases of election laws that prevent or discourage electoral participation are rare but present. There have been seven instances of demobilizing election lawmaking throughout the period of analysis, significantly less than the 19 enactments that have increased participation. Although this balance is a positive one, the record shows that politicians have at times altered the rules of the game to suppress democratic participation. Third, the overall normative balance of election lawmaking is less encouraging. There have been equal or greater instances of deleterious election lawmaking in both the FPTP and MMP eras than clearly positive cases. Furthermore, the introduction of MMP has not seemed to decrease the incidence of deleterious election lawmaking (consisting of partisan and demobilizing reforms). There has been a slight increase in the passage of deleterious acts, from 10 under FPTP to 11 under MMP, which is entirely due to the passage of more partisan acts. This does not directly bear on either hypothesis, though it does fail to substantiate an applied assumption that PR systems inherently diminish corrosive forms of election lawmaking. This point is further explored in Chapter 7.



Table 5.8: Normative Election Lawmaking	FPTP	MMP
Total Partisan	7	11
Total Demobilizing	5	2
Total Deleterious	10	11
Total Positive	9	5
Total Potentially Positive	19	15

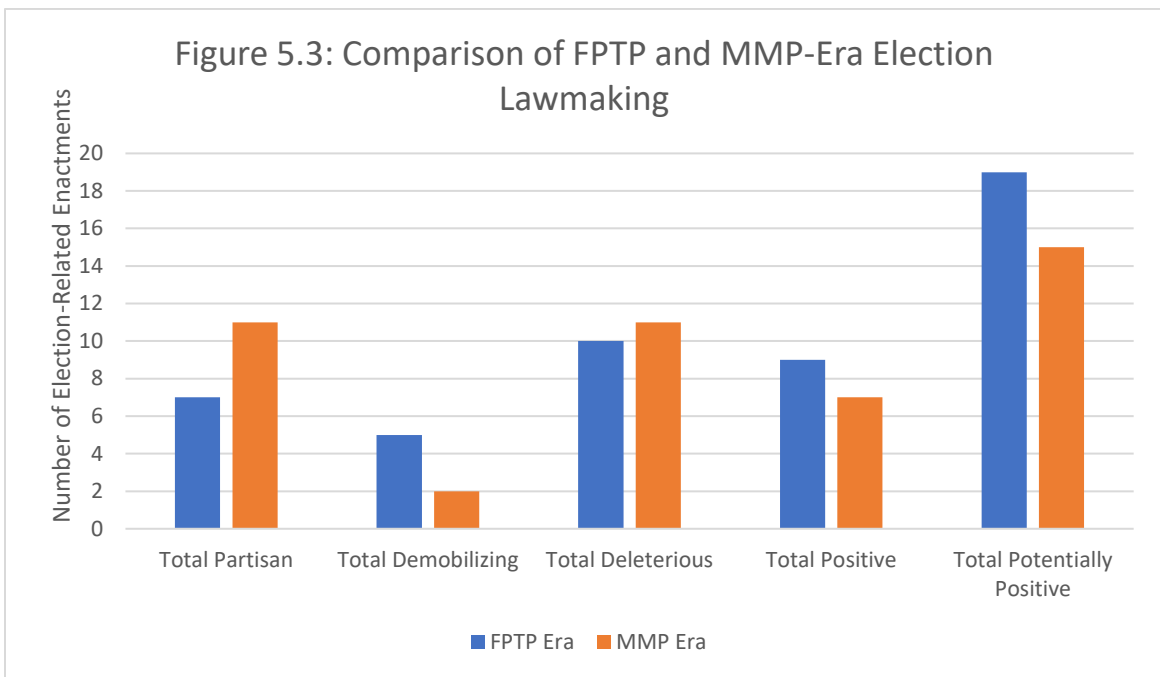


Table 5.9 displays results for a chi-squared test of partisanship and era, whereas Tables 5.10 and 5.11 (below) display results for chi-squared tests of participatory effect and era. Chi-squared tests are conducted to see whether the observed counts are statistically different from a random distribution. In both cases, a small n-size complicates this analysis by making it difficult to reach statistical significance, even with substantial observed

differences.<sup>53</sup> The test of partisan differences shows that a greater number of partisan election laws and fewer non-partisan election laws have passed under MMP (though with a p-value of 0.15, this finding is not statistically significant). This test fails to provide evidence for Hypothesis 1, that MMP should lead to fewer partisan election enactments.

Table 5.9: Is Partisanship Independent of Era?	FPTP	MMP	Total
Non-Partisan	22	15	37
Partisan	7	11	18
Total	29	26	55
Pearson's Chi-Squared Test			
$\chi^2 = 2.0557$ , $df = 1$ , $p\text{-value} = 0.1516$			

Two tests of participatory effect are conducted: one with the familiar tri-part classification and one measuring participatory effect versus no participatory effect. Significance is not reached when dividing between demobilization, neutral, and mobilization. However, there is a relationship significant at  $p < 0.10$  between era and the passage of election laws that impact turnout, suggesting a non-random distribution. It seems that there have been fewer election laws passed under MMP that affect participation—both mobilizing and demobilizing—than under FPTP. Fifty-nine percent of FPTP-era election laws affected participation, but only 35 percent of MMP-era election laws have affected participation. There were 17 participatorily impactful election acts passed between 1970 and 1993, but only 9 passed between 1997 and 2018. This is in line

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<sup>53</sup> This is generally true for all chi-squared tests conducted in this chapter. Results should therefore be interpreted cautiously. Yates' correction is not used for 2 x 2 tables (5.9, 5.11, and 5.18) because expected counts are above 5 and because this is an exploratory analysis (see Haviland 1990). The goal of this analysis is to discover prospective relationships. Thus, eliminating Type 2 errors (false negatives) is privileged over eliminating Type 1 errors (false positives). The results are broadly similar when Yates' continuity correction is applied, with p-values slightly higher.

with expectations for Hypothesis 2, that MMP should lead to both less mobilizing and less demobilizing election lawmaking.

Table 5.10: Is Participatory Direction Independent of Era?	FPTP	MMP	Total
Demobilizes	5	2	7
Neutral	12	17	29
Mobilizes	12	7	19
Total	29	26	55
Pearson's Chi-Squared Test			
$\chi^2 = 3.3098$ , df = 2, p-value = 0.1911			

Table 5.11: Is Participatory Effect Independent of Era?	FPTP	MMP	Total
Mobilizes/Demobilizes	17	9	26
Neutral	12	17	29
Total	29	26	55
Pearson's Chi-Squared Test			
$\chi^2 = 3.1694$ , df = 1, p-value = 0.07503			

### *Logistic Analysis*

Logistic regression tests can discern relationships between a binary variable of interest and multiple explanatory variables. I conducted two sets of tests: one using partisanship as the dependent variable, and one using demobilization as the dependent variable.

### Partisanship Logistic Tests

A series of logistic regressions are conducted using partisanship as the dependent variable to consider the effects of a variety of explanatory variables. The primary variables of

interest—era and effective number of parties—cannot be tested in the same regression because of high collinearity.<sup>54</sup> To avoid this problem, two regressions are run with these variables included alternatively. Results with era are displayed in Table 5.12 and results with effective number of parties are displayed in Table 5.13. Four control variables are used: ruling party (Labour- or National-led), participatory effect (demobilizes, neutral, or mobilizes), inclusion of an entrenched clause, and inclusion of a clause that affects Māori.

The statistical analysis fails to evidence the effects of proportionality on partisan election lawmaking. It does provide some initial evidence for the hypothesized relationship between the number of parties and partisan election lawmaking, and thus may indirectly indicate a relationship between proportionality and partisan election lawmaking due to the strong causal link between electoral system and number of parties. As shown in the models, election laws have been more likely to be partisan in Aotearoa New Zealand when they are participatorily demobilizing, when non-voters have more leverage, and when Labour is in charge.

In both regressions, there is a strong and statistically significant relationship between the party in power and partisan election lawmaking. All else equal, National governments are far less likely to engage in partisan election reforms than Labour governments. In both models, legislation without a participatory effect is less likely to be partisan (significant at  $p = 0.05$ ), as is legislation that has a mobilizing participatory effect (significant at  $p = 0.10$ ). Additionally, both models fail to show a relationship between election laws that affect Māori and partisan reforms.

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<sup>54</sup>  $r = 0.91$ . Inclusion of both variables in the same regression would cause multicollinearity issues, leading to unreliable results.

Table 5.12: Logistic Regression with Era

	Estimate	Std. Error	z value	Pr(> z )	
(Intercept)	-1.48545	2.96009	-0.502	0.61579	
Era	0.09957	1.44657	0.069	0.94512	
Government National	-4.33767	1.46007	-2.971	0.00297	**
Māori	0.86666	0.98003	0.884	0.37653	
Entrenchment	-1.44312	1.55493	-0.928	0.35336	
Participatory Effect Mobilizes	-2.95546	1.45334	-2.034	0.04200	*
Participatory Effect Neutral	-3.91305	1.65782	-2.360	0.01826	*
Competitiveness	0.08218	0.06367	1.291	0.19676	
Leverage	0.19933	0.16921	1.178	0.23878	
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Significance codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1					
Null deviance: 69.545 on 54 degrees of freedom					
Residual deviance: 46.115 on 46 degrees of freedom					
AIC: 64.115					

Table 5.13: Logistic Regression with Effective Number of Parties

	Estimate	Std. Error	z value	Pr(> z )	
(Intercept)	-1.07305	2.24226	-0.479	0.63225	
Parties Effective	-2.44918	1.43660	-1.705	0.08822	.
Government National	-6.42907	2.15236	-2.987	0.00282	**
Māori	0.52329	0.97493	0.537	0.59145	
Entrenchment	-3.33506	1.98360	-1.681	0.09270	.
Participatory Effect Mobilizes	-2.97462	1.54372	-1.927	0.05399	.
Participatory Effect Neutral	-4.67786	1.90703	-2.453	0.01417	*
Competitiveness	0.06118	0.06637	0.922	0.35658	
Leverage	0.54189	0.24019	2.256	0.02406	*
--					
Significance codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1					
Null deviance: 69.545 on 54 degrees of freedom					
Residual deviance: 42.208 on 46 degrees of freedom					
AIC: 60.208					

The model that includes era does not show any additional statistically significant relationships, whereas the model that includes the effective number of parties tells a more complex story. In the latter model, the expected relationships with the effective number of parties, leverage, and entrenchment appear. The higher the effective number of parties in parliament, the less likely it is that election changes are partisan (significant at  $p = 0.10$ ). Additionally, the larger the non-voting population (and therefore the more voters that could

potentially be mobilized with election reforms), the more likely that reforms are partisan (significant at  $p = 0.05$ ). Finally, election reforms that affect entrenched provisions are also less likely to be partisan (significant at  $p = 0.10$ ), which is logical considering that these bills require supermajoritarian support for passage and thus are extremely difficult to enact without consensus.

Why do the regressions with era and effective number of parties differ so dramatically, especially considering the high correlation coefficient between these factors? Robustness tests with three other measures of party system are found to not have a significant relationship with partisanship, and instead reflect similar findings to the regression with era displayed in Table 5.12 (see Appendix K). Either the relationships shown in Table 5.13 are spurious, or the inclusion of the effective number of parties reveals a more particular dynamic of parliamentary politics than other indicators. The fact that the model with effective number of parties is more explanatory than the other models suggests that the latter scenario is the case.<sup>55</sup> There are also compelling reasons to believe that effective number of parties is a better measure of the number of veto players than any of the other metrics. This issue is further explored in Chapter 6.

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<sup>55</sup> The model with effective number of parties has substantially lower residual deviance and Akaike information criterion (AIC). The residual deviance for the model with effective number of parties is 42.2, compared with 46.1 for the model with era. This indicates that the former model better predicts which election enactments are partisan than the latter model. The AIC is a measure that estimates the amount of information lost by a given model. Models that lose less information are considered of higher quality. The difference in AIC between the models is 3.9 ( $64.1 - 60.2$ ), indicating there is considerably more support for preferring the model with effective number of parties than the model with era. In mathematical terms, this means that the model with effective number of parties is seven times more likely than the model with era to minimize information loss. Additionally, a MLR model run using a more complex measure of partisanship produces even stronger relationships between effective number of parties, leverage, and partisan election lawmaking (see Table 5.17 below). This provides further evidence that the results in Table 5.13 are not spurious.

### Demobilization Logistic Test

To test the correlates of demobilizing election lawmaking, I fitted a logistic regression with a demobilization binary as the dependent variable. The results are shown in Table 5.14.

	Estimate	Std. Error	z value	Pr(> z )	
(Intercept)	-1.800381	4.376185	-0.411	0.6808	
Era	0.486868	2.064917	0.236	0.8136	
Government National	3.322814	1.529409	2.173	0.0298	*
Māori	0.170407	1.429260	0.119	0.9051	
Entrenchment	-0.079048	1.703056	-0.046	0.9630	
Partisan Scale	0.940662	0.353573	2.660	0.0078	**
Competitiveness	0.007548	0.083282	0.091	0.9278	
Leverage	-0.282541	0.266466	-1.060	0.2890	
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Significance codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1					
Null deviance: 41.929 on 54 degrees of freedom					
Residual deviance: 26.517 on 47 degrees of freedom					
AIC: 42.517					

This model fails to show a statistically significant relationship with era. A robustness check with the effective number of parties substituted for era reveals a similar result (see Appendix K).<sup>56</sup> These findings are in line with the chi-squared analysis, which also failed to find a statistically significant relationship. The small number of cases involved (seven demobilizing acts out of 55 laws analyzed) makes it difficult for the result to reach statistical significance and increases the chance for bias. Although the descriptive

<sup>56</sup> The test with effective number of parties provides an indication that higher leverage of non-voters (in the form of low-turnout elections) decreases the likelihood of demobilizing election lawmaking. This is counter to initial expectations but has a certain logic to it. Perhaps in low-turnout environments, most infrequent voters are already sitting on the sidelines and thus there is little to be gained by trying to decrease turnout even further. In parallel logic, it should be easier to use election rules to depress participation when turnout is high, as there are more voters who could potentially become nonvoters if barriers to the ballot box are increased.

results still stand as evidence for Hypothesis 2, the statistical tests serve as an important caveat to the relationship between electoral system and demobilizing election lawmaking.

The regression does reveal a statistically significant relationship between demobilizing election lawmaking and National-led governments. In other words, National-led governments have been more likely than Labour-led governments to enact election laws that discourage democratic participation. The model also shows that the more partisan an election law is, the more likely that it demobilizes participation. Election reforms that decreased voter turnout were more likely to incite partisan disagreement than election enactments that did not diminish participation. This is in line with the findings of the logistical regression models of partisanship and makes intuitive sense.<sup>57</sup>

I also fitted a logistic model considering whether each election law contained any provision that demobilizes participation (Table 5.15). Although only seven enactments had an overall demobilizing effect on participation, 16 laws contained at least one provision that diminishes turnout. The relationships with National-led governments and partisanship appear again. Additionally, it seems that election laws that directly affect Māori voters are more likely to contain demobilizing provisions ( $p < 0.10$ ). Removing the effects of partisanship from the equation reveals an even stronger relationship between demobilizing provisions and provisions affecting Māori voters, significant at the 0.05 level of confidence (see Appendix K). This suggests the hypothesized relationship between election demobilization and the presence of Māori—that demobilization efforts have centered on Aotearoa New Zealand’s marginalized communities with discordant preferences.

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<sup>57</sup> Similar results are found when using the binary measure of partisanship rather than the complex ordinal measure.

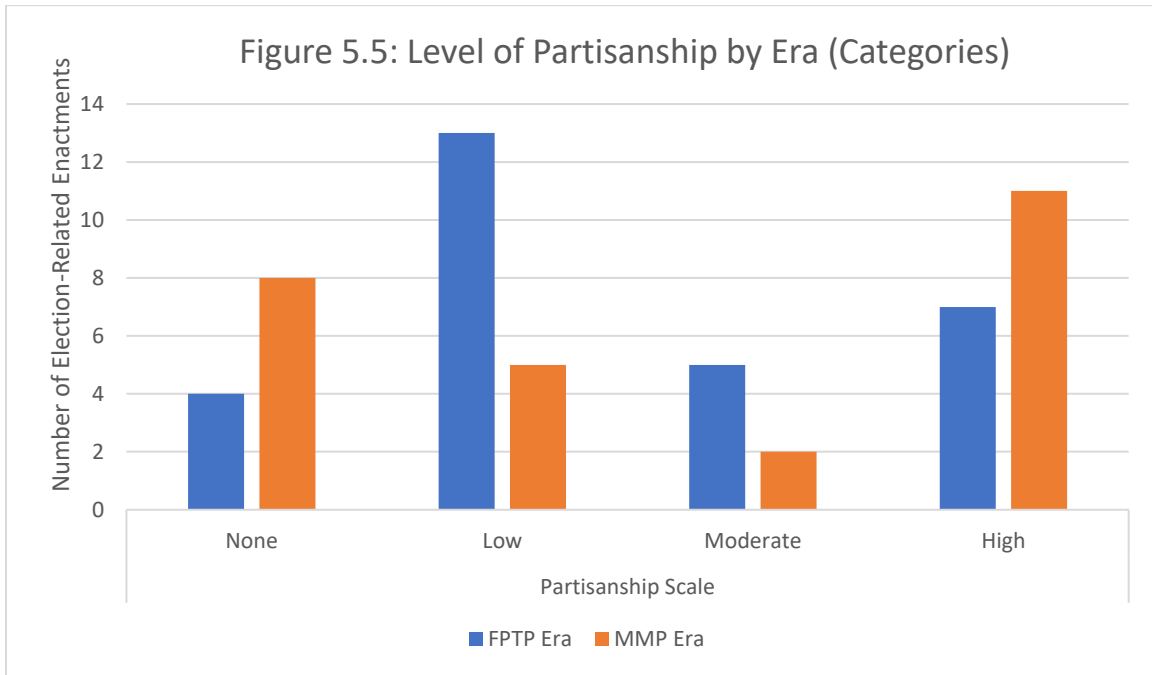
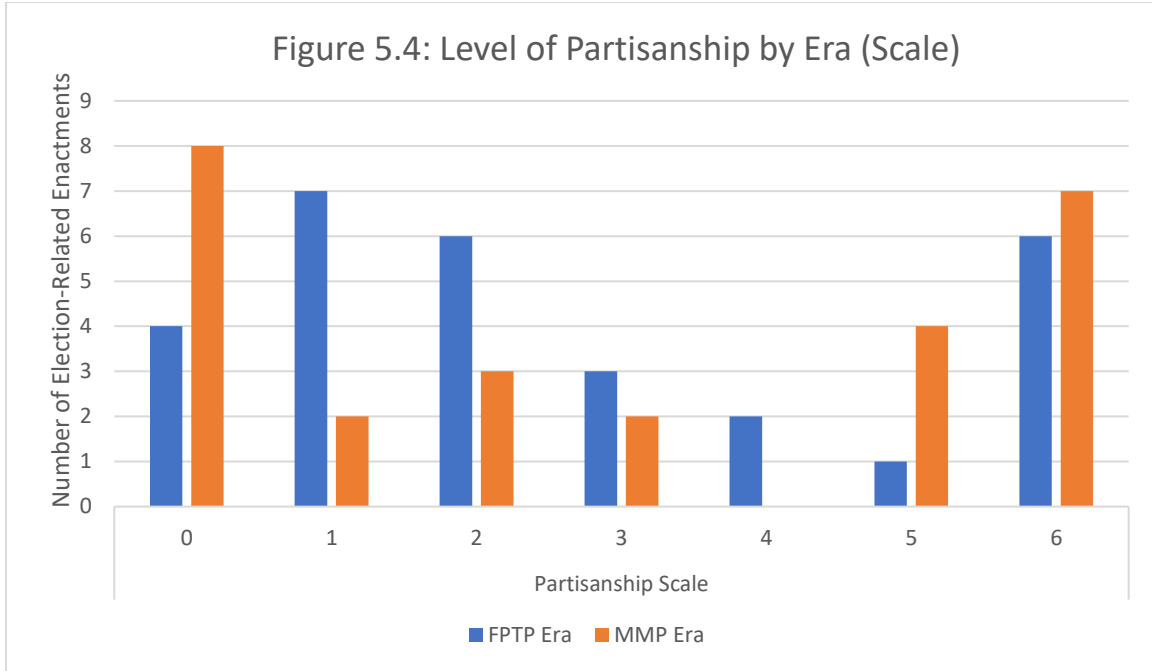


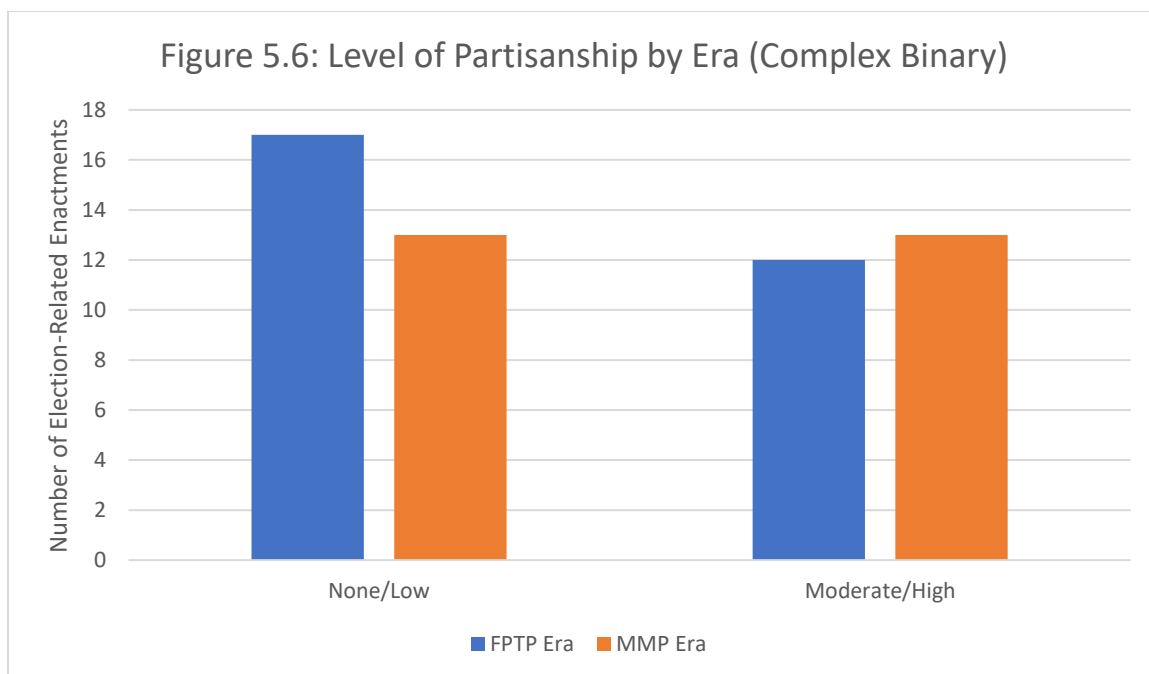
Table 5.15: Logistic Regression of Demobilizing Election Provisions

	Estimate	Std. Error	z value	Pr(> z )	
(Intercept)	-1.06956	3.66809	-0.292	0.77060	
Era	0.91786	1.80092	0.510	0.61029	
Government National	2.93213	1.39340	2.104	0.03535 *	
Māori	1.81239	1.06158	1.707	0.08778 .	
Entrenchment	2.23481	1.51671	1.473	0.14063	
Partisan Scale	0.82247	0.27912	2.947	0.00321 **	
Competitiveness	-0.01812	0.06970	-0.260	0.79490	
Leverage	-0.25724	0.22756	-1.130	0.25829	
--					
Significance codes:	0 '***'	0.001 '**'	0.01 '*'	0.05 '.'	0.1 ' ' 1
Null deviance:	64.455	on 54	degrees of freedom		
Residual deviance:	35.252	on 47	degrees of freedom		
AIC:	51.252				

### *Analysis Using Complex Measure of Partisanship*

I ran another set of tests substituting the binary classification of partisanship for a complex scale. The descriptive data, displayed in Figures 5.4–5.6, are in line with the binary measurement (see Appendix L for data tables). Under FPTP, there were six instances of grossly partisan election reforms passing; under MMP, there have been seven. Aggregated, there were 12 moderately or highly partisan enactments in the FPTP era, compared with 13 such enactments in the MMP era. There has been an increase in the number of completely non-partisan bills passed under MMP, from four to eight. In aggregate, however, there were more instances of election laws passing with little or no partisanship under FPTP (17 versus 13). In short, there does not appear to be any decrease in the number of partisan election reforms passed under MMP.





The MLR model including era, shown in Table 5.16, is largely identical to the logistic regression displayed in Table 5.12. Election laws passed by National-led governments are less likely to be partisan than reforms passed by Labour-led governments, while participatorily neutral and mobilizing bills are less likely to be partisan than demobilizing ones. These relationships are all statistically significant at  $p = 0.01$ . Once again, no evidence is found to substantiate the relationship between era and level of partisanship proposed by Hypothesis 1.

The model incorporating effective number of parties, shown in Table 5.17, also reveals similar results to its logistic counterpart (Table 5.13). The same relationships are observed between partisan election reforms and Labour-led governments, demobilizing laws, higher leverage of non-voters, and lower effective number of parties. The model provides additional evidence for the corollary to Hypothesis 1, that a greater effective number of parties reduces the incidence of partisan election lawmaking. The relationship

is significant at the 0.05 level of confidence, indicating it is unlikely that the observed association is spurious.

Table 5.16: MLR with Complex Partisanship Scale and Era

	Estimate	Std. Error	t value	Pr(> t )	
(Intercept)	2.75449	2.31333	1.191	0.23988	
Era	-0.73538	1.06821	-0.688	0.49465	
Government National	-2.29082	0.66740	-3.432	0.00128	**
Māori	0.51973	0.73286	0.709	0.48179	
Entrenchment	-0.29642	1.01045	-0.293	0.77057	
Participatory Effect Mobilizes	-2.53738	0.93208	-2.722	0.00913	**
Participatory Effect Neutral	-2.99950	0.91644	-3.273	0.00202	**
Competitiveness	0.05657	0.04410	1.283	0.20598	
Leverage	0.14777	0.12106	1.221	0.22844	

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Significance codes: 0 '\*\*\*' 0.001 '\*\*' 0.01 '\*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 2.072 on 46 degrees of freedom  
Multiple R-squared: 0.3176, Adjusted R-squared: 0.1989  
F-statistic: 2.676 on 8 and 46 DF, p-value: 0.01673

Table 5.17: MLR with Complex Partisanship Scale and Effective Number of Parties

	Estimate	Std. Error	t value	Pr(> t )	
(Intercept)	4.42355	1.65323	2.676	0.010296	*
Parties Effective	-1.53876	0.73851	-2.084	0.042780	*
Government National	-3.00204	0.72683	-4.130	0.000151	***
Māori	0.44505	0.70432	0.632	0.530592	
Entrenchment	-0.69664	0.98297	-0.709	0.482082	
Participatory Effect Mobilizes	-2.61418	0.89239	-2.929	0.005269	**
Participatory Effect Neutral	-3.23622	0.88661	-3.650	0.000668	***
Competitiveness	0.04412	0.04102	1.076	0.287684	
Leverage	0.26312	0.11241	2.341	0.023637	*

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Significance codes: 0 '\*\*\*' 0.001 '\*\*' 0.01 '\*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 1.991 on 46 degrees of freedom  
Multiple R-squared: 0.37, Adjusted R-squared: 0.2605  
F-statistic: 3.377 on 8 and 46 DF, p-value: 0.00397

Both models fail to evidence a relationship between partisanship and the inclusion of entrenched provisions. This is explained by the differences in measurement between the binary and complex partisanship metrics. The binary measurement only considers third

reading divisions. The four election laws that included entrenched provisions passed without division in their third readings, which was virtually required by the need for supermajoritarian support. The complex partisan measure, on the other hand, also considers the level of contention in debate and the partisan effects of the bill. Two of these four enactments, the Electoral Amendment Act 1980 and Electoral Act 1993, had both partisan electoral effects and significant partisan disagreements in the parliamentary debate, elements that are masked by the binary partisan variable. The evidence presented here is counter to claims that entrenchment protects Aotearoa New Zealand against partisan election reforms. When all elements of partisanship are taken into account, election acts that alter entrenched provisions are no less likely to be partisan than election acts that do not contain entrenched provisions.

#### *Analysis of Government Party*

The logistic regression displayed in Table 5.17 revealed a statistically significant relationship between legislation sponsored by the National government and non-partisan election lawmaking. This section further explores this relationship. As shown in Table 5.18, Labour-controlled governments have passed 14 of the 18 partisan election laws identified, whereas National-led governments have passed 25 of the 37 non-partisan election laws. Fourteen of Labour's 26 election reforms have been partisan, compared with only four of National's 29 election reforms. A chi-squared test shows the relationship between government party and partisanship to be statistically significant at the 0.01 level of confidence.

Table 5.18: Partisan Election Lawmaking by Party	Labour	National
Non-partisan	12	25
Partisan	14	4
Pearson's Chi-Squared Test		
$\chi^2 = 9.9892$ , $df = 1$ , $p\text{-value} = 0.001575$		

Several factors help explain this divergence. First, five of Labour's 14 partisan election reforms were passed between 2006 and 2007 and all concern one political episode, the 2005 election funding controversy (Geddis 2008). Second, several of National's most controversial election reforms did not receive third reading divisions because Labour accepted National's authority to fulfill manifesto pledges to repeal previous legislation. This was the case with both the Electoral Amendment Act 1976 (returning the number of Māori electorates to four) and the Electoral Amendment Act 2009 (repealing parts of Labour's 2007 finance reform). Two explanations are more systematic. One is that the National party in opposition has been less willing to go along with Labour's desired election reforms than Labour has when the tables are turned. This argument places the blame on National for stonewalling the government's agenda. The other explanation lies in the inherent dynamics of left- and right-wing parties as agents of change and stability. As a left-wing party (or the head of a left-leaning coalition), Labour has a tendency to want to change the established rules of the game to broaden participation, especially as the rules were written at an earlier age with a less inclusive democracy in mind (Atkinson 2003). National (and National-led coalitions), on the other hand, generally adhere to conservative values of stability and tradition. In terms of democratic law, this might translate into a desire to maintain the system largely as it is, and only seek minor and noncontroversial tweaks.

Even if all these explanations are true, ultimately Labour has a record of regularly altering the rules of the game in the face of partisan opposition. To make a normative judgement of whether this record of election lawmaking is “good” or “bad”, it is instructive to examine the participatory effects of Labour’s partisan enactments. Only four fit into the normative quandary of category C—acts that are partisan and mobilize participation. Nine partisan laws did not affect participation and one enactment demobilized participation. On balance, then, Labour’s frequent partisan election lawmaking is not substantially mitigated by the normative good of increasing participation. This record reflects poorly on them.

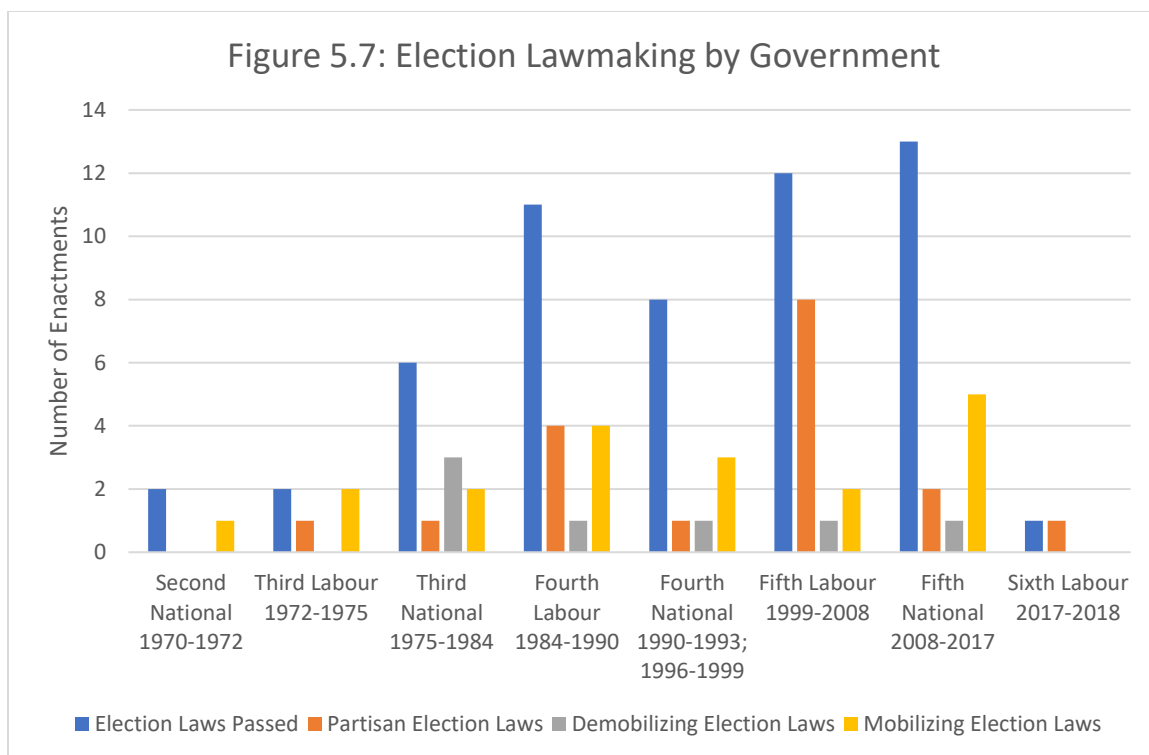
On the other hand, as shown in Table 5.19, National is responsible for five of the seven demobilizing enactments—a record that reflects poorly on them. This finding is in line with the expectations of Hypothesis 2, though it is not a statistically significant difference (in no small part because both parties have passed similar numbers of mobilizing and neutral acts). It makes sense when considering the implications of Aotearoa New Zealand’s left-right SES cleavage structure (Miller 2005). Because lower turnout tends to benefit National, the party should have a greater interest in passing demobilizing election laws than Labour. Surprisingly, National is also responsible for more mobilizing election laws, even though these should tend to benefit the Labour party. The normative popularity of increasing participation likely plays a role here. National could offset the SES effects of increased turnout by gaining support through the passage of popular mobilization laws. This so-called “act-contingent” strategy (Reed and Thies 2001), where politicians pursue legislation for the sake of benefiting from the act of passage itself, was certainly at play when National passed the 1993 Electoral Referendum and Electoral Acts and was likely at

play when it passed the Electoral (Finance Reform and Advance Voting) Amendment Act 2010, accounting for three of the four most significant mobilizing acts passed by National.

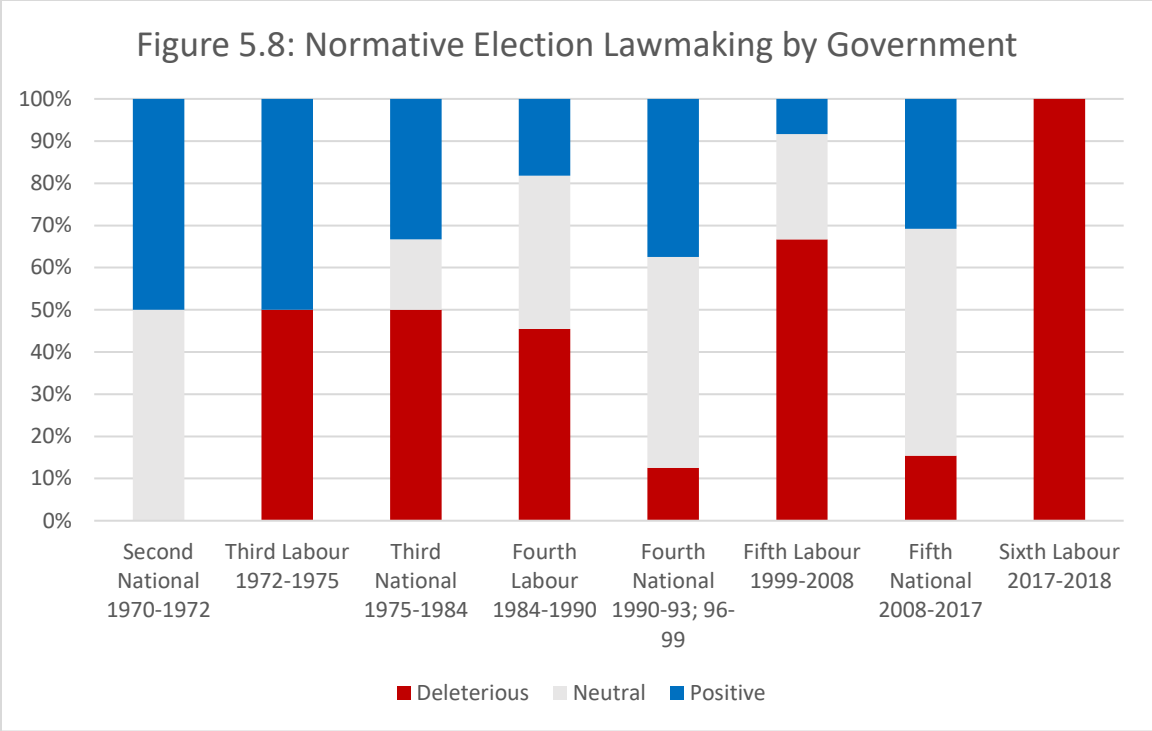
Table 5.19: Participatory Effect of Election Lawmaking by Party	Labour	National
Demobilizes	2	5
Mobilizes	8	11
Neutral	16	13
Pearson's Chi-Squared Test		
$\chi^2 = 1.9118$ , $df = 2$ , $p\text{-value} = 0.3845$		

An examination of election lawmaking by government, depicted in Figure 5.7, reveals whether these relationships are driven by specific governments or are true across all governments. It appears the relationship between Labour and partisan election lawmaking holds across every Labour government studied. One of two election enactments in the Third Labour government, four of 11 in the Fourth Labour government, and eight of 12 in the Fifth Labour government were partisan. The one election law passed by the current Labour government was also partisan, and it appears that at least one more partisan election law will be passed this term. In comparison, no National government has passed more than two partisan election laws. The relationship between National and demobilizing reforms also applies across governments, though concentrates in the Third National government led by Muldoon (1975–84). Three of the six election laws enacted in that government demobilized voter participation. No demobilizing laws were passed in the last three years of the Second National government, and one each was passed in the Fourth and Fifth National governments. In comparison, no Labour government has passed more than a single demobilizing law. Almost every government has passed multiple mobilizing election laws.





Can overall value judgements be made based on this analysis? As shown in Figure 5.8, most governments have passed a mix of both deleterious and positive election reforms. The Sixth Labour government has only passed a single election reform, while the Second National and Third Labour governments also have small sample sizes with two election laws each. Furthermore, the broad distinctions of “deleterious” and “positive” election lawmaking mask as much as they reveal. With these limitations in mind, it is clear that some governments hold a more commendable record of election reform than others. Both the Third National and Fourth Labour governments passed more deleterious election reforms than positive ones. The Fifth Labour government has a particularly disreputable record of election lawmaking and the current Labour government has a completely disreputable record thus far, whereas the Fourth and Fifth National governments have notably reputable ones. No government’s record is perfect, though the Second National government comes close.



*Analysis of Election Law Type*

This section examines the relationship between partisanship and election type to determine whether the areas of election lawmaking that are partisan have changed under MMP, which was proposed as a component of Hypothesis 1. Tables 5.20 and 5.21 show the breakdown of partisan election lawmaking in the FPTP and MMP eras by the type of electoral provisions included in each enactment. An important caveat is warranted. These tables indicate whether bills that contain the relevant election law type were partisan overall, not whether the election law type was the reason for the bill’s partisanship. The following analysis does consider partisanship of specific provisions, using the tables as quantitative gauges for the qualitative analysis.

Table 5.20: FPTP-Era Election Lawmaking by Type	Electoral System (Major)	Electoral System (Minor)	Registration Administration	Voting Administration	Franchise	Boundaries	Finance and Electioneering	Ballot Initiatives	Governance	Member Qualifications	Māori
Partisan	0	2	5	3	5	1	6	0	1	1	3
Total Partisan	7	7	7	7	7	7	7	7	7	7	7
Total Acts of Type	3	6	13	11	11	10	15	2	4	2	13
Percent Partisan of Partisan Acts in Era	0%	29%	71%	43%	71%	14%	86%	0%	14%	14%	43%
Percent Partisan of Acts of Type in Era	0%	33%	38%	27%	45%	10%	40%	0%	25%	50%	23%

Table 5.21: MMP-Era Election Lawmaking by Type	Electoral System (Major)	Electoral System (Minor)	Registration Administration	Voting Administration	Franchise	Boundaries	Finance and Electioneering	Ballot Initiatives	Governance	Member Qualifications	Māori
Partisan	0	1	2	2	2	0	7	0	1	3	2
Total Partisan	11	11	11	11	11	11	11	11	11	11	11
Total Acts of Type	1	1	5	6	2	1	15	1	4	4	4
Percent Partisan of Partisan Acts in Era	0%	9%	18%	18%	18%	0%	64%	0%	9%	27%	18%
Percent Partisan of Acts of Type in Era	0%	100%	40%	33%	100%	0%	47%	0%	25%	75%	50%

Overall, this analysis evidences that switching to MMP has significantly altered the areas of election lawmaking that are partisan. Partisan energy has shifted from registration administration, voting administration, franchise, and boundaries rules to finance and electioneering and member qualification provisions. There have also been significant shifts in partisan attention within each area of election law. Each election type is analyzed in turn.

### Electoral system

No major electoral system changes were passed in a partisan fashion throughout either era. There are three instances of minor electoral system reforms being passed in partisan bills. Only in the case of the Electoral Amendment Act 1975 was the reason for the legislation's partisanship at least partly due to electoral system reform. This case is important, however, as the provision allowed for variations in the number of Māori electorates based on the results of the Māori electoral option. The two other recorded cases of partisan change are misleading, as the provisions concerned were not themselves controversial—in the Electoral Amendment Act 1993, adding a requirement for registered parties to follow democratic procedures in candidate selection; and in the Electoral Amendment Act 2014, clarifying the requirement that list seats be reallocated in the event of a successful election petition. This means that only a single partisan change to the electoral system was passed in the FPTP era and that no such partisan changes have passed under MMP. This appears to align with Elizabeth McLeay's (2018) claim that consensus-based election reform has been a norm in Aotearoa New Zealand since passage of the Electoral Act 1956, at least

when electoral *system* reforms are concerned.<sup>58</sup> This has become more so under MMP, as no partisan changes to the electoral system have thus far been enacted—although there has been significant disagreement over electoral system reform that is not reflected by third reading divisions. This issue is explored further in Chapter 6.

One reason why partisan electoral system reform is so rare is because of entrenchment. Several aspects of the electoral system are protected, including the method of voting, term length, and the number of electorates. Any changes to these provisions must garner three-fourths parliamentary support or majority support in a popular referendum. This requirement prevented the Labour party from enacting a provision in the Electoral Amendment Act 1975 increasing the size of parliament to 121 members. It has preempted many other calls for reform that were not supported by both major parties, and virtually guarantees that a major electoral system reform cannot pass without the support of both National and Labour.<sup>59</sup>

Because legislation altering an entrenched provision must receive supermajority support, the record of legislative enactments is a poor measure to view shifted partisanship in electoral system reform under MMP. Rather, members' bills reveal the significant changes that have taken place: from a focus on wholesale electoral system reform to a focus on tinkering with the rules of an MMP system, especially the electoral threshold and one-seat coattails provisions (Interview M). Three constants have been disagreements over the

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<sup>58</sup> A consensus-based electoral system reform is not automatically a commendable one. The Electoral Amendment Act (No 2) 1987 was an ad hoc agreement between Labour and National to scrap a by-election because they felt it was an "irritation" to hold one so close to the general election (Interview X). This had the effect of preventing members of the public from expressing their democratic voice in an election. Both parties agreed to make this mechanism permanently available with the Electoral Act 1990 and utilized the provision to skip another by-election in 1996 (Martin 2004).

<sup>59</sup> It does not prevent changes to entrenched provisions that are opposed by all minor parties. Such was the case with the alteration of the ballot paper in the Electoral Amendment Act (No 2) 1995 (Marin 2004).

provisions for Māori electorates, the size of parliament, and the parliamentary term length.<sup>60</sup>

### Registration Administration and Voting Administration

Both types of election administration laws have proven substantial sources of partisanship, although it seems they have become less so under MMP. There were five partisan acts in the FPTP era that were controversial in part because of registration administration provisions but there was only a single act in the MMP era (the Electoral Amendment Act 2014 was partisan for other reasons). Legislation that contained registration administration reforms made up 71 percent of all cases of partisan election lawmaking under FPTP but have made up only 18 percent of all cases under MMP. A constant source of partisanship for registration administration is the registration period. Originally closing on writ day, several members' bills in the late 1970s and early 1980s proposed either repealing the requirement for registration altogether or extending the registration period to election day. The law itself did not change until Labour's Electoral Amendment Act 1990 extended registration to the day before election day. The provision was contentious, though the opposition allowed the bill to pass without division on the third reading. National reversed this three years later with the highly partisan Electoral Amendment Act 1993. Both major parties agreed to extend the registration period to the day before election day in 1995. That consensus held for the following two decades. There is now renewed controversy with

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<sup>60</sup> Although some claim a consensus has now developed for the retention of the Māori electorates so long as Māori wish them to exist (Interviews E, J), the actual record of party statements and proposed members' bills suggests otherwise (see Geddis 2006a).

Labour's Electoral Amendment Bill 2019 proposing to extend registration to election day itself. Rules for determining electors' place of residence were only controversial under FPTP—especially with the Electoral Amendment Act 1989, which responded to the Wairarapa Electoral Petition. On the other hand, partisan controversy over provisions for continuous enrollment have only surfaced under MMP, namely with the Electoral Amendment Act 2002.

There were two acts in each era that were controversial due to voting administration provisions (the Electoral Amendment Act 1993 was partisan for other reasons). Proportionally, however, there has been a decline: 43 percent of partisan election lawmaking under FPTP included voting administration changes, compared with only 18 percent under MMP. The voting administration issues that are partisan have changed over time. The only major source of controversy in the FPTP era was a provision in the Electoral Amendment Act 1975 that required lists of candidates with party designations to be mailed out to electors ten days before polling day. This was repealed by National two years later, along with most other provisions in the 1975 act. A huge source of controversy in the interim period not covered by this analysis was the format of the ballot paper. Labour and National joined forces to pass the Electoral Amendment Act (No 2) 1995 over the objection of minor parties, thereby aligning the electorate and list boxes by party to discourage split-ticket voting (Arseneau and Roberts 2015). The Electoral Amendment Act 2002 was highly controversial for enacting a provision that allowed the party vote of electors who voted in the wrong electorate to be counted. The Electoral Amendment Act 2014 was introduced initially without partisan controversy. This changed during select committee consideration, with the addition of a provision requiring electors to verbally confirm their name and the

removal of a provision that would have allowed use of the EasyVote enrollment confirmation card as proof of registration when voting.

### Franchise

There has been a notable decline in the number of partisan election changes involving franchise reform, from five under FPTP to two under MMP. Seventy-one percent of FPTP-era partisan election laws included franchise clauses, compared with only 18 percent of MMP-era partisan election laws. There has also been a sharp decline in the overall number of acts altering franchise rules, from 11 changes in the FPTP era to only two in the MMP era. Of the partisan election changes involving franchise reform, one in each era contained a franchise provision that was itself noncontroversial—the Electoral Amendment Act 1993 (which made changes to mental health disqualification) and the Electoral Amendment Act 2002 (which discontinued the allowance that persons who are not New Zealand citizens can stand as candidates if they were enrolled on 22 August 1975). Of the other acts, prisoner voting has been the most consistently partisan reform. The Electoral Amendment Act 1975 expanded the franchise to all prisoners, which was undone by the Electoral Amendment Act 1977. Prisoners who were serving sentences of fewer than three years were then given the right to vote in the Electoral Act 1993 (see Robins 2006).<sup>61</sup> However, the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 reversed this measure and

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<sup>61</sup> This has been the only instance of non-partisan prisoner voting reform over the period of analysis. The circumstances were unusual, however. The 1992 Electoral Reform Bill originally copied the existing blanket ban on prisoner voting, but this provision was ruled an infringement on the Bill of Rights. This ruling of inconsistency likely played a role in the political decision to enfranchise prisoners with sentences of less than three years.



once again disenfranchised all sentenced prisoners.<sup>62</sup> The issue continues to be controversial: the Waitangi Tribunal (2019) has ruled that the 2010 Act infringes upon the Treaty of Waitangi and the current Labour government has pledged to revert prisoner voting back to the provisions of the Electoral Act 1993 (Little 2019), while the National party leader has pledged to reverse any changes made by Labour in order to keep all currently sentenced prisoners disenfranchised (RNZ 2019). In contrast to prisoner disenfranchisement, the time requirement for residing in an electorate was controversial under FPTP (especially when the Electoral Amendment Act (No 2) 1985 shortened the length from three months to one) but has become much less so under MMP.

### Finance and Electioneering

Acts affecting campaign finance, electioneering, and broadcasting have been the most frequent source of election lawmaking, with 30 separate reforms over the period of analysis—15 each in the FPTP and MMP eras. Politicians have consistently disagreed over these rules. Eighty-six percent of FPTP-era and 64 percent of MMP-era partisan election changes included finance and electioneering provisions. Two of the FPTP-era acts involved finance provisions that were themselves non-controversial—the Electoral Amendment Act 1975 (increasing maximum election expenses from \$1,500 to \$2,000) and the Electoral Amendment Act 1977 (increasing maximum election expenses from \$2,000 to \$4,000). But in every other case, the finance and electioneering provisions were central sources of

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<sup>62</sup> Geddis notes that National’s primary motivation for passing the legislation was partisan signaling: “[i]n this sense, the voting rights of some 3,000 New Zealanders were used purely as an instrumental weapon in the partisan battle for political power. That was and is quite deplorable” (2017: 226; see also Geddis 2011).

disagreement. One area of contention has been the degree to which the electoral roll is accessible to the public for the purposes of electioneering. Politicians clashed over making the dormant electoral roll public in the debate over the Electoral Amendment Act (No 2) 1985, with the National opposition accusing Labour of “putt[ing] fingers into the ballot box and mak[ing] it easier for activist Labour supporters to fiddle elections” (468 NZPD 8634, 3 December 1985). Broadcasting rules have been a source of conflict since the broadcasting allocation was introduced in 1989. Parties continue to disagree about the strictness of broadcasting regulations, the criteria for allocating broadcasting funds, and the amount to be allocated (Geddis 2003). Campaign finance regulation has seen a surge in partisan attention under MMP. Between 2006 and 2007, five highly partisan election acts focusing on finance reforms were passed, all following from illegal spending practices committed by both major parties during the 2005 election.<sup>63</sup> A consensual process was followed to pass the Electoral (Finance Reform and Advance Voting) Amendment Act 2010, calming partisan fervor on the issue. There are also lingering disagreements over the strictness of the ban on polling day advertising and electioneering. A provision that tightened the rules around these activities was removed from National’s Electoral Amendment Act 2014 in select committee because of Labour’s objection to the change.

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<sup>63</sup> These were, in order of passage, the Appropriation (Parliamentary Expenditure Validation) Act 2006, the Appropriation (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2007, the Electoral Amendment Act 2007, the Electoral Finance Act 2007, and the Broadcasting Amendment Act (No 2) 2007 (see Geddis 2007, 2008).

## Boundaries

Changes to rules concerning the Representation Commission and the drawing of boundaries were common under FPTP but rarely made in a partisan manner. This is because most boundary rules are entrenched, preventing unilateral changes to the membership of the Representation Commission, the criteria for drawing boundaries, and the allowed tolerance quota. One important exception to this is the Electoral Amendment Act 1975, which altered boundary rules by allowing the number of Māori electorates to fluctuate based on the size of the Māori electoral population. This provision was reversed the following year by the Electoral Amendment Act 1976, which again fixed the number of Māori electorates at four. The frequency of boundary reforms has declined sharply since the introduction of MMP. There were 10 amendments to boundary provisions under FPTP, most involving the Māori electorates. In contrast, only a single amendment to boundary provisions has been made under MMP, a reform in the Electoral Amendment Act 2017 that requires the online publishing of all objections to the Representation Commission's proposed electoral boundaries.

The political landscape of electoral boundary rules has been sharply altered by the introduction of PR. Elections previously hinged on a few marginal constituency districts. Each redistricting brought about intense partisan scrutiny, as it could completely alter the landscape of electoral politics. Under MMP, constituency districts matter much less, as the party vote largely determines the number of seats each party will get in parliament (Interviews U, Y, AG).<sup>64</sup> This shift has transformed constituency boundaries from being

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<sup>64</sup> An important exception being the coattails provision, which allows a party that wins one constituency seat to gain list seat votes even if they fail to receive 5 percent of the party vote.

one of the most controversial areas of election law to a relatively unimportant formality. Unsurprisingly, it has also meant that no partisan changes to the boundary provisions have passed under MMP.

### Ballot Initiatives and Governance

Both ballot initiative and governance rules have rarely been amended and even more rarely disputed. Only three acts over the period of study involved changes to the rules governing ballot initiatives. The most notable case is the Citizens Initiated Referenda Act 1993, which instituted procedures for the holding of indicative referenda (Parkinson 2001).<sup>65</sup> No reforms to the ballot initiative process have been partisan, although most ballot initiatives themselves have been fiercely contentious. There were more changes to electoral governance, with four each over FPTP and MMP eras. Just a single act in each era was partisan, and in both cases the governance provisions were not the source of disagreement. The 2010 and 2011 restructuring of electoral governance infrastructure, which involved merging the Chief Electoral Office with the Electoral Commission and the Chief Registrar of Elections, received broad political support.

### Member Qualifications

The rules governing what actions can be taken as an MP have rarely been changed. There were only two amendments to member qualifications in the FPTP era. The Electoral

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<sup>65</sup> The record of citizens' initiated referendums in Aotearoa New Zealand has been markedly poor (see Catt 1996, Geddis 2014; Goschik 2003; Morris 2004a).

Amendment Act 1981 altered rules around the disqualification of members who become state servants, while the Electoral Amendment Act 1993 suspended members for mental disorders. In neither case was the provision itself controversial. MMP has significantly altered the political landscape of member qualifications, creating the dilemma of “party hopping”—when sitting MPs leave their political party (Geddis 2006b). The Electoral (Integrity) Amendment Act 2001 enacted a highly controversial mechanism whereby a party leader could vacate the seat of any MP who left their party. This expired in 2005, but was reenacted in the Electoral (Integrity) Amendment Act 2018—this time without a sunset clause—and has continued to incite fierce partisan divisions (Interview AB).<sup>66</sup> Another significant dispute that developed under MMP was the disqualification of members who apply for foreign citizenship. The Electoral (Vacancies) Amendment Act 2003 was controversially passed in one day to save the seat of Harry Duynhoven, who had accidentally but technically been disqualified from sitting as a member by applying to renew his Dutch citizenship (Geddis 2004; Morris 2004b; Waldron 2004). The effect of the bill was to prevent a by-election from taking place. This issue was resolved the following year with the passage of the Electoral Amendment Act 2004.

### Māori

Laws specifically targeting Māori voters tie into every other type of election rule discussed above. They have become significantly less common under MMP. Thirteen acts directly affecting Māori were passed in the FPTP era, whereas only four have been passed under

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<sup>66</sup> It has also been almost universally panned by the country’s legal scholars (Geddis 2018).

MMP. Under FPTP, much partisan activity concerned the Māori electoral option. The Electoral Amendment Act 1975 introduced a Māori option for the first time, the Electoral Amendment Act 1980 delayed exercise of the option, the Electoral Amendment Act 1981 reduced the option from three months to two, and the Electoral Amendment Act 1990 altered the definition of the Māori population to include unregistered individuals of Māori descent. The procedures for determining the number of Māori electorates has been even more controversial. The Electoral Amendment Act 1975 allowed the number of electorates to fluctuate based on the Māori electoral population rather than keeping them fixed at four, but this was reversed when National took power the following year. The issue was partially settled by the introduction of MMP, as the Electoral Act 1993 again allowed the number of Māori electorates to fluctuate based on the size of the Māori electoral population. There has not been a single act under MMP that has altered Māori voting in a partisan way (the two partisan acts that contained Māori-specific provisions were divisive for other reasons). Even so, the status of the Māori electorates continues to be divisive, with frequent calls alternatively for their entrenchment or their elimination. The differential effect to Māori of certain electoral provisions continues to be an intense source of conflict, most notably with prisoner disenfranchisement in the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 (Waitangi Tribunal 2019).<sup>67</sup>

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<sup>67</sup> This enactment negatively impacts turnout beyond prisoners by signaling to marginalized communities that their participation is not desired, thus reducing the likelihood that they vote (Interview AA).

### *Analysis of Proposed Members' Bills*

An analysis of proposed members' bills enriches the narrative of election reforms by detailing which rules politicians wanted to change but were unable to. Due to extreme party unity in Aotearoa New Zealand, government bills virtually always pass whereas non-government bills virtually always fail. This means an analysis of members' bills is mostly a story of aspirational reforms from the opposition. The analysis can also reveal latent partisanship over various types of election laws that lead to reactive political strategies—whereby politicians block the passage of electorally harmful bills to maintain ingrained institutional advantages. The examination of proposed election bills is split into three parts: the first examining their prevalence, partisanship, and participatory effect; the second examining the party of the introducer; and the third examining the types of election law involved.

#### Prevalence, Partisanship and Participatory Effect of Members' Bills

So far, substantial evidence has been brought to bear that Aotearoa New Zealand election lawmaking is regularly a partisan affair. An examination of proposed members' bills reveals even more disagreement under the surface. Each proposed and failed members' bill is a moment of partisan disagreement over the democratic rules of the game. Over the period of analysis, there have been 25 tabled members' bills concerning election law that received first readings.<sup>68</sup> There were an additional three government bills that were

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<sup>68</sup> David McGee, the former Clerk of the New Zealand House of Representatives, views this as a surprisingly high number of members' bills to be introduced on the subject (Interview AD). According to McGee, this indicates that members are substantially motivated by partisan considerations.

introduced but never passed and one members' bill that was tabled but never debated.<sup>69</sup>

Tables 5.22–25 show numerical and percentage values for the participatory effect and level of partisanship of these proposed members' bills, one set each for FPTP and MMP.

Table 5.22: FPTP-Era Members' Bills— Number of Election Bills Debated		Participatory Effect			Total
		Demobilizing	Neutral	Mobilizing	
Partisanship	Highly Partisan	0	4	5	9
	Less partisan	0	3	4	7
Total		0	7	9	16

Table 5.23: FPTP-Era Members' Bills—Percentages		Participatory Effect			Total
		Demobilizing	Neutral	Mobilizing	
Partisanship	Highly Partisan	0%	25%	31%	56%
	Less partisan	0%	19%	25%	44%
Total		0%	44%	56%	100%

Table 5.24: MMP-Era Members' Bills— Number of Election Bills Debated		Participatory Effect			Total
		Demobilizing	Neutral	Mobilizing	
Partisanship	Highly Partisan	2	2	1	5
	Less partisan	0	3	1	4
Total		2	5	2	9

<sup>69</sup> The three government bills are the Electoral Amendment Bill 1998 (which was eventually inserted into the Electoral Amendment Act 2002), the Broadcasting (Election Broadcasting) Amendment Bill 1999, and the Electoral (Integrity) Amendment Bill 2005. The first two failed despite being supported by the opposition because the coalition between National and New Zealand First fell apart during their consideration. The third bill was introduced as part of a coalition agreement between Labour and New Zealand First, though its passage was not a condition of the agreement. Because the circumstances surrounding these bills were quite distinct from members' bills, they have been excluded from the main analysis and are mentioned where relevant. In Appendix J, their partisanship classification is the binary partisanship metric for enactments (third reading division) applied to the first reading. The members' bill tabled but never debated is the Electoral Finance Amendment Bill 2008. There has only been one members' bill amending election rules that has passed—the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010. This has been included in the analysis of enactments. A members' bill currently under consideration, the Electoral Access Fund Bill 2018, passed its second reading without division and seems likely to be enacted in 2020.



Table 5.25: MMP-Era Members' Bills—Percentages		Participatory Effect			Total
		Demobilizing	Neutral	Mobilizing	
Partisanship	Highly Partisan	22%	22%	11%	56%
	Less partisan	0%	33%	11%	44%
Total		22%	56%	22%	100%

There were notably more members' bills concerning election law introduced under FPTP than under MMP—16 in the former compared to nine in the latter. The fact that large numbers of members' bills in the FPTP era concerned election law indicates that election lawmaking was a highly contentious and partisan affair. Furthermore, significantly more members' bills in the FPTP era were killed in their first reading rather than being allowed the courtesy of select committee review and a second reading. Nine bills were voted down in their first reading under FPTP, whereas only five have been treated as such under MMP (though the proportion of members' bills that are highly partisan has remained the same). These divergences provide modest evidence that underlying partisanship in election lawmaking has declined under MMP.

There are almost half as many members' bills with participatory effects under MMP than under FPTP (four versus nine). This is the same trend that was observed with enacted election laws. It seems that MMP has reduced the incentives to propose or pass participatorily impactful election reforms. The story is more complex when broken down by direction of impact. There have been few members' bills with demobilizing provisions over the period of analysis, an encouraging trend. Only two members' bills would have demobilized participation if passed, totaling 8 percent of all members' bills. In comparison, 13 percent of enacted election reforms demobilized participation. Both demobilizing

members' bills occurred under MMP—counter to the trend presented for election enactments.

The picture is very different in terms of mobilization. Members' bills have frequently been a vehicle for mobilizing election ideas. Eleven mobilizing members' bills were debated over the period of analysis. Nine occurred in the FPTP era, whereas only two were introduced under MMP. Furthermore, many of these bills contained provisions with large participatory effects. Of the 11, four (36 percent) would have had major mobilizing effects (defined as likely to boost turnout by at least 5 percentage points). The provisions in all four bills concerned registration administration and included radical reforms such as extending the registration period from writ day through to the end of polling day, putting the onus for registration on the government, and repealing the requirement for registration altogether. In comparison, 19 enacted reforms mobilized turnout, none of which had a major mobilizing impact.

#### Members' Bills and Introducer's Party

An examination of the introducer's party provides another avenue to examine the relationship between party and election lawmaking. As can be seen in Table 5.26, many of the party-based participatory trends observed with enacted election reforms continue with members' bills. Every single one of Labour's six introduced bills with a participatory effect would have mobilized voter turnout. On the other hand, National's lone bill with a participatory effect would have demobilized participation. This is in line with the findings from enacted reforms. Associated small parties have also pursued election changes in line

with expectations. The left-leaning Green, NewLabour, and Social Credit parties only proposed mobilizing and neutral bills, whereas the right-wing Act party's lone members' bill would have demobilized participation.

Table 5.26: Introducer's Party and Participatory Effect of Members' Bills	Demobilizes	Mobilizes	Neutral
ACT	1	0	0
Democrats	0	0	1
Green	0	1	0
Labour	0	6	6
National	1	0	2
NewLabour	0	2	0
New Zealand First	0	0	2
Social Credit	0	2	1

The relationship between party and partisanship, shown in Table 5.27, is more complicated. It is important to reiterate that every proposed members' bill is partisan, although some are clearly more so than others. Labour members have pursued changes to election rules much more frequently than National members—a ratio of three to one. Of Labour's 12 members' bills, six were highly partisan and six were less so. In comparison, National members only put forward three members' bills affecting election rules, but all three were quite partisan affairs.

Table 5.27: Introducer's Party and Partisanship of Members' Bills	Lower	Higher
ACT	0	1
Democrats	0	1
Green	1	0
Labour	6	6
National	0	3
NewLabour	1	1
New Zealand First	1	1
Social Credit	2	1

Members' bills have been an important vehicle for small parties to propose ideas. Forty percent of proposed members' bills have been put forward by MPs from small parties, including bills from Social Credit, Democrats, NewLabour, New Zealand First, ACT, and Green party members. Particularly astonishing is the fact that six of the ten occurred in the FPTP era, when small parties made up no more than a handful of seats in parliament. This is because small parties did not have other available means to influence policy discussions, leading them to more aggressively pursue members' bills (Interview AD). Given that the FPTP electoral system actively disadvantaged small parties, they also had an incentive to push for reform. In the MMP era, the advent of coalition governments means that small parties can play an active role in shaping legislative bills (Malone 2008), reducing the need for members' bills as a policy signaling device.

It is also important to consider instances when major parties joined forces to defeat members' bills put forward by minor parties. There were two such cases over the period of analysis, both occurring in the FPTP era: the Electoral (Representation Commission) Amendment Bill 1986 (which sought to add political representatives from all parliamentary

parties onto the Representation Commission) and the Mixed Member Proportional Representation Poll Bill 1990 (which proposed a binding referendum on MMP at that year's general election). This small parties versus major parties schism has been assumed to play a bigger role in the MMP era (Interviews J, L, AC). However, there has not been a single case of major parties teaming up to pass election reforms over the opposition of minor parties since 1996.<sup>70</sup>

### Members' Bills and Election Law Type

A breakdown of proposed members' bills by the type of election rules involved, shown in Table 5.28, confirms both the broad base of partisan disagreements over election law and the trends of shifted partisanship observed earlier. Members' bills involved every type of election law except for governance. There has been a notable decline of partisan interest in major electoral system, registration administration, voting administration, and boundaries reform. In contrast, there has been a notable increase of partisan interest in minor electoral system and member qualification reforms.

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<sup>70</sup> One of the major reasons for the absence of this legislative dynamic may be because coalition agreements have included both big and small parties, making it difficult for governments to pass laws that skew election results against small parties (Interview L). The best evidence for this is the transitional period between FPTP and MMP, which witnessed the passing of three controversial election laws along major-minor party lines. Minor parties fiercely opposed the Electoral Amendment Act (No 2) 1995 due to a provision altering the design of the ballot paper to align the list and electorate boxes by party, thus encouraging straight-ticket voting for the major parties (Geddis 2014; Interviews G, J). The Broadcasting Amendment Act 1996 and the Electoral Amendment Act (No 2) 1996, passed together, were opposed by small parties due to provisions allowing the government and opposition to each nominate a person to serve on the Electoral Commission for the purposes of determining the broadcast allocation. This shut out minor parties from representation for this important determination (Interview J). The Electoral Act 1993 also contained a provision fiercely opposed by minor parties: setting the representation threshold at 5 percent, rather than the 4 percent threshold recommended by the 1986 Royal Commission. All these inter-era cases occurred in an environment without formal coalition agreements between major and minor parties.

Table 5.28: Proposed Members' Bills by Type	Electoral System (Major)	Electoral System (Minor)	Registration Administration	Voting Administration	Franchise	Boundaries	Finance and Electioneering	Ballot Initiatives	Governance	Member Qualifications	Māori
FPTP	4	0	4	2	1	3	3	2	0	0	2
MMP	1	4	1	0	1	0	2	0	0	1	2
Total	5	4	5	2	2	3	5	2	0	1	4
Total Highly Partisan	3	2	4	2	0	1	3	1	0	0	3
Percent of All Members' Bills in FPTP Era	25%	0%	25%	13%	6%	19%	19%	13%	0%	0%	13%
Percent of All Members' Bills in MMP Era	11%	44%	11%	0%	11%	0%	22%	0%	0%	11%	22%
Percent of All Members' Bills Overall	20%	16%	20%	8%	8%	12%	20%	8%	0%	4%	16%
Percent of Type Highly Partisan	60%	50%	80%	100%	0%	33%	60%	50%	0%	0%	75%

Many members' bills involved major or minor reforms to the electoral system. More than one third of all members' bills contained provisions affecting the electoral system. Notably, four of the five bills containing major electoral system reforms occurred in the FPTP era. Most of these concerned proposals to switch the electoral system to a proportional one—which understandably was no longer a concern after the implementation of MMP. All four of the bills containing minor electoral system reforms were introduced under MMP. Two concerned the entrenchment or elimination of the Māori electorates, one attempted to reduce the number of MPs, and one attempted to reduce the electoral threshold to 4 percent and remove the one-seat threshold (as per the recommendations of the Electoral Commission's 2012 review of MMP). A majority of the major electoral system bills and half of the minor electoral system bills were highly partisan.

Five bills contained registration administration provisions and two bills contained voting administration provisions. Most were tabled in the FPTP era. All four of the members' bills proposing changes to registration procedures were introduced between 1978 and 1980 in response to major problems with the enrollment system that became apparent in the leadup to the 1978 general election. Incidentally, all four bills also proposed radical solutions for the election that, if implemented, would have had a major mobilizing effect on voter turnout. Three of the four were introduced by Gerald Wall (Labour MP for Porirua), and all four bills proposed substantially lowering registration barriers. Two sought to enact election day registration at a time when the registration period closed on writ day.<sup>71</sup> The Voting Rights Protection Bill 1978 proposed doing away with the

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<sup>71</sup> Incidentally, election day registration is just now being considered by parliament as part of the Electoral Amendment Bill 2019 and appears likely to pass.

requirement for electors to register before they become eligible to cast a valid vote, while the Electoral Amendment Bill (No 2) 1978 proposed putting the onus on the government to enroll all eligible voters. Almost every members' bill containing registration and voting administration provisions was fiercely controversial.

There are few members' bills that involved changes to the franchise. Most significant is the Electoral Amendment Bill 1972, which sought to lower the voting age from 20 to 18 years of age. This was achieved two years later with the Electoral Amendment Act 1974. The Electoral Access Fund Bill 2018 proposes a fund to help cover disability-related costs of disabled candidates standing for office. It seems likely that the legislation will pass in 2020. All three proposed bills containing provisions relating to electoral boundaries occurred in the FTPT era, a similar trend to the enactments. Both the Electoral Amendment Bill 1978 and the Electoral (Representation Commission) Amendment Bill 1986 sought alterations to the membership of the Representation Commission to include formal representation for small parties. The fact that Labour and National alone are allowed political appointments to the commission continues to be controversial, though of much diminished importance considering the mechanics of MMP (Beever 2003; Interviews H, J, P). A handful of finance and electioneering bills were also proposed throughout the past 50 years, covering a diverse array of issues. As with enacted election laws, a significant percentage were intensely partisan affairs.

Ballot initiative members' bills were a rare occurrence; the only two were the work of Social Credit's Gary Knapp.<sup>72</sup> Knapp introduced identical bills in 1983 and 1984 seeking

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<sup>72</sup> Knapp switched party affiliation to the Democrats in 1985 but continued a streak of election-related members' bills. His Electoral (Representation Commission) Amendment Bill 1986 proposed adding political representatives from minor parties onto the Representation Commission.



the implementation of a binding referendum system. A non-binding initiative mechanism was realized ten years later in the Citizens Initiated Referenda Act 1993. No members' bills concerned electoral governance, unsurprising considering the infrequent and non-partisan nature of governance changes that have passed. There was only a single members' bill debated involving member qualifications—the Electoral (Party Registration) Bill 1997, which sought to prevent party-hopping.<sup>73</sup>

Four members' bills contained provisions directly affecting Māori voters, two in each era. Both FPTP-era bills concerned easing Māori voter registration restrictions on transferring between the general and Māori rolls, whereas both MMP-era bills concerned the future of the Māori electorates. The Electoral (Racially-Based Representation) Referendum Bill 2002 proposed a referendum to eliminate the electorates, while the Electoral (Entrenchment of Māori Seats) Amendment Bill 2018 proposed their entrenchment. Three of the four members' bills affecting Māori voters failed their first reading, indicating a high level of partisanship.

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<sup>73</sup> A temporary ban on party hopping was achieved four years later, expiring in 2005. A government bill was introduced in 2005 to extend the prohibition on party hopping but was never passed. The issue lay dormant until 2018, when the Labour government controversially passed legislation reimplementing the party hopping ban.



## **CHAPTER 6: ELECTION LAWMAKING IN AOTEAROA NEW ZEALAND AND THE IMPACT OF PROPORTIONAL REPRESENTATION**

It is clear that election lawmaking in Aotearoa New Zealand is not consensual. It is equally clear that switching to a PR system has failed to reduce the incidence of partisan election lawmaking. Electoral system reform has seemed to contribute to a decline in the passage of demobilizing bills and, more broadly, any election rules with participatory effects. It has also shifted the areas of election law that are partisan. National members and National-led governments have a propensity to propose and pass demobilizing election laws, while Labour members and Labour-led governments have an even stronger tendency to pursue partisan election reforms. I have uncovered evidence that demobilizing election reforms disproportionately involve Māori voting provisions. I have also substantiated a relationship between leverage of non-voters and the incidence of partisan election lawmaking.

This chapter highlights main takeaways from the data presented in Chapter 5, considers whether to accept or reject the hypotheses presented in Chapter 4, and weighs the balance of evidence for the myriad other factors mentioned in Chapter 2 that may impact the politics of election lawmaking. It proceeds in five parts. The first three constitute core elements of analysis. The first part examines the degree to which Aotearoa New Zealand election lawmaking is consensual, the second analyzes the evidence for the central hypotheses and causal mechanisms, and the third considers a range of independent variables. The last two parts consider incidental areas of concern. The fourth evaluates which policy triggers have brought election reforms onto the agenda. The fifth examines the degree to which partisan election lawmaking has been random.

*Is Aotearoa New Zealand Election Reform Consensus-Based?*

As described in Chapter 3, there is a persistent belief held by scholars that Aotearoa New Zealand's election reforms are largely consensual and that highly partisan changes do not regularly occur here. This idea is central to McLeay's (2018) book *In Search of Consensus*, which argues that passage of the Electoral Act 1956 established consensus-based election lawmaking in Aotearoa New Zealand as a norm. Similar views cropped up repeatedly in interviews with academics (D, E, H, I, O, S), government officials (F, J, R, V, AD) and politicians (N, AG). This sentiment is not new. In Hansard's record of parliamentary debate, politicians have repeatedly expressed this consensus-based understanding of election law from the earliest years analyzed. Politicians are most likely to wax lyrical about the "good old days" of consensus-based election lawmaking in the mist of fiercely partisan debates over election reform. Such was the case when John Marshall (National MP for Karori) spoke in opposition to the Electoral Amendment Act 1975 (398 NZPD 2097, 12 June 1975, emphasis my own):

More than perhaps anything else, I regret that on several important matters there has been a division between the parties, and in that division we are departing from the bipartisan approach to electoral legislation. In the 1956 Act, which is the present law on parliamentary elections and for which I was responsible as the then Minister of Justice, we had a bipartisan approach to the electoral legislation, and it was passed unanimously by Parliament after a considerable period of discussion in a select committee. There was a spirit of compromise, and we were able to reach agreement on all matters.

**Because that was a bipartisan Bill which has been an accepted piece of legislation for the past 20 years, and has been the basis on which seven general elections have been held up to the election at the end of this year, we have been free from party political division in our electoral legislation.** It has meant that both parties have accepted the electoral law as fair and reasonable, and there has been no suggestion that it favoured one party more than another. As a result of the changes introduced by the Government in this Bill the stability of our electoral law is likely to go by the board in several important respects. This could mean, as the Leader of the Opposition pointed out tonight, that whichever party becomes the Government there are likely to be some changes in that electoral law. So we will now have the unsatisfactory situation where the electoral law mean one thing when

one Government is in office and another thing, in some important respects...when another Government is in office.

Marshall fondly remembered the prior several decades of election lawmaking, especially the Electoral Act 1956, which introduced the practice of entrenched election statutes. He also correctly foresaw that Labour's reforms would lead to frequent partisan changes in the future—including the following two years, when the National government repealed many of the 1975 Act's core provisions. But Marshall is on less certain ground with the assertion that parliament had been "free from party political division" on election law over the past two decades. The Political Disabilities Removal Act 1960, which restored the ability of unions to make levies for political purposes, was passed on a party-line vote. The Electoral Amendment Act 1965, which fixed the South Island quota at 25 seats without altering Māori representation, was also highly contentious (Christmas 2010).

Thirty years later, politicians were at it again. In the debate over the Electoral Finance Act 2007, Leader of the Opposition John Key decried how "[y]ears and years of bipartisan support of electoral [election] reform will be sacrificed" for Helen Clark's political benefit (644 NZPD 14031, 18 December 2007). Key seemed to forget about the nearly annual passage of partisan election reforms preceding this debate, including the Electoral (Integrity) Amendment Act 2001, the Electoral Amendment Act 2002, the Electoral (Vacancies) Amendment Act 2003, and the Appropriation (Parliamentary Expenditure Validation) Act 2006. Just a few years later, in the debate over the Electoral (Administration) Bill 2010, Labour MP Pete Hodgson made an extended statement on the history of consensus (663 NZPD 11012, 19 May 2010, emphasis my own):

I want to make a point about consensus and to say that we do not, it appears, yet have consensus in this House. In fact, by one perspective we have never particularly had it—I will explore that a little—and we do not have consensus, or broad consensus, or mostly consensus on what I think will be the next few bills

regarding electoral [election] reform as it applies to donations, spending caps, parallel campaigning, and all of these things. We know what we are talking about here.

**I do not want to talk about the issues; I want to talk about the value of consensus. I acknowledge we have never had it, but in the 1980s and in the 1990s when there was near-consensus throughout those decades—and they were turbulent enough in general but as far as electoral law was concerned they were rather quiescent—the main point of contention was when the rolls should close.** Should they close 28 days prior, or should they close the evening prior? As Governments changed in that time, so did the electoral law. The point of that is that the electoral law is part of our constitution. We always say that we have an unwritten constitution; in fact, we have it written in several places, and the rest of it is just tradition or by arrangement. It is part of our written constitution, and it is not a good idea for the written constitution to change reliably upon the change of Government. If one is to address that, the question is how we get somewhere close to a near consensus on it. We are some distance away in respect of donations, spending caps, and parallel campaigning.

In these remarks, Hodgson acknowledges that the idea of past consensus is illusory and points out a history of frequent partisan changes to election law. Despite this recognition, Hodgson goes on to praise a supposed “near-consensus” that existed in the 1980s and 1990s, describing the period as “rather quiescent”. What is particularly curious is that the 1990s was the decade when the fierce battle over electoral system reform was waged.

The last few years have witnessed a rash of parliamentary speakers extolling Aotearoa New Zealand’s cherished tradition of consensus-based election lawmaking. In the debate over the Electoral Amendment Act 2014, both sides of the aisle made statements to this effect while bemoaning the partisan conditions under which the bill was passed. Simon Bridges proclaimed that “New Zealand is a nation where we actively seek to build on the lessons learnt from previous elections, and where we take a multiparty approach to electoral [election] reform” (697 NZPD 16720, 13 March 2014), while Phil Goff noted that “[n]ormally with electoral legislation we try to deal with it in a different way” (697 NZPD 16745, 18 March 2014)—with “different” in this context meaning consensually. In the debate over the Electoral (Integrity) Amendment Act 2018, Nick Smith declared that “[t]he

general consensus is that we make electoral law changes only with ... broad parliamentary support” (733 NZPD 7158, 27 September 2018). Chris Bishop went even further, calling bipartisan election lawmaking a “convention” and declaring the bill “unconstitutional” because “it is not being passed with bipartisan support” (733 NZPD 7175–76, 27 September 2018).

Parties have even used the supposed “convention” of non-partisan election reform as a reason to not pursue changes. This was certainly the case in National’s decision to ignore the recommendations of the Electoral Commission’s (2012b) review of MMP mandated by the outcome of the 2011 referendum (Interviews G, I, S, V). Minister of Justice Judith Collins stated in response to the commission’s report that “[e]nduring change to electoral law should be based as much as possible on consensus” and that, because consensus could not be reached, there would be no legislative action (Collins 2013; see also Edgeler 2013; Geddis 2017). The primary reason for the lack of consensus was that National opposed the commission’s recommendations.<sup>74</sup> The party left no mystery as to the source of its opposition: National’s submission to the commission argued that the reforms would hurt their future electoral prospects (New Zealand National Party 2013).

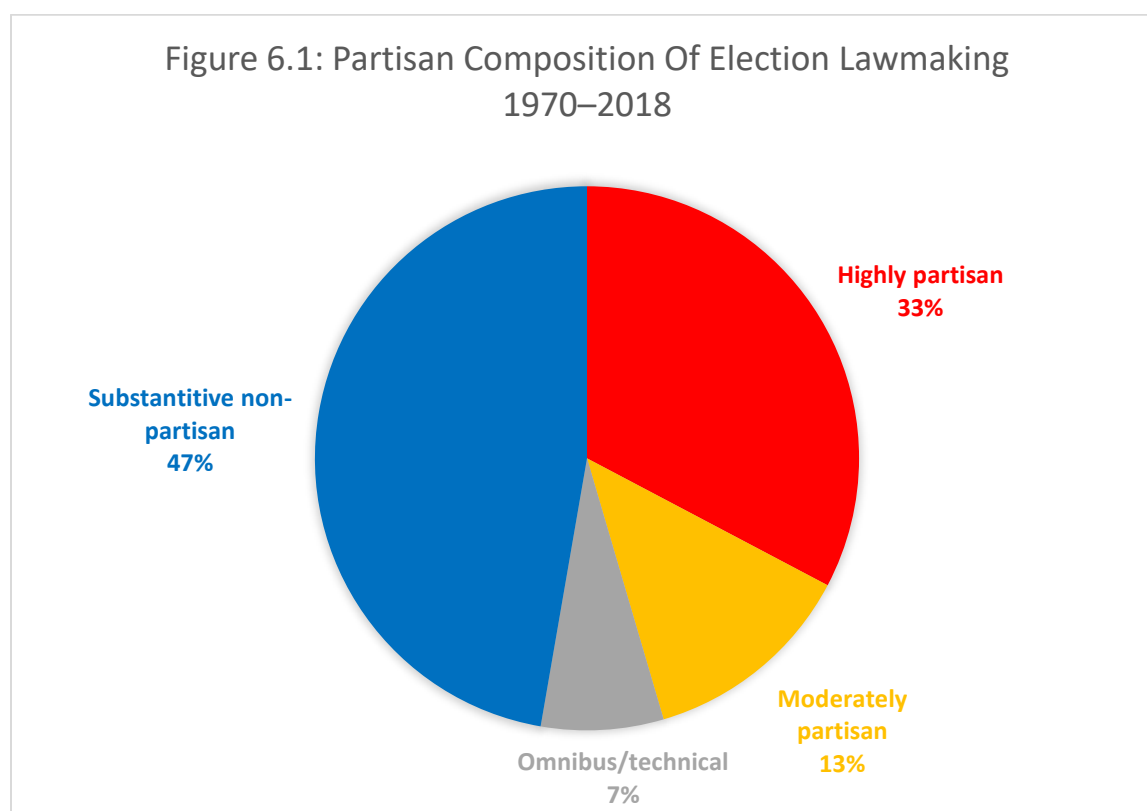
One of the most important findings of this thesis is that Aotearoa New Zealand’s election lawmaking is not consensus-based. As shown in Figure 6.1, election rulemaking has routinely been a partisan affair.<sup>75</sup> Of the 55 election-related laws enacted over the period of analysis, 18 were highly partisan. This means that approximately one out of every

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<sup>74</sup> ACT also opposed the changes, while New Zealand First thought that any reforms should require a referendum. Bennett (2013) argues that this specific instance of inaction underlines the need for extraparliamentary processes such as citizens’ assemblies on election reform (see also Hayward 2014). More generally, Nigel Roberts said that parties have used the supposed need for unanimity or near unanimity as “a huge cover” for self-interested inaction (Interview G). Therese Arseneau and Peter Aimer expressed similar sentiments (Interviews S, Z).

<sup>75</sup> Consistent with the rest of the analysis, Figure 6.1 excludes election laws passed between 1994 and 1996.

three laws affecting the rules of the game was passed on a divisive party-line vote. The total number of election-related enactments includes a handful of one-line omnibus bills that made extremely technical changes, so this presents a conservative measure of the extent of partisanship. An additional seven laws were moderately partisan, bringing the proportion of partisan election lawmaking close to 50 percent. The fact that 25 proposed members' bills have also taken up legislative time, half of which were highly partisan, underlines the fact that politicians do not adhere to a consensual norm when engaging in changes to the democratic rules of the game.<sup>76</sup>



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<sup>76</sup> At the same time, this study provides evidence for Jacobs and Leyenaar's (2011) claim that non-partisan minor election reforms should be a common occurrence, as the electoral costs of opposing reform are more easily outweighed by the benefits of supporting change when the reform promotes positive normative values. Thirty-four of the 55 analyzed election enactments were passed without a third reading division and 13 mobilizing election laws passed without a third reading division. However, their claim that politicians should be more likely to support electorally harmful minor reforms than major ones was not evidenced. Every case of major electoral system reform analyzed was passed without a third reading division, meaning that politicians were in fact less likely to support minor electoral system reforms than major ones.



More generally, the record of Aotearoa New Zealand election lawmaking shows that changes to the rules of the game are a regular occurrence here. This is contrary to the idea espoused by a former Minister of Justice that election laws should be changed infrequently (Interview N).<sup>77</sup> There were 55 election amendments over the 46 years of lawmaking studied. This translates into more than one enactment passed every single year. There have been on average 3.5 changes to the democratic rules of the game plus almost two proposed changes between every general election. Over the past 50 years, only one general election has taken place with election rules in the books identical to the previous general election: the 45th Parliament led by Jim Bolger and then Jenny Shipley (December 1996 to October 1999). The only reason for this gap was that the National–New Zealand First coalition collapsed mid-term, preventing two government-sponsored election bills from proceeding.<sup>78</sup> At the other end of the spectrum, John Key shepherded through no less than nine election-related enactments in the 49th Parliament (December 2008 to August 2011).<sup>79</sup> This evidence means that not only have election reforms frequently been partisan, but politicians have regularly tinkered with the rules of the game.

Why, then, has this belief in consensus-based election reform persisted?

When presented with examples of partisan election reforms, several interviewees put Aotearoa New Zealand's case in relative terms, saying it is much better than compared

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<sup>77</sup> To the contrary, Robert Peden noted that, due to the triennial select committee review process, the Electoral Act is one of the most amended pieces of legislation (Interview Q).

<sup>78</sup> The Electoral Amendment Bill 1998 was carried over and incorporated into the Electoral Amendment Act 2002. The Broadcasting (Election Broadcasting) Amendment Bill 1999 lapsed at the end of the session, but core elements were incorporated into the Broadcasting Amendment Act 2004.

<sup>79</sup> These were, in order of passage: the Electoral Amendment Act 2009, the Parliamentary Service (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2009, the Electoral (Administration) Amendment Act 2010, the Electoral Amendment Act 2010, the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010, the Electoral (Finance Reform and Advance Voting) Amendment Act 2010, the Parliamentary Service Amendment Act 2010, the Electoral Referendum Act 2010, and the Electoral (Administration) Amendment Act 2011.

with the United States (Interviews D, E, G, S). Using one of the most egregious cases of partisan election lawmaking (Valelly 2016) as a point of comparison will inevitably return a favorable result. It is straw man logic to claim that, because Aotearoa New Zealand does not have the levels of partisanship found in the United States, partisan election lawmaking either does not happen here or does not happen at worrisome levels.

McLeay argues that the norm is one of process rather than outcome: it is the expectation that parties will seek consensus on election matters, even if they do not attain consensus in the end (Interview H).<sup>80</sup> Parties who have infringed upon this norm have faced repercussions, in McLeay's estimation. But there are numerous cases of parties abridging the normal legislative process and rushing through election reforms without attempting to gain consensus.<sup>81</sup> And there are not always clear signs that such actions have damaged the offending party. Furthermore, even if parties follow a consensus-based process, it matters little if the government ignores the concerns of minority parties and decides to pass fiercely partisan legislation anyway.

Perhaps Aotearoa New Zealand academics have simply followed the international trend explored in Chapter 2, privileging wholesale election reforms over "minor" cases.<sup>82</sup>

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<sup>80</sup> One element of McLeay's claim is that parties are more likely to get consensual outcomes if they follow a consensual process. This seems very plausible and is a promising avenue for future scholarship (as explored in Chapter 7).

<sup>81</sup> The committee stage of both the Electoral (Vacancies) Amendment Act 2003 and the Appropriation (Parliamentary Expenditure Validation) Act 2006 was controversially skipped. The Electoral Amendment Act 1976, the Broadcasting Act 1989, and the Electoral Amendment Act 1989 are a few of the many cases where the legislative process was controversially abbreviated in other ways. Data for this observation derives from Claudia Geiringer, Polly Higbee, and Elizabeth McLeay's database of Aotearoa New Zealand urgency motions, which they graciously shared with the author (see also Geiringer et al. 2011). The issue of democratic procedures is identified in Chapter 7 as an area for future scholarship.

<sup>82</sup> Former Prime Minister Sir Geoffrey Palmer explicitly made such a distinction, noting that the consensual norm exists for the essentials of the electoral system but not the "peripherals". Palmer also clarified that the peripherals are not unimportant (Interview M). Similarly, Sir Kenneth Keith stated that the consensual norm only applies to "central features" of the electoral system (Interview AF).

If one only considers the two biggest election reforms in the country’s post-WWII history—the Electoral Act 1956 and the Electoral Act 1993—it seems easy to declare Aotearoa New Zealand’s election lawmaking to be consensus-based. However, doing so ignores the many other election-related reforms that have been enacted in the interim, several of which passed in highly partisan circumstances. Alternatively, scholars have pointed to the use of entrenchment as a sign that politicians have forced themselves to seek consensus on major changes to election rules (McLeay 2018). While certainly a valuable mechanism to discourage partisan changes to the rules of the game, this argument belies several important facts: that the entrenched provisions are rather arbitrary,<sup>83</sup> that important election rules such as the number of Māori electorates and the right of prisoners to vote are not entrenched, and that many partisan enactments have altered non-entrenched provisions. Statistical tests indicate that the inclusion of entrenched provisions reduced the likelihood that election enactments receive party-line divisions in their third reading but did not make election enactments less partisan overall.

Terminological confusion may also play a role. As explored in Chapter 2, the assumed consensus on “electoral reform” could be taken to mean consensus on electoral *system* reform—that is, changes to rules determining the translation of votes into seats. It is true that major electoral system enactments have been relatively rare, and that the four most significant cases studied passed without a third reading division. Nevertheless, there are four problems with assuming the country’s alleged consensus over “electoral reform”

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<sup>83</sup> As noted by McLeay (2018), the provisions that were entrenched were those that were on the political agenda in the 1950s and that for which cross-party agreement could be attained. The election rules that are divisive have certainly changed over the last 70 years, leaving its coverage patchy in some areas (Interview AG). National MP Nick Smith has advocated for entrenching all provisions of the Electoral Act to remedy this situation.

refers exclusively to major electoral system reform. First, although MPs may have voted in common on the legislation to bring about these changes, there actually has been a significant amount of partisan disagreement over their passage. Second, there has been even more partisanship in the passing of minor electoral system reforms. Third, the definition ignores significant disagreements over electoral system rules that have been expressed in members' bills. And finally, it minimizes the importance of other types of election laws. Each of these points is worth exploring in more detail.

First, due to the provisions of the Electoral Act 1956, changes to the method of voting require three-fourths support in parliament to become law. This means that major electoral system reforms that alter the voting procedure cannot be passed without the agreement of both major parties. When considering the extent of partisanship expressed in parliamentary debate and the partisan effects of legislation, however, it becomes clear that there has still been a significant amount of partisan disagreement over passage of these laws. Of the four major electoral system reforms passed in the period of analysis, two had moderate levels of partisanship—the Electoral Referendum Act 1991 and Electoral Act 1993, both with complex partisan scores of three out of a possible six.

Second, focusing on wholesale electoral system reform minimizes the more frequent yet equally important changes to other elements of the electoral system. There have been seven minor electoral system reforms enacted over the period of analysis, almost double the number of major ones enacted. Of these seven, three passed in a highly partisan fashion while two passed with moderate levels of partisanship. None of the seven passed

free of partisan discord.<sup>84</sup> Notably, three involved contentious changes to the Māori electorates—one of the few elements of the electoral system that is not entrenched. Perhaps these “minor” reforms have been considered fair game by politicians, whereas “major” reforms are placed on a pedestal as demanding consensus. For all the reasons explored in Chapter 2, however, small changes to the electoral system can significantly impact democratic participation, election integrity, and electoral outcomes, and should not be written off as unimportant.

Third, the current understanding of “electoral reform” belies the fact that there has been a significant amount of disagreement over the electoral system expressed through the large number of proposed members’ bills introduced in parliament. As explored in Chapter 5, electoral system reforms are one of the most frequent targets of members’ election-related proposals. Of the 25 members’ bills analyzed, nine involved electoral system reforms—five with whole-sale change and four with minor elements. More than half of these electoral system reform bills were highly partisan affairs. Five died in their first reading on party-line votes, and two additional bills received only government support at this stage. Although none of these cases resulted in successful partisan reform, they demonstrate that politicians from a wide range of parties have regularly attempted to alter the electoral system without consensus. In line with enacted reforms, two of the four minor

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<sup>84</sup> The three minor electoral system reforms passed with high levels of partisanship were the Electoral Amendment Act 1975 (allowing the number of Māori electorates to fluctuate based on the size of the Māori electoral population), the Electoral Amendment Act 1993 (requiring registered parties to follow democratic procedures in candidate selection), and the Electoral Amendment Act 2014 (clarifying the requirement of the reallocation of list seats in the event of a successful election petition)—although only in the first case was the provision itself the focus of partisan disagreement. Both moderately partisan acts contained minor electoral system changes that were the source of party-line contention. The Electoral Amendment Act 1976 again fixed the number of Māori electorates at four, whereas the Electoral Amendment Act 1990 altered the calculation used to determine the size of the Māori electoral population in preparation for a return to a fluctuating number of Māori electorates.

electoral system bills concern provisions affecting the Māori electorates. The Electoral (Racially-Based Representation) Referendum Bill 2002 sought their abolishment, while the Electoral (Entrenchment of Māori Seats) Amendment Bill 2018 sought their entrenchment.

Finally and perhaps most critically, the problem with a narrow definition of “electoral reform” is that it diminishes the prominence of other types of election laws that are important, including voting and registration administration, franchise rules, electoral governance, and campaign finance. Overlooking these rules in scholarship and in the media makes them even less visible to voters, which can give politicians more leeway to shape the rules of the game to their benefit. All types of election rules are worthy of attention. Once a more inclusive definition of “electoral reform” is adopted in relation to Aotearoa New Zealand, it becomes abundantly clear that the supposed norm of consensus-based election lawmaking simply does not exist. Of the 44 enacted election reforms that did not contain electoral system provisions, 15 were opposed along party lines at their third reading and an additional three were passed with moderate levels of partisanship. Among the important changes these controversial laws made were disqualifying prisoners from voting, altering the amount of time voters must reside in an electorate to be eligible to vote, altering the rules for determining residence, extending and curtailing the length of the registration period, creating a constitutional right to vote, banning party hopping, counting the party vote of those electors who vote in the wrong district, implementing continuous enrollment, and instituting a new regime of campaign finance law. When the totality of evidence is considered, the unavoidable conclusion is that Aotearoa New Zealand election lawmaking is not consensus-based and has not been for more than 50 years.

*Analysis of Hypotheses and Causal Factors*

Hypothesis 1, that the introduction of MMP has reduced the incidence of partisan election lawmaking, is not evidenced by the analysis. There is, however, evidence for the expected ancillary relationship between effective number of parties and partisan election lawmaking, reflected in regressions of both simple and complex measures of partisanship. This finding was not replicated for other party system measures, demanding further scrutiny. Although MMP does not appear to have directly reduced the number of partisan election reforms, it certainly has affected the areas of election lawmaking that are partisan—removing partisan interest from boundaries and major electoral system reform and creating partisan interest in the electoral threshold, coattails rule, and party hopping.

The expected causal mechanisms for Hypothesis 1 still deserve explanation. One reason why reduced incentives for pursuing marginal electoral shifts failed to diminish partisanship is that MMP is not a pure PR system. It has retained both *de facto* and *de jure* elements of a non-proportional system. The high party seat threshold creates a majoritarian-like cutoff at 5 percent support. Because the difference between 5 percent support and 5 percent minus one vote support could mean the difference between seven MPs and none, votes at the margin of that threshold have greatly increased worth. Parties near 5 percent should be particularly eager to find advantages to boost their support to ensure parliamentary representation after the election. Larger parties might be sympathetic to their aligned minor parties, making them willing to pursue partisan changes to maximize their chances at forming a government. This can make marginal changes in turnout electorally (and politically) worthwhile to pursue (Interview L).

The coattails provision is a non-proportional mechanism that has been used by both major parties to allow a coalition partner to gain party list seats when they would not otherwise qualify (Interviews E, G, J, L, S, Z, AB). This increases the impact of voters in a single electorate beyond that of other voters, as the results of that single electorate could prove the difference between seven parliamentary representatives and none. This was most prominently the case in the 2008 general election. ACT received 3.65 percent of the vote but won the Epsom electorate seat, granting it five MPs. In comparison, New Zealand First won more than 4 percent of the vote but no electorates, and thus were shut out from parliamentary representation (Interview S). Political culture also plays a role. Electorate seats are still valued by politicians over list seats (Ward 1998; Interviews G, AD). Individual politicians are therefore incentivized to pursue marginal electoral shifts to win their constituency seat, even if this does not affect the overall amount of party support. This FPTP electoral mentality among MPs may translate into party strategy when it comes to election lawmaking.

The high party vote threshold also plays a role in the causal mechanism relating to increased number of veto players by shutting out parties from parliament that receive significant support.<sup>85</sup> Fewer parliamentary parties has meant that there are fewer veto players in the way of controversial election reforms. Even though there are more parties under MMP than previously, there continues to be two major parties that collectively hold a significant majority of parliamentary seats. The average effective number of parties has

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<sup>85</sup> Another mechanism that has kept the barriers to entry high for new parties is the generous parliamentary service resources granted to MPs (Edwards 2008). According to Bryce Edwards, MPs have designed the rules in their favor to create a strong incumbency advantage and keep extraparliamentary opponents out of parliament (Interview O).



increased by little more than 1, from 1.96 (for 1969–93) to 3.16 (for 1996–2017).<sup>86</sup> This means that Aotearoa New Zealand’s party system under MMP is as fragmented as if there were about three equally sized parties in parliament, compared with about two under FPTP. Aotearoa New Zealand’s average effective number of parties under MMP is well below long-run averages of most established democracies with PR systems, including Norway (3.64), Denmark (4.57), India (4.80), Israel (5.18), and Switzerland (5.20) (Lijphart 2012). On one hand, there is some indication that the increased presence of minor parties has preempted some partisan electoral dynamics under MMP. There have yet to be any instances of big parties teaming up to pass election rules opposed by small parties. It is likely that coalition agreements between major and minor parties have given minor parties veto power in this regard, preventing the passage of laws that harm their electoral prospects (Interview L). On the other hand, coalition politics has worked at times to create instances of partisan election lawmaking that would not otherwise have occurred. Consideration of the Electoral (Integrity) Amendment Bill 2005 was part of the confidence and supply agreement between Labour and New Zealand First (Malone 2008; Interview I). Similarly, Labour included New Zealand First’s controversial proposal for a ban on election polls in the month prior to polling day in the Electoral Amendment Bill 2002, before it was removed later in the legislative process. The highly divisive Electoral (Integrity)

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<sup>86</sup> Averages are calculated using initial party seat totals after each election. As noted previously, the effective number of parties is a measure of party fragmentation. By taking into account the relative size of each party, it is a more conservative measure of party system than the number of parties in parliament, (which for Aotearoa New Zealand averaged 2.5 under the FPTP era and 6.875 under the MMP era). When there are only two parliamentary parties and they are unequal in size, the effective number of parties will always be less than 2.

Amendment Act 2018 was passed as a condition of New Zealand First's supply and confidence agreement with Labour.<sup>87</sup>

Assuming that, as hypothesized, there is a genuine relationship between the effective number of parties and partisan election lawmaking, there are two important questions that are considered in turn. One involves a comparison between the effective number of parties and era, and the other involves a comparison between various measures of party system.

First, why would this relationship exist but not one between era and partisan election lawmaking? The answer is that the effective number of parties is more reflective of actual parliamentary dynamics than the underlying electoral system. In this logic, the main constraint on partisan election lawmaking is the number of veto players, not the value of the marginal voter. In other words, politicians will seek to manipulate election rules for partisan gain regardless of the chances that doing so will yield an electoral advantage. Their primary limitation is the barriers that stand in the way of reform. PR systems only guarantee a decrease in the value of the marginal voter. Although they tend to increase the number of veto players, there is great variation in the degree of impact. One need only look to Aotearoa New Zealand's experience with MMP as an example, which has generally but not always resulted in parliaments with more veto players. Most governments have retained a major party feel, with Labour or National holding most of the needed seats. A few governments have relied more heavily on support from minor parties, giving those small

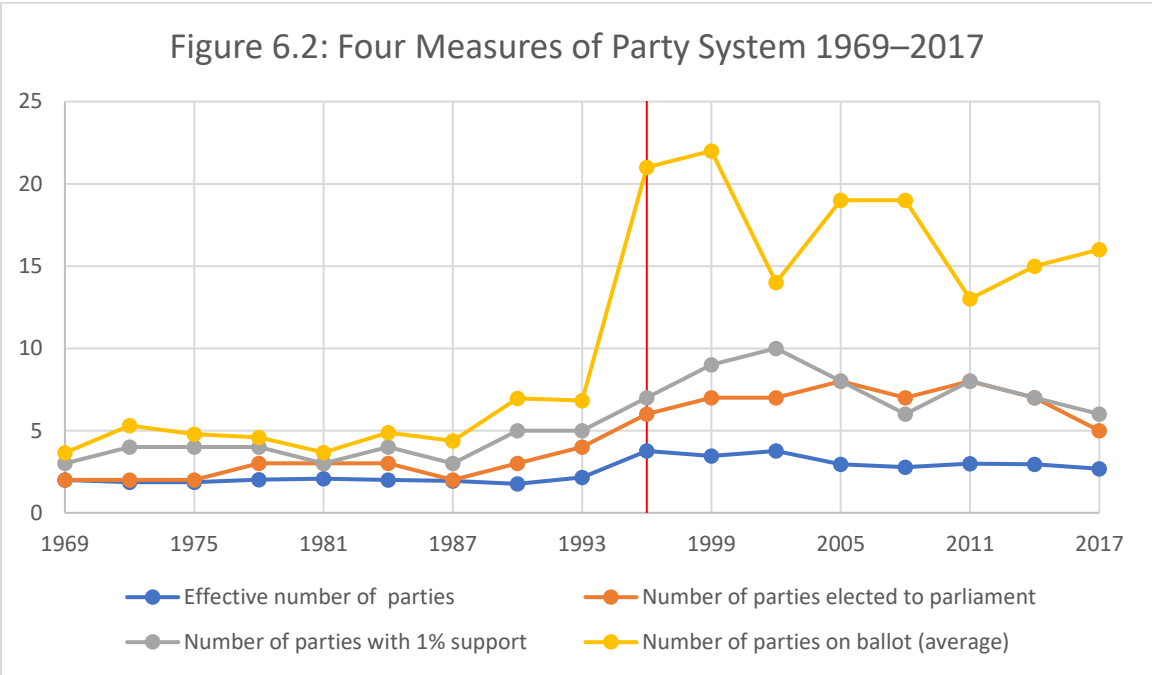
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<sup>87</sup> According to former Green MP Jeanette Fitzsimons, Labour was also receptive to the provision because it was worried that New Zealand First might break up while in government, which would leave the coalition without a majority (Interview AB). Similarly, Labour passed the Electoral (Integrity) Amendment Act 2001 (with New Zealand First support) to protect itself against a breakup of the Alliance coalition.

parties a stronger position to influence policy decisions and act as veto players. There has been a trend of decline among minor parties as more elections are held under MMP. In numerical terms, the effective number of parties hovered around 2 under FPTP. This skyrocketed to 3.75 in the first several MMP parliaments but has dropped to 2.67 at the 2017 election. This means Aotearoa New Zealand's party system was "in effect" fragmented to nearly four equally sized parties in the early years of MMP but has since declined to the current equivalent of a "two-and-a-half" party system. In short, the effective number of parties captures veto player dynamics much better than era does. It therefore makes sense that a relationship with partisan election lawmaking is exhibited for one but not the other.

Second, why would a relationship with partisan election lawmaking exist only for effective number of parties and not for other operationalizations of party system? The answer is along the same lines as above: this measure better accounts for the actual party dynamics at play than do the absolute number of parties in parliament, the number of parties to achieve at least 1 percent at the polls, and the number of parties on the ballot. All four metrics are displayed for comparison in Figure 6.2 (below). Both average number of candidates and number of parties that get 1 percent of the vote are extraparliamentary, and thus reflect competition at the ballot box rather than parliamentary dynamics. These measures certainly might influence the incentives to engage in partisan election lawmaking, but if this causal mechanism does not actually constrain political behavior, it makes sense that they would prove unexplanatory. The number of parties in parliament is a legislative measure of party dynamics, but a highly imperfect one. One-representative parties (which have existed in both FPTP and MMP eras) are given the same weight as

majority parties. The reason why a measure for the effective number of parties was developed was to better estimate the actual dynamics of parliamentary politics and the degree of fragmentation in the party system (Laakso and Taagepera 1979). Considering the relative size of each party achieves these twin goals. A high effective number of parties virtually guarantees the need for coalition governments and therefore the presence of additional veto players. The fact that a relationship between effective number of parties and partisan election lawmaking was evidenced but not for era or other measures of party system makes sense where the barriers to election lawmaking matter more than the incentives to engage in manipulations of the rules of the game.



Hypothesis 2, that MMP has reduced the incidence of demobilizing election lawmaking, is evidenced by the descriptive data. There were few cases of demobilizing election lawmaking overall, making it difficult for chi-squared and logistic regressions to produce statistically significant relationships. The existence of demobilizing election

lawmaking makes sense considering Aotearoa New Zealand has the key ingredient for it—Māori can be considered marginalized subjects with discordant preferences. Indeed, three of the seven cases of demobilization directly concern Māori voters. An additional two cases concern the disenfranchisement of prisoners, a provision that disproportionately affects Māori (Waitangi Tribunal 2019). A statistically significant relationship was observed between the presence of demobilizing provisions and provisions that affect Māori votes.

For the reasons explained earlier, it is unlikely that the reduced importance of marginal electoral shifts is the cause for less demobilization. More likely is that even though additional veto players have failed to stop partisan election changes, they have proven effective at deterring demobilizing election reforms. Most of the partisan election laws that have passed under MMP did not impact turnout. Coalition parties were willing to join their partners in supporting controversial but not participatorily impactful changes such as the 2001 and 2018 Electoral (Integrity) Amendment Acts and the electoral finance acts passed between 2006 and 2007. It might have been harder to bring coalition partners on board for election laws that demobilize voters, perhaps because of the different electoral bases of parties or due to the norm violations these laws usually entail. As predicted, fewer mobilization acts were passed under MMP as well, a change in line with the idea that coalition partners with different electoral bases of support would be hesitant to support reforms with participatory effects. A chi-squared test found a statistically significant link between MMP and fewer participatorily impactful election laws, providing evidence that PR systems constrain politicians in passing voting laws that affect turnout.

### *Analysis of Other Explanatory Variables*

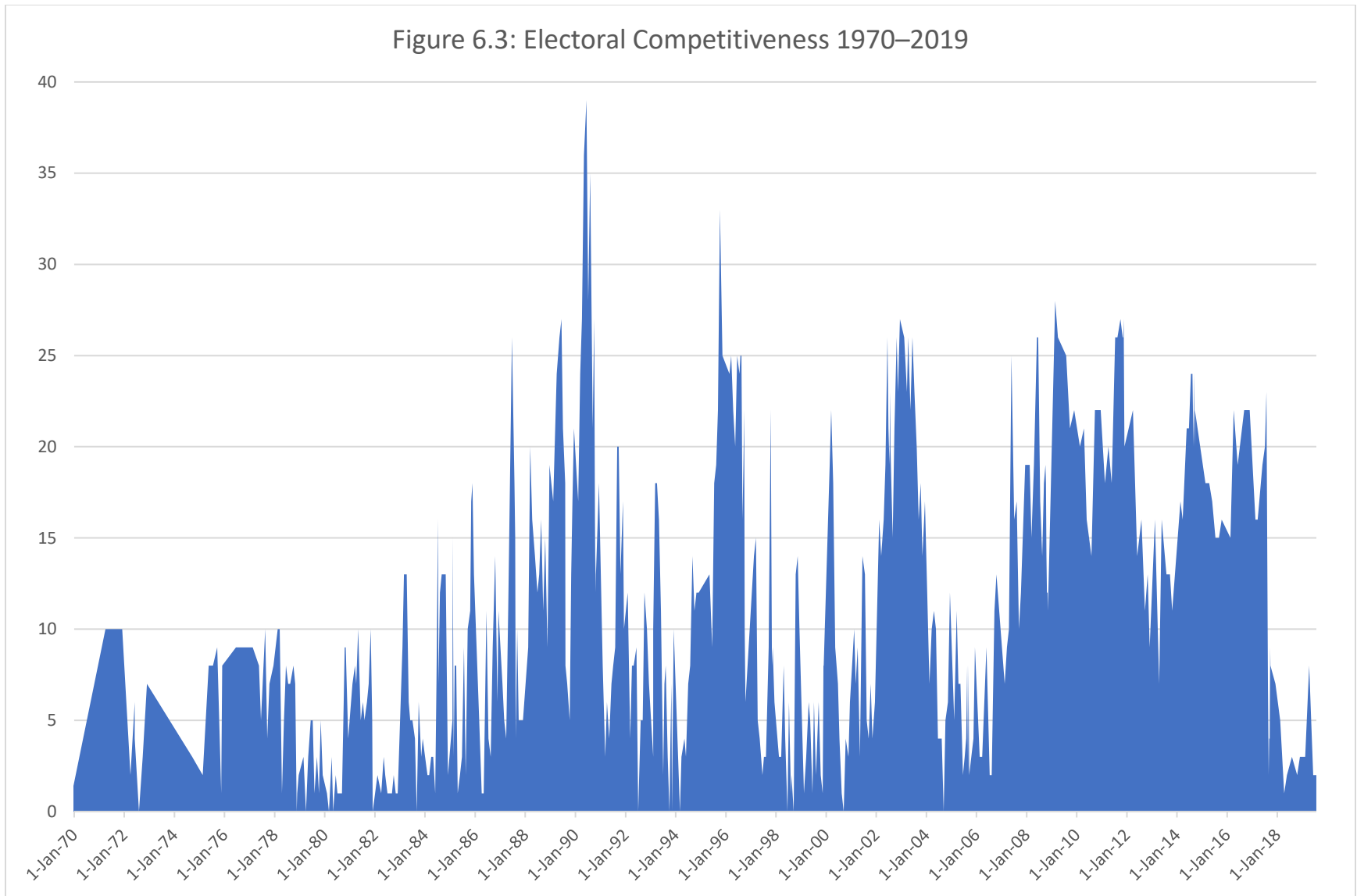
This section analyzes a variety of other explanatory variables. I begin with a recap of the results for electoral competitiveness and leverage, two independent variables directly tested in Chapter 5 that were unrelated to the central hypotheses. I proceed by examining the presence of a left-right SES cleavage structure, the preference gap between voters and non-voters, the presence of marginalized subjects with discordant preferences, the level of inequality, the degree of political polarization, the importance of a government mandate, the exogenous institutional changes to parliament, the extent of constitutional control over procedures, the degree of federalism, and the normative desirability of consensual lawmaking. Although it is out of the scope of this study to test all these variables empirically, they are nonetheless important to keep in mind and should be at the forefront of future scholarship on election lawmaking.

#### Electoral Competitiveness

The idea behind electoral competitiveness is simple: when the polls show a close electoral race, there is a greater chance that manipulating election laws will prove decisive and thus parties are incentivized to pursue partisan election reforms. Although several scholars have proposed this link (Piven et al. 2009; Minnite 2010) and evidenced the relationship in American contexts (Bentele and O'Brien 2013; Vandewalker and Bentele 2015), this analysis failed to evidence such a relationship in Aotearoa New Zealand. Electoral competitiveness was unexplanatory in regressions of both partisanship and participatory effect. The time period provides little insight. Opinion polls became a regular occurrence

by the early 1970s, so politicians had access to polling information throughout the period of analysis. There are a few potential explanations. Perhaps using the difference between the two highest-polling parties as measurement failed to capture the realities of a more complex multiparty race, especially from the late 1980s onwards (see Kayser and Lindstadt 2015). Additionally, it seems the horse race changed rapidly at times, a point illustrated by the sharp jumps and dives in Figure 6.3 (below). Legislative action based on polls is difficult to predict if electoral conditions change dramatically between a bill's introduction and passage. Many election bills follow a time-sensitive three-year legislative cycle between general elections. This makes the timing of most election legislation dependent on administrative necessity rather than political calculus. Finally, a more competitive electoral atmosphere increases the likelihood that parties pursuing election reform will incite public backlash for being viewed as manipulating the system (Interview L). The increased risk of action could cancel out the increased benefits of election reform, creating a null effect.

Figure 6.3: Electoral Competitiveness 1970–2019





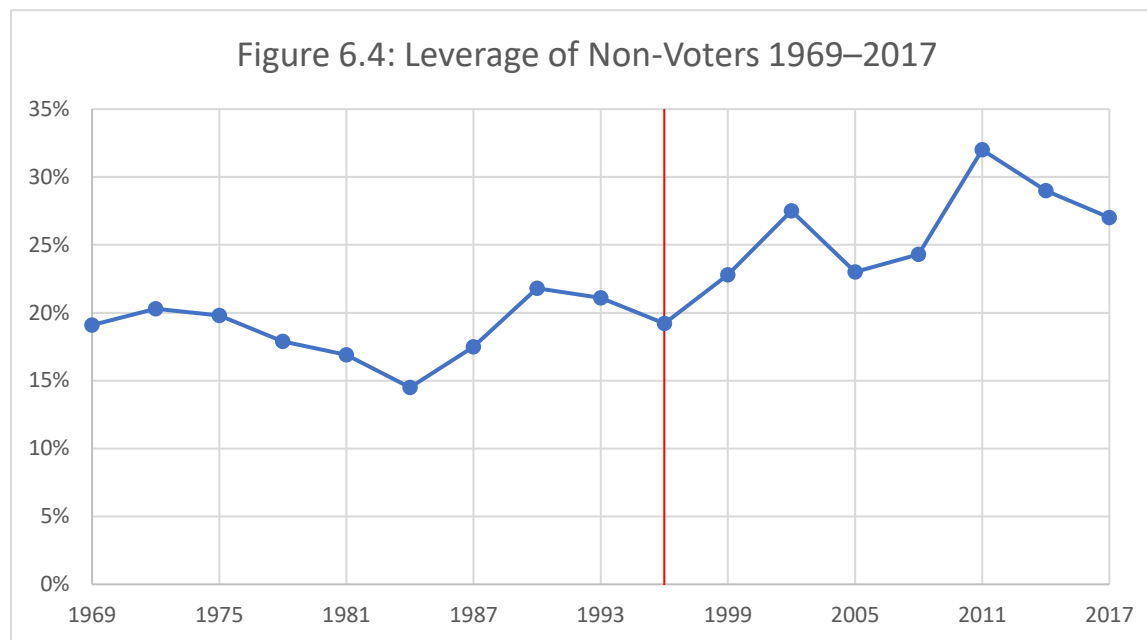
### Leverage of Non-Voters

The leverage of non-voters is their ability to alter an election outcome. The more non-voters there are, the greater their leverage. When turnout is low, it should be easier for election reforms to achieve higher turnout and alter an electoral outcome and therefore more enticing for politicians to pursue partisan reforms. Turnout in Aotearoa New Zealand increased slightly between 1969 and 1981, from 80.9 percent to 85.5 percent of the voting-eligible population (Nagel 1988; Vowles 1994; see Appendix G). It has dropped steadily thereafter, first to around 80 percent in the 1990s and then plummeting to a low of 68 percent in the 2011 election. It has recently recovered slightly, reaching 73 percent at the 2017 election. Overall, this marks a transformation in Aotearoa New Zealand from a country with one of the highest rates of participation in the world to one with only slightly above average turnout (Vowles 1994). Surprisingly, the introduction of MMP did not result in a sustained increase in turnout. Rather, it seems that shifting to a PR system simply slowed a trend of decline, which was practically guaranteed considering longer-term trends of decreasing electoral competition and the effects of generational experiences (Vowles 2002, 2010).<sup>88</sup> Diminished turnout means that non-voters now hold more power to sway an election result, if they were to vote. In other words, the leverage of non-voters has increased dramatically from the FPTP to MMP eras, a point illustrated by Figure 6.4. Increased leverage might encourage partisan election lawmaking, especially reforms that aim to mobilize voters—though this runs counter to the broader expectations of switching to a PR system. Perhaps increased leverage of non-voters is one reason why partisan

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<sup>88</sup> The early years of MMP coincided with a series of relatively uncompetitive elections, which depress turnout. Vowles considers this one reason why the decline in turnout continued past the introduction of MMP with no noticeable bump (Interview D).

reforms have continued to be prevalent under MMP, although the number of mobilizing reforms actually decreased.



Leverage was calculated for each bill, allowing for more specific observations. In tests of partisan election lawmaking that included the effective number of parties, a statistically significant relationship ( $p < 0.05$ ) with leverage was observed in the expected direction. All else equal, election laws were more likely to be partisan when passed in an electoral environment of low turnout. The MLR test allows this relationship to be quantified: *ceteris paribus*, a 10 percent boost in turnout would make an election law on average 2.6 points more partisan, or roughly the difference between being moderately and highly partisan. This indicates that leverage produces a strong, independent effect on the likelihood of election reform being partisan. Leverage held no explanatory power when era was included as a variable instead of effective number of parties. Perhaps the relationship is obscured in this case because of a strong correlation between leverage and era ( $r = 0.77$ ). The correlation between leverage and effective number of parties is also high, but

substantially less so ( $r = .67$ ). No evidence was found for a relationship between leverage and the participatory effect of election laws.

### Left-Right SES Cleavage

The existence of a core left-right SES cleavage means that voters choose parties primarily based on their income, education, occupation, and wealth. Traditionally, this means that left-wing parties disproportionately attract those with lower SES and right-wing parties those with higher SES. As explained in Chapter 2, those with lower SES typically turn out at reduced rates. Thus, a clear left-right SES divide indicates that left-wing parties will be incentivized to mobilize voters and right-wing parties to demobilize voters. The existence of such a cleavage means politicians can reasonably predict who would benefit from higher turnout, making election lawmaking a logical political strategy to win elections (James 2012).

Socioeconomic status is consistently *the* core cleavage of Aotearoa New Zealand politics, and one that has been remarkably stable over the past 50 years (Aimer 2015; Gibbons 2011; Miller 2005; Interviews L, Z).<sup>89</sup> The strength of the country's left-right SES cleavage is evidenced by the continuing endurance of a mostly two-party system under

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<sup>89</sup> Vowles found a weakening of the class cleavage in the late 1980s and early 1990s and a strengthening of the urban-rural cleavage, perhaps the cause of demands for electoral system change itself. However, the strength of the class cleavage quickly rebounded after the switch to MMP. Additionally, Vowles notes that there have been important changes to the components of socioeconomic status that matter, giving SES "broadly defined" less explanatory power in describing voting patterns (Interview D). Occupational class (manual vs. non-manual) is no longer predictive. The level of education has a curvilinear relationship with left-right voting (higher and lower-educated persons lean left, moderately educated persons lean right), whereas assets and income still have strong linear relationships: those with more assets and higher incomes lean right. Despite these changes, the ideological left-right dimension is still dominant. On a different note, Gibbons argues that an "old politics" versus "new politics" cleavage is also important (Interview C).

MMP. In other words, one of the primary reasons why third parties have had trouble attaining and maintaining 5 percent support is because other potential cleavages such as postmaterialist (Green party), racial/ethnic (Māori party), and religious (Conservative party) are not nearly as strong (Aimer 2015; Miller 2005). The strength of the SES cleavage should encourage partisan interest in election rules, as increasing or decreasing barriers to the ballot box will be more likely to impact electoral results. The fact that Aotearoa New Zealand's election lawmaking was found to be highly partisan is a strong indication of the link between an SES cleavage structure and partisan election reform.

### Preference Gap

The larger the divergence in party preferences between voters and non-voters, the greater the chances that increasing turnout will alter an electoral result (Kohler and Rose 2010) and therefore the greater the incentive to pass partisan and participatorily impactful election laws. This metric is partially covered by the left-right SES division but can be tested independently. Vowles et al. (2017) analyze turnout from the 2014 general election, concluding that non-voters' preferences indeed differ from voters' preferences—but not enough to make a difference in the electoral outcome. The reason for this is that non-voters prefer small parties, many of which do not garner enough support to win seats (Interviews D, T). Māori have particularly low turnout, but in the 2014 election Māori non-voters would have voted for a Māori party that was too far off the 5 percent threshold mark to gain them representation. More generally, Vowles questions whether non-voters have stable and informed preferences, a sentiment in line with many other scholars (see Chapter 2). Political parties certainly assume non-voters skew toward the left. Rob Salmond, the

director of the Labour Leader's Office, noted that the party's election lawmaking and campaigning operation is predicated on the assumption that higher turnout benefits Labour and that non-voters lean left (Interview L). Unfortunately, no evidence is available to test whether there have been changes in the preference gap between voters and non-voters over time, nor the relationship between the preference gap and election lawmaking.

### Marginalized Subjects with Discordant Preferences

The presence of marginalized subjects with discordant preferences seems vital to creating an incentive to engage in demobilizing election lawmaking. If such underrepresented groups were to become fully represented at the ballot box and in parliament, then parties would have to change their policy positions and electoral strategy to stay competitive. Doing so would upset parties' existing electoral coalitions, causing political instability. Parties are therefore incentivized to keep these groups underrepresented to maintain their current coalition structures—and may even join forces with oppositional parties to do so.

As mentioned in Chapter 3, a large array of data indicates that Māori and Pasifika are marginalized groups (Walters 2018). Māori make up 16 percent of the population but more than 50 percent of the prison population. Pasifika are also overrepresented, making up 9 percent of the population but 11 percent of incarcerated individuals. Fifty-seven percent of Pākehā own a home, compared with 28 percent of Māori and only 18 percent of Pasifika. More than half of Pasifika children experience material hardship, compared with 39 percent of Māori and 15 percent of Pākehā. Māori and Pasifika are twice as likely as non-Māori and non-Pasifika to be unable to collect a prescription due to cost, and Māori

make up 26 percent of all mental health service users. Māori have an average life expectancy seven years shorter than that of non-Māori. Disadvantages in education, employment, wealth, and health have feedback loops, meaning that they are passed on from one generation to the next. Although some disparities have lessened over the past fifty years, many remain significant.

Māori and Pasifika also hold distinct political preferences from the Pākehā majority. Māori have much lower turnout rates (Vowles et al. 2017). In the 2014 general election, 16.8 percent of Pākehā did not vote, compared with 17.6 percent of Pasifika and 26.8 percent of Māori (Stats NZ 2014). Both Māori and Pasifika are much more likely to vote for the Labour party than the National party and are also more likely to vote for minor parties (Vowles et al. 2017). Labour has dominated the Māori electorates historically, winning every available seat between 1969 and 1990 (Sorrenson 1986). Māori voters have periodically split away from Labour in favor of certain minor parties, supporting New Zealand First between 1993 and 1999 and the Māori party between 2005 and 2014 (Sullivan 2016).<sup>90</sup> The Mana Motuhake party also received primarily Māori support in the 1980s and 1990s, with a few candidates entering parliament as part of the Alliance party between 1993 and 2002 (King 2003). Māori support for minor parties indicates a clear preference divergence from the mainstream. In short, both groups are clearly marginalized and hold divergent political preferences.<sup>91</sup>

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<sup>90</sup> Lara Greaves notes that there is a divide between Māori who vote for Labour and Māori who vote for third parties (Interview T). Māori who traditionally voted for Labour stuck with the party, while Māori who traditionally voted for other minor parties concentrated their support on certain third parties that ended up winning parliamentary representation under MMP.

<sup>91</sup> The following analysis focuses on Māori because they make up a much larger proportion of the population than Pasifika and thus their presence has greater political and electoral implications.

The political ramifications for the presence of marginalized groups with discordant preferences are heightened incentives for parties to pass highly partisan and demobilizing election reforms. Insofar as Māori fit into a left-right SES division, their presence creates incentives for Labour to increase Māori representation and for National to decrease Māori representation. Insofar as Māori have discordant preferences that do not fit neatly into the left-right SES cleavage, there is a joint incentive for politicians from both major parties to keep Māori underrepresented. Labour might be worried about upsetting other parts of its coalition structure and therefore reluctant to push for election reforms to increase Māori representation.

My analysis of election lawmaking uncovered numerous instances of election reforms that affect Māori and occasional instances of demobilizing reforms. I also found evidence of a link between the presence of demobilizing election provisions and election provisions that affect Māori voters. The analysis of election law type revealed that changes to Māori voting provisions are commonplace. Over the period of analysis, 17 enacted laws directly impacted Māori voters, five of which were highly partisan and an additional four moderately partisan. This amounts to almost one out of every three changes to the rules of the game specifically impacting Māori. Additionally, four proposed bills contained Māori-specific provisions, three of which were highly partisan. There was a significant decline in legislative action between FPTP and MMP. Thirteen laws passed under FPTP directly affected Māori, compared with only four under MMP. Perhaps this marks an increased degree of consensus over Māori election issues generated by the introduction of MMP. It could also indicate increased barriers to election lawmaking under the new system.

In addition to frequent legislative changes to Māori voting, there have been seven demobilizing election reforms enacted over the period of analysis. The existence of marginalized groups with discordant preferences provides something of a prerequisite for the existence of demobilizing election lawmaking, so it makes sense that such reforms happen here. In statistical tests, a correlation was uncovered between the inclusion of Māori-specific provisions and the passage of laws that contained demobilizing provisions ( $r = 0.47$ ). In logistic regression, the relationship was significant at the 10 percent level of confidence.<sup>92</sup> In other words, the presence of Māori-specific provisions makes election laws more likely to contain demobilization provisions. This relationship is in line with expectations of a link between Māori voters and demobilizing election lawmaking.<sup>93</sup>

It seems clear that the presence of Māori as a marginalized community with discordant preferences fundamentally shapes the character of election lawmaking in Aotearoa New Zealand. It has created incentives for parties to pursue both partisan and demobilization election reforms.<sup>94</sup> There are numerous cases of fights between Labour and National over Māori representation and turnout, including the Māori electorates, the Māori roll, and the Māori electoral option. Even now that the introduction of MMP has seemed to calm legislative action on these rules, there are still lingering disagreements over the Māori electorates, with frequent calls by party leaders and pundits for their abolishment or

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<sup>92</sup> When the effects of partisanship are removed, the relationship between Māori-specific provisions and demobilizing provisions became stronger ( $P < 0.05$ ).

<sup>93</sup> Other statistical tests provided less compelling results. No evidence was found for a relationship between the passage of overall demobilizing laws and provisions affecting Māori voters, nor was a relationship between the presence of provisions affecting Māori voters and partisan election lawmaking substantiated.

<sup>94</sup> There is some evidence that the presence of Pasifika has also had a direct impact on election lawmaking. One of the main reasons that Labour decided to extend franchise rights to non-citizens in its Electoral Amendment Act 1975 was to gain the support of the burgeoning Pasifika immigrant population (Interview A; for a thorough analysis of this episode, see Barker and McMillan 2014). Both major parties agreed to tighten non-citizen franchise rights in 1980 from those “ordinarily resident” to permanent residents only.



their entrenchment (Braae 2018; Hurihanganui 2019; Korako 2018; Interview E).<sup>95</sup> These disagreements have translated into legislative action. One recent members' bill proposed entrenching the Māori electorates, while another proposed a referendum on their abolishment. There are also still frequent legislative fights over election rules that disproportionately impact Māori, including the registration period, the treatment of special votes, and prisoner disenfranchisement rules.

There is some evidence to support the assertion that Labour's eagerness to increase Māori participation has been tempered by a desire to maintain other parts of its electoral coalition. Labour chose not to vote against the Electoral Amendment Act 1976, which returned the number of Māori electorates to four. Additionally, it did not pursue an increase in the number of Māori electorates in the decades that followed, meaning Māori representation was not proportional to the Māori population until the introduction of MMP.<sup>96</sup> Labour has not relaxed the strict rules around the Māori electoral option, which currently limit enrolled Māori voters to making a choice between the Māori and general roll once every five years. This is despite the Electoral Commission's (2018) recommendation that Māori be allowed to change rolls at any point.<sup>97</sup> The fact that Māori voters, when given the chance, have thrown their support behind a series of minor parties in recent years indicates that Labour has not always adequately accommodated the

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<sup>95</sup> As noted by Geddis (2006a: 350–1), party positions on the future of the Māori electorates map closely onto each party's assessment of the support it is likely to receive from Māori voters.

<sup>96</sup> Neil Atkinson notes that the reason for this is likely strategic on the part of Labour: because Māori electorates voted overwhelmingly for Labour candidates, they were a major source of wasted votes and hurt Labour's electoral prospects (Interview E).

<sup>97</sup> According to the Justice Committee's Report on the Electoral Commission's Inquiry into the 2017 General Election, the Labour majority adopted the commission's recommendation over National opposition due to concerns over tactical voting (whereby Māori could change rolls at the last minute to manipulate the election results). The Government has yet to translate this recommendation into a legislative proposal.

preferences of Māori voters. This is most obviously the case with the Foreshore and Seabed Act 2004, legislation explicitly tailored to Labour's non-Māori electoral support. It is also true of Labour's reaction to Don Brash's 2004 Orewa speech attacking "Māori racial separatism". Labour moved its policy focus away from racial equality in an attempt to regain electoral support (Vowles et al. 2017). Because MMP allows minor parties to gain parliamentary representation, disaffected Māori voters were able to retaliate against Labour's policy decisions by supporting the Māori party in the 2005 general election. This would not have been possible under the FPTP system, meaning that Māori must have decided either to support the lesser of two evils (Labour versus National) or to stay home on election day. The record shows that many chose the latter option.

There is an argument to be made that Māori preferences are not as discordant as they once were and that there are incentives for both parties to vie for Māori support and encourage higher Māori turnout. The best evidence for this is the fact that politicians chose to expand the number of Māori electorates in the proposal for MMP rather than abolish them, as was originally recommended by the Royal Commission in 1986. Although certainly an admirable moment in the history of Aotearoa New Zealand election lawmaking, at best this demonstrates the competing normative and ideological values at play when politicians alter the rules of the game. In this case, the desire for representation and equality won out over calculations of political realism and electoral advantage. The entire record of election lawmaking tells a different story, one weighed heavily toward the presence of Māori as creating incentives for partisan and demobilizing election reforms.

Population trends portend increased incentives for politicians to pursue deleterious election reforms. Rapid growth of the Pasifika population over the period of analysis—

from less than 1 percent of Aotearoa New Zealand’s population in 1970 to around nine percent currently (Stats NZ and Ministry of Public Island Affairs 2010)—means it is likely that they will be the focus of increased political interest, both in terms of party campaigning and election lawmaking. There has been significant Māori population growth as well, from about 10 percent of the population in 1970 to 16 percent today (Stats NZ 2019). Projections indicate that by 2038, Pasifika could reach 11 percent and Māori 19 percent of the total population (Stats NZ 2016a, 2017). The implications of Māori and Pasifika population growth on electoral politics are significant. As these minority groups increase their electoral clout, election rules designed to encourage or discourage their participation will have greater effects, thereby increasing the incentives to manipulate election laws for partisan gain. A significant body of scholarship from the United States has found evidence that larger African American populations and increased minority turnout make the passage of restrictive voting laws more likely (Bentele and O’Brien 2013; Biggers and Hanmer 2017; Vandewalker and Bentele 2015; Voris 2016). Although Māori and Pasifika population growth has not yet appeared to translate into more frequent demobilizing election reform, it is important to continue studying this relationship in the Aotearoa New Zealand context.

### Inequality

Inequality works in tandem with many of the other factors mentioned to incentivize partisan and demobilizing election lawmaking. Heightened economic disparities can intensify the SES cleavage structure and increase the preference gap between voters and non-voters. Uniquely, inequality can enhance the preference gap between political elites

and the public, increasing the stakes of elections for politicians to maintain ingrained advantages. It can also further marginalize ethnic and racial minorities, creating easier targets for political exclusion and increasing resistance to the incorporation of discordant and disconnected communities within current party structures (Interview B). Inequality also increases the barriers to participation that existing election machinery imposes on low-SES groups. Economic disparities can combine with social and political barriers to full inclusion to create interlocking webs of social marginality (Bentele and O'Brien 2013). In Aotearoa New Zealand, neoliberal economic reforms passed in the 1980s combined with punitive criminal justice policies and restrictive welfare policies to do just that—contributing to greater economic, social, and political inequality (Mills 2018; O'Brien 2013; Interview AA). This combination of policies also contributes to the social construction of the “unwanted” voter (Ferrer 2017; see also Guinier and Torres 2002).

As explored in Chapter 3, inequality has skyrocketed in Aotearoa New Zealand over the past 50 years (Creedy et al. 2018). The same time period has also witnessed the creation of a “political class”, where politicians have become increasingly stratified from the public and hold increasingly divergent interests and views (Edwards 2003; Interviews O, Y). These trends dovetail with electoral system reform, with heightened inequality one of the contributing factors to public calls for change. This complicates the picture of PR, as MMP is expected to decrease partisan and demobilizing election lawmaking whereas high inequality is expected to have the opposite effect. Perhaps increasing inequality is one reason why partisan election lawmaking has not diminished under MMP, and why demobilizing election lawmaking has not decreased more. It is beyond the scope of this

study to empirically discern the effects of inequality on election lawmaking, but this should prove a fruitful area for future scholarship.

### Political Culture

Political culture refers to the level of divisiveness and polarization in Aotearoa New Zealand politics.<sup>98</sup> Greater divisiveness and polarization in politics generally translates into more partisan lawmaking of every type, of which election lawmaking is one subset. More specifically, increasing polarization increases the stakes of elections because the outcome can mark sharp policy divergences. In a “win-at-all-costs” scenario, partisan election lawmaking becomes more appealing as a mechanism to achieve an electoral advantage. The divisiveness of politics is difficult to quantify, although several scholars have written on the subject (Mann and Ornstein 2012; Miller and Hoffmann 1999). There seems to be a perception that Aotearoa New Zealand politics has become more divisive and “dirty” over the past several decades (Hager 2006, 2014; Interview O). Polarization is more readably quantifiable. Gibbons’ (2011) analysis of party manifestos provides evidence that Labour and National have become more divergent over the period of analysis. Their policy promises converged in the early 1970s but have steadily grown apart thereafter. Gibbons observes that there is greater party polarization over economic issues now than at any point since 1950. The old politics–new politics dimension is more complex, with the major parties diverging in the 1980s, converging in the 1990s, and growing more polarized since

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<sup>98</sup> This is a different meaning of political culture than that used in other contexts. For instance, McLeay et al. (1996) measure “political culture” as the attitudes of the public toward government and political parties and the level of citizen participation in politics. In several interviews, participants framed Aotearoa New Zealand’s political culture in terms of a high desirability for consensual election lawmaking (Interviews S, W, AG). This issue is considered separately later in this chapter.

then. Overall, this tells a story of gradually increasing political polarization. Together with claims of increased divisiveness, these two factors suggest a more conducive environment to partisan election lawmaking in the MMP era. They also provide another mitigating reason to explain why MMP has failed to curtail such reforms.

### Importance of Government Mandate

In Aotearoa New Zealand, an electoral mandate is the idea that elections bestow elected governments with the right to enact policies specified during the election campaign. Greater importance bestowed on the popular mandate should reduce political opposition to previously promised changes (Mulgan 1978). Gibbons (1999) has found that 75 percent of government policy implementation related to manifesto policies between 1946 and 1979—an indication that pledge fulfillment was quite strong under FPTP. Nathan McCluskey's (2008) extensive study of manifesto pledges in Aotearoa New Zealand found a clear declining trend in the rate of manifesto pledge fulfillment. An average of 78 percent of manifesto pledges were fulfilled before 1984, compared with an average of 69 percent of pledges fulfilled between 1984 and 1993 and an average of 62 percent of pledges fulfilled since the introduction of MMP. The reason for this is straightforward: with the realities of coalition governments in MMP, parties must make trade-offs between policy proposals to secure coalition partners (Malone 2008). McCluskey also discovered a significant decline in the number of pre-election promises made for each election since 1990, from greater than 1000 for each major party to only a few hundred each.

These studies provide evidence that the electoral mandate has weakened over the past fifty years.<sup>99</sup> The record of election lawmaking is less clear. There are two notable cases of opposition parties letting unwanted election reforms pass without a third reading division because of the majority party's campaign pledges. Both were National-sponsored legislation: the Electoral Amendment Act 1976, which returned the number of Māori electorates to four, and the Electoral Amendment Act 2009, which repealed most of the Electoral Finance Act 2007 (Labour did not force a division in the former case and voted affirmatively in the latter). Even in the case of the Electoral Amendment Act 2009, however, Labour's support was influenced as much by the realization that the Electoral Finance Act 2007 was an error as by National's supposed electoral mandate to scrap the law (Geddis 2017; Watkins 2009; Interview N). Labour was also moved by National's pledge that it would follow a consensus-based process to construct replacement legislation (New Zealand Herald 2009). Besides these instances, there do not appear to be many cases of parties giving election legislation a free pass due to manifesto pledges. A weakened popular mandate would suggest that oppositional cooperation because of an election result is becoming rarer, although it is already so rare in the case of election lawmaking as to be a non-factor.

On the other hand, a "negative mandate"—the idea that there will be increased opposition to policies not previously promised in manifestos—appears to remain strong.

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<sup>99</sup> A similar sentiment was expressed by McLeay, who stated that the weakening of the government mandate happened in two steps (Interview H). First, Labour governments of the 1980s and early 1990s failed to fulfill their promises, and second, MMP forced parties to dilute their manifesto promises due to the need to craft coalition agreements. Gibbons disagrees, however, arguing that parties still care about fulfilling manifesto commitments and still make specific promises with the intention of fulfilling them (Interview C). Rather than weakening the electoral mandate, the advent of MMP has meant that parties try to avoid big promises in the first place as they are harder to keep.

National opposed the Electoral (Integrity) Amendment Act 2018 in part on the grounds that it was not announced as a coalition demand between Labour and New Zealand First until after the election, and thus was being unfairly sprung on the public. The Electoral (Vacancies) Amendment Act 2003 was also opposed for its ad hoc nature (Geddis 2004). With the trend toward shortening party manifestos and the growing importance of post-election coalition agreements under MMP, opposition to election reforms due to a negative mandate may become more common.

### Exogenous Institutional Change

Independent of electoral system reform, Aotearoa New Zealand's parliament has undergone significant procedural changes that have fundamentally altered how legislation progresses through the legislative branch. Foremost in importance are changes to select committees. Starting from a more or less ad hoc system in the 1970s, a series of reforms to the parliamentary Standing Orders have made select committees a routine and formative part of legislative deliberation (Martin 2004; McLeay 2018). In 1979, automatic referral of legislation to select committees began, effectively embedded the role of select committees in the normal legislative process (Malone 2008). Thirteen permanent select committees were established in 1985 and divided into distinct subject areas. These committees were also given a new oversight role of the executive. Select committees' terms of reference were expanded in a series of Labour reforms between 1984 and 1990. Starting in the 1990s, members' bills that survived their first reading began to regularly receive select committee scrutiny. With the advent of MMP, select committee membership is now roughly proportional to each party's membership in parliament. This means that not all select



committees have government majorities, granting minorities new powers to delay bills and wield leverage in negotiations. Select committees also have new obligations to scrutinize bills within a specified time frame, limiting the ability of minority parties to delay bills.

In short, select committees had become quite important toward the end of the FPTP era and they have grown more so under MMP (Malone 2008). In terms of election lawmaking, a stronger select committee system increases the likelihood that the election reform process is consensus-driven rather than divisive and acrimonious. Select committees are a useful mechanism for encouraging consensus and reducing the level of partisan fervor. For instance, the decision to use a cross-party select committee process for the replacement of the highly partisan Electoral Finance Act 2007 is one of the major reasons why the Electoral (Finance Reform and Advance Voting) Amendment Act 2010 ended up passing with multiparty support (Interviews A, N). The strengthening of the select committee system should work in concert with MMP to make partisan election lawmaking less likely. This has obviously not been the case, a sign that executive dominance over parliament is still strong despite the strengthening of select committees. Governments can still have their way with election reforms over the objections of minority parties. Ryan Malone's (2008) conclusion was along a similar vein: despite the strengthening of legislative power under MMP, the executive still dominates (Interview I; see also Geddis 2016).<sup>100</sup>

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<sup>100</sup> McGee (2007) argues that legislative procedures have changed to counterbalance the increased political constraints under MMP. Parliamentary rules now facilitate a quicker legislative process, preventing minority parties from stonewalling the government's agenda. These changes include limits to the number of speakers and the length of speeches at each reading and the shift to non-debatable procedural motions (Interview AD).

### Constitutional Control over Election Procedures

The more constitutional control that legislatures have over the rules of the game, the greater the opportunity for politicians to manipulate those rules. Aotearoa New Zealand is one of only a handful of countries that lack a codified, “higher law” constitution. Its retention of the doctrine of parliamentary supremacy means that parliament has virtually unlimited authority to make and change election laws. While the New Zealand Bill of Rights Act 1990 recognized the right to vote, the legislation did not establish a mechanism to prevent parliament from unjustifiably infringing upon this “right.”<sup>101</sup> Aotearoa New Zealand courts do not have the power to invalidate laws they find to be unconstitutional.

The closest mechanism to a constitutional limit on parliament’s election lawmaking authority is entrenchment. First enacted in the Electoral Act 1956, a handful of election rules require three-fourths parliamentary support or a majority referendum decision to change. These provisions are the term length of parliament, the membership of the Representation Commission, the procedures for redistricting and tolerance for population differences among districts, the voting age, and the method of voting. The provision for entrenchment was not entrenched itself (i.e., it was “singly entrenched”), meaning it could be removed by a simple majority vote of parliament. At the time of passage, it was widely recognized that entrenchment held neither constitutional nor judicial force and was only self-enforceable by parliamentary convention (McLeay 2018). In the 60 years that have transpired, this parliamentary convention has held. Every time an entrenched provision has

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<sup>101</sup> Instead, the legislation imposes a duty upon the Attorney-General to notify parliament when a bill appears to be inconsistent with the Bill of Rights. Parliament has frequently passed legislation after an adverse report. The Supreme Court has ruled that the judiciary may grant a formal declaration of inconsistency in relation to legislation that unjustifiably infringes upon a right guaranteed by the Bill of Rights, though such a declaration has no effect on the legislation’s status as law. See *Attorney-General v Taylor* [2018] NZSC 104.

been amended, it has received the necessary supermajority support. Some legal scholars have suggested that the entrenched provisions may now have gained legal force to the point where they can be adjudicated in the courts (Shiels and Geddis 2019). Thus, it seems that entrenchment provides some quasi-constitutional protection for Aotearoa New Zealand's election machinery against self-interested politicians.

On the other hand, entrenchment could benefit existing parties in power by enshrining preferential and exclusionary election rules. The entrenched voting age created an additional barrier to expanding the franchise from 21-year-olds to 18-year-olds. The entrenched membership of the Representation Commission has helped keep representatives from Labour and National on the Commission and representatives from all minor parties excluded from its ranks. And the entrenched method of voting made switching to a PR system very difficult, helping to preserve an unrepresentative status quo. Entrenchment fails to prevent major parties from teaming up against minor parties to manipulate election laws in their favor. The mechanism also symbolically privileges certain rules over others, protecting general electorates but not Māori electorates.

Another trend worth noting is the growth and consolidation of Aotearoa New Zealand's electoral management board (EMB), or the entity responsible for electoral governance. Prior to the introduction of MMP, two bodies oversaw the country's national elections: the Chief Electoral Office, which ran the voting process and regulated candidates, and the Registrar of Electors, which handled voter registration. The Chief Electoral Office was housed within the Ministry of Justice, while the Registrar of Electors became a state-owned enterprise in the 1980s. The Electoral Commission was formed as an independent Crown entity in 1993 and was tasked with regulating parties and running

voter education campaigns. Until the merger of the Chief Electoral Office and the Electoral Commission in 2010, the Chief Electoral Office was potentially open to (the appearance of) partisan conflicts of interest in the running of elections because it was statutorily under the direction of the Minister of Justice (Interviews Q, W).<sup>102</sup> However, there is no evidence that any government used their position to influence the Chief Electoral Office. There is no longer any opportunity for partisan involvement in the administering of Aotearoa New Zealand's elections, as its EMB is now unified as an independent Crown entity. Furthermore, statutory independence has not affected parliament's ability to change election laws and thus does not qualify as reduced parliamentary control over election procedures (Interview Q).<sup>103</sup>

The record of election lawmaking uncovered in this analysis makes clear that politicians have availed themselves of the opportunity to alter election rules time and time again, regardless of the procedural constraints standing in their way. Simply put, governments can have their way with the democratic rules of the game.

### Degree of Federalism

A high degree of federalism provides opportunities for election laws to be passed at lower levels of government (James 2011, 2012). This is certainly the case in the United States,

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<sup>102</sup> The Registrar of Electors statutorily merged with the newly amalgamated Electoral Commission in 2012 and operationally merged in 2016 (Interviews J, K, Q, V).

<sup>103</sup> Aotearoa New Zealand is not the only country to recently reform its electoral governance institutions. The United Kingdom has partially centralized their EMB to mixed results (James 2017), while the United States' creation of the Election Assistance Commission has also had a limited impact (Montjoy and Chapin 2005). In contrast, independent, centralized EMBs have been shown to be a critical ingredient for effective election administration in both Africa (Mozaffar 2002) and Latin America (Hartlyn et al. 2008).

where national, state, regional, county, city, and district levels of governance create practically endless opportunities for partisan election lawmaking to take place. In contrast, Aotearoa New Zealand has maintained an almost completely unitary system of governance throughout the period of analysis. This should dampen the incentives to manipulate election laws for partisan interest, as there are less avenues and jurisdictions for partisan election lawmaking to take place. Most local election laws are passed at the national level, leaving little opportunity for local bodies to manipulate rules for their benefit.<sup>104</sup>

#### Desirability of Consensual Lawmaking

When the political costs of divisive election lawmaking or the political benefits of consensual election lawmaking increase, consensual election lawmaking becomes more desirable and therefore more likely. This is compatible with elite agency theory, where politicians are assumed to be rational actors conducting a cost-benefit analysis when deciding whether to pursue partisan election reforms. Christmas (2010) argues this calculus was at its peak between 1956 and 1974 but has partially broken down since then. However, Christmas bases this analysis on changes in the amount of consensus in election lawmaking rather than on a change in the desirability of consensus. It is difficult to measure the degree of desirability itself because few opinion polls have been taken on election reform in Aotearoa New Zealand outside of the referendums on electoral system change. It seems that parties have been punished at times for enacting particularly acrimonious election

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<sup>104</sup> The important exception to this is the Local Electoral Act 2001, which allows local governments to decide which electoral system to use for their elections. This decision has brought with it an extraordinary amount of political calculation and contention (Drage and Cheyne 2018).

laws, especially Labour's Electoral Amendment Act 1975 and Electoral Finance Act 2007 (Interviews S, AG). The political backlash from the latter episode has led to a cautious election lawmaking strategy on the part of Labour in recent years (Interview L). This was recently evident when Jacinda Ardern quickly shot down a Green party proposal to lower the electoral threshold before the 2020 election (Devlin 2019b; Interview A). It has not stopped Labour from continuing to pursue partisan changes to election rules, including extending the registration period through election day, treating special votes as applications for registration, and enfranchising prisoners who are serving sentences of less than three years.<sup>105</sup> In short, it seems that outcome-contingent benefits gained from partisan election reforms still frequently outweigh the act-contingent costs of divisive action.

### *Policy Triggers in Aotearoa New Zealand Election Lawmaking*

The reasons why specific election reforms are brought onto the executive policy agenda has not been the focus of this study. That being said, the evidence gathered confirms James' (2012) proposal of six such policy triggers: technology, declining turnout, administrative failure, external policy streams, judicial challenge, and citizen challenge. To this list I add an additional two: electioneering practices and previous legislation. Whereas James' study focused solely on election administration, this research finds these triggers are applicable to all types of election laws.

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<sup>105</sup> The first two provisions are in the Electoral Amendment Bill 2019, which is almost certain to pass over National party opposition in 2020. The Labour government has indicated that the prisoner enfranchisement provision will be passed before the 2020 election, but as of this writing, the government has not indicated whether it will be added to the Electoral Amendment Bill 2019 or introduced as a separate bill. It appears Labour has made a calculation that these are lower-stake issues that will not cause public backlash (Interview L).

Technology has played a role in almost every election-related enactment. A series of 1980s reforms responded to technological advancements in enrollment procedures made possible by computer technology (Interview J). More recently, legislation has started to address the promises and perils of the internet. The 2011 and 2014 Electoral Amendment Acts implemented online registration, the Broadcasting (Election Programmes and Election Advertising) Amendment Act 2017 allows political parties to use their funding allocation on internet advertising, and the Electoral Amendment Act 2017 allows the use of electronic pollbooks (Interview P). Interestingly, none of this technology has found its way into the poll booth or ballot box itself. The marking and counting of ballots for elections are still done solely by hand (Interview K).

Declining turnout has always been used as an argument for mobilizing bills, but it has become a more pressing concern in the past few decades as participation rates have slumped.<sup>106</sup> Combating low voter participation rates was one of the reasons for the inclusion of no-excuse advance voting in the Electoral (Finance Reform and Advance Voting) Amendment Act 2010 and the Electoral Amendment Act 2014's implementation of full online enrollment. It is also a primary driver for mobilizing provisions in the current government's electoral amendment bill.

Administrative failures have also been a common reason for election lawmaking. The 1979 and 1980 Electoral Amendment Acts both fixed problems with registration procedures and the electoral roll that became apparent in the 1978 general election. The

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<sup>106</sup> The Electoral Commission has also prioritized increasing voter participation in its operational reforms and in its recommendations to parliament (Interviews F, K, P, V). These recommendations have spearheaded changes such as implementing no-excuse advance voting in 2010 and enabling voters to enroll and vote at advance voting places in 2017 (Interview S).

Electoral Amendment Act 2002 made extensive changes to electoral governance and voting administration as a response to delayed preliminary results from the 1999 general election (Interviews J, Q). This also resulted in the creation of an interdepartmental select committee that recommended merging the country's electoral governance into an independent Electoral Commission—a suggestion eventually realized with the 2010 and 2011 Electoral (Administration) Amendment Acts. A legal problem with the Representation Commission's calculation of the Māori electoral population necessitated a legislative enactment in 1992, while a printing error in the donation limit enacted by the Electoral Amendment Act (No 2) 1995 required passage of correcting legislation.

External policy streams, or foreign events that spill into the domestic arena, have been surprisingly absent as a reason for election reform. The Justice and Electoral Committee visited Australia in 2005 and 2007 to observe their election system, but neither trip resulted in legislative reform. The most important case of foreign influence is the Royal Commission's consideration of other countries when analyzing proposals for electoral system reform (Jackson and McRobie 1998: 118). The commission decided to recommend MMP modeled on Germany's use of the system. Both examples are cases where Aotearoa New Zealand has explicitly sought out other countries for guidance on specific policy issues. I was unable to identify any cases where battles over voting reform in other countries have directly impacted the direction of legislative action here. A rather distant example is the New Zealand Bill of Rights Act 1990 using as its inspiration the Bill of Rights from the United States and Canada (Interview AF).



Judicial challenges have regularly resulted in legislative reform.<sup>107</sup> In the *Re Hunua Election Petition 1979*, the Supreme Court ruled that enrollment irregularities in the 1978 election were not enough to invalidate the results. Controversially, they also ruled that incorrectly marked ballots must be disallowed, even if the intention of the voter was clear. This led to the disqualification of many ballots and changed the outcome of the election. The Court of Appeal (*Wybrow v. Wright 1980*) reached the unanimous conclusion that ballots should be counted if the voter's intention was clear, but this judgment had no bearing on the effects of the disputed election. The electoral petition and other administrative problems with the 1978 election led to the creation of a committee of inquiry known as the Wicks Committee, which recommended a series of reforms that were enacted in the 1980 and 1981 Electoral Amendment Acts (Prebble 1980).<sup>108</sup> The decision had wider repercussions as well, helping to convince Labour that a major review of the electoral system was necessary and leading to a pledge in the party's 1981 manifesto to establish a Royal Commission on electoral matters (Atkinson 2003). Another important judicial case was the *Re Wairarapa Election Petition 1988* judgement on residency rules, which established a narrow interpretation of residency requirements. This decision was overturned by the Electoral Amendment Act 1989, which created more leniency for voters to determine where to enroll. A court challenge to the 2010 prisoner disenfranchisement law as infringing on an entrenched statute was dismissed (*Ngaronoa v. Attorney-General 2018*), but a challenge asking the court to declare the law inconsistent with the New Zealand Bill of Rights was successful (*Attorney-General v. Taylor 2017*; see also Geddis

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<sup>107</sup> They have also regularly resulted in changes to electoral outcomes (see O'Connor 1990).

<sup>108</sup> Curiously, the ballot marking procedure itself was not changed to an affirmative tick until 1990. Until that time, voters had to cross out the names of every candidate except for their preferred choice.

2017, 2018b). This formal declaration of inconsistency by the courts, the first of its kind, may have contributed to Labour's decision to reverse the law.

Citizen challenges have played a vital role in bringing election reform onto the political agenda. Grassroots activism was crucial in translating the 1986 Royal Commission's recommendations into the 1992 and 1993 referendums on electoral system reform, culminating in the approval of MMP in a binding referendum (Jackson and McRobie 1998; Renwick 2010). The implementing legislation was approved without a third reading division, even though both major parties opposed reform. Interestingly, the 2011 referendum on retaining MMP was mostly due to lobbying from a small interest group rather than a mass citizen challenge (Grey and Fitzsimons 2012).<sup>109</sup>

Electioneering practices have frequently led to the passage of election legislation. After several candidates decided to inappropriately change their names to confuse voters in the leadup to the 1972 general election, a bill was passed to ban the practice. A series of enactments between 2006 and 2009 validated parliamentary expenditures that the Auditor-General had found to be improperly used for electioneering (NZ Office of the Auditor-General 2006). Additionally, Labour passed the Electoral Finance Act 2007 in response to troublesome electioneering practices that had occurred in the 2005 general election (Geddis 2007, 2008).

The enactment of previous legislation has also frequently been a trigger for additional enactments. Sometimes this has been a case of simple repeal due to a change of

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<sup>109</sup> Arseneau posits that the elite-driven nature of the 2011 referendum is one of the reasons why the Electoral Commission's mandated review of MMP in 2012 received such little public interest (Interview S). This helps explain why National did not feel pressured to give the commission's recommendations parliamentary consideration.

government. National's 1976 and 1977 Electoral Amendment Acts repealed most of Labour's Electoral Amendment Act 1975, while the Electoral Amendment Act 2009 repealed core provisions of the Electoral Finance Act 2007. In other cases, the time horizon has been even shorter. The Electoral Amendment Act (No 2) 1990 established a new system of handling parliamentary election broadcasting after an enactment passed earlier that year was found to be unsatisfactory to broadcasters.

### *The Randomness of Partisan Election Lawmaking*

This study uncovered numerous instances where important election reforms were achieved without partisan disagreement or media attention, as well as cases where relatively unimportant changes were fiercely contested and received copious amounts of media coverage. One of my goals was to explain as much of this seeming randomness as possible by finding explanations for variations in political behavior. The results are encouraging but not overwhelming: my most powerful model explained about 37 percent of the variation in the level of partisanship of election reforms, even after accounting for the participatory effect of reforms and the party in power.<sup>110</sup> This result leaves much more unknown than known. Perhaps political actors really are behaving unpredictably much of the time, especially when it comes to election lawmaking. James Christmas, the last person to conduct a study of the level of consensus in Aotearoa New Zealand election reforms, thinks this is the case (Interview A). As explored in Chapter 2, political actors face significant limitations when making decisions, including imperfect information, time and resource

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<sup>110</sup> This MLR used the complex partisanship scale as its dependent variable and included the effective number of parties.

constraints, and short time horizons (Renwick 2010). This study proves explaining the behavior of politicians in manipulating election laws is certainly possible. It will be up to future scholarship to improve upon these findings.

## CHAPTER 7: CONCLUSION

This thesis advances the political science of electoral systems by introducing a conceptual framework for the study of the politics of election lawmaking and empirically testing the effects of PR in Aotearoa New Zealand on the incidence of partisan and demobilizing election reforms. The analysis shows that partisan changes to election laws are more frequent than commonly understood, appearing in a country considered to have one of the strongest democratic systems. I have also shown that the introduction of MMP seems to have reduced the incidence of demobilizing reforms and has shifted the areas of election lawmaking that are partisan. Evidence has been brought to bear of a relationship between partisan election lawmaking and the effective number of parties in parliament, the leverage of non-voters, the participatory effect of legislation, and the party in power. This chapter concludes by revisiting the central hypotheses, exploring the implications of these findings, and suggesting directions for future scholarship.

### *Central Hypotheses Revisited*

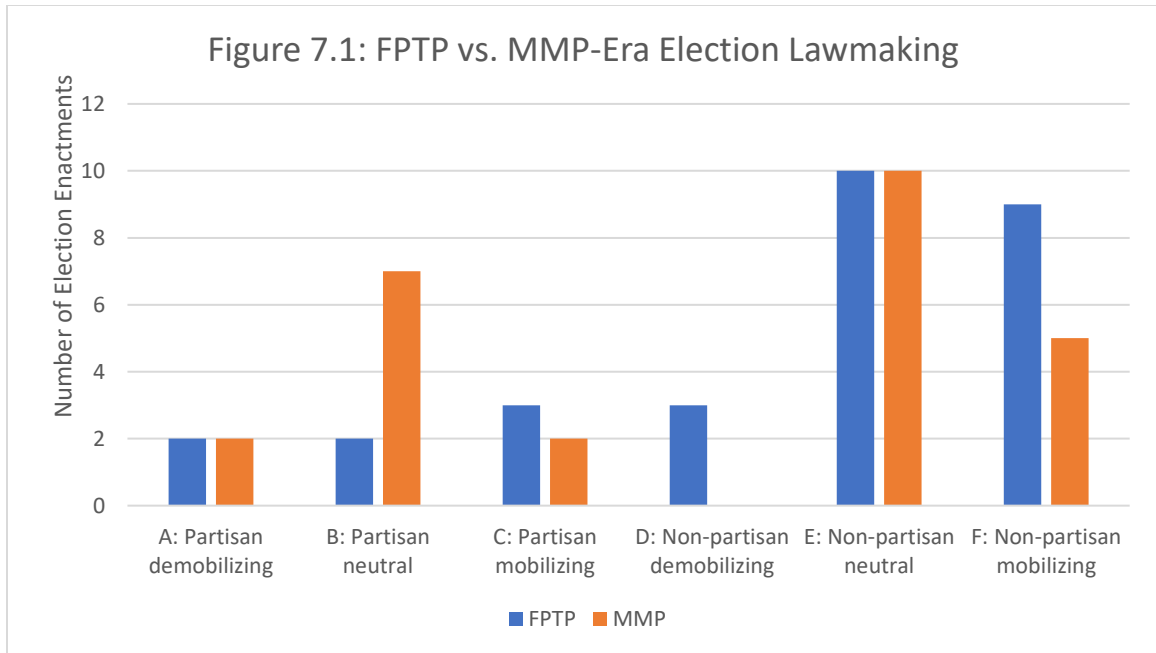
This section evaluates the hypotheses and claims made in Chapter 4 based on the evidence revealed in Chapters 5 and 6. It examines first partisan election lawmaking and then demobilizing election lawmaking.

### Partisan Election Lawmaking

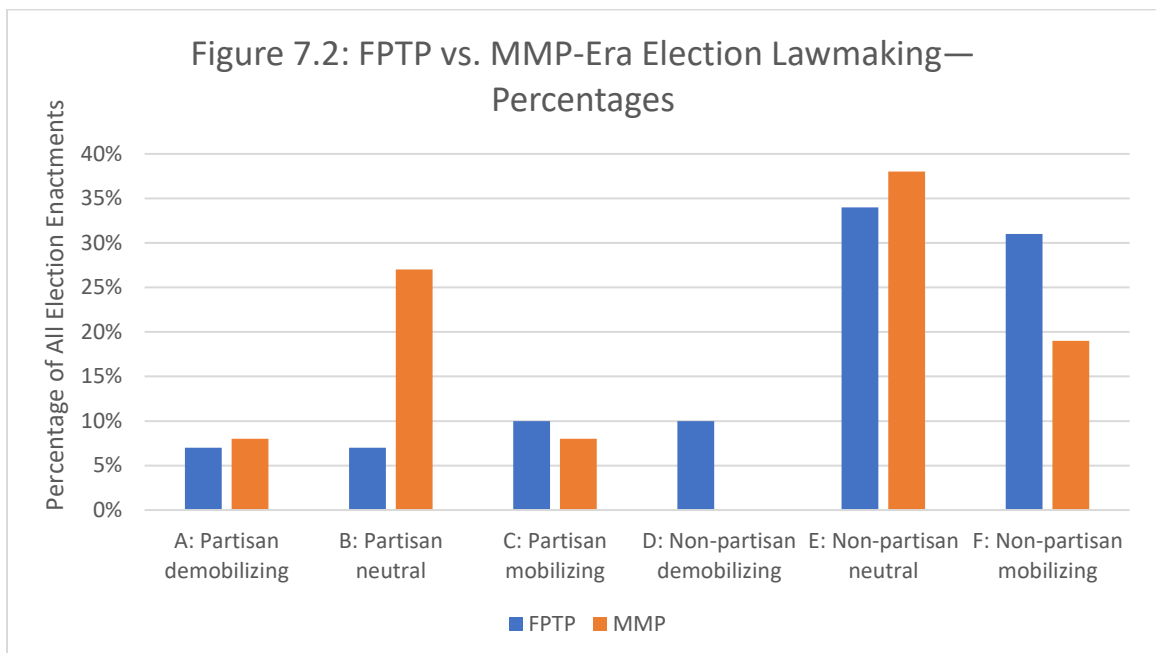
**Hypothesis 1:** Aotearoa New Zealand’s switch from a plurality to a proportional electoral system has reduced the incidence of partisan election lawmaking.

The evidence uncovered by this thesis does not substantiate Hypothesis 1. As shown in Table 7.1 and Figure 7.1, the incidence of partisan election lawmaking increased from seven partisan election enactments under FPTP to 11 under MMP. As shown in Table 7.2 and Figure 7.2, as a percentage of all election laws passed in the era it rose from 24 to 42 percent. Using the complex partisanship scale, 12 FPTP-era election enactments passed with moderate or high levels of partisanship, compared with 13 under MMP. Chi-squared, logistic, and MLR tests all failed to reveal a statistically significant relationship between era and partisan election lawmaking. The number of proposed members’ bills debated provides the only countervailing evidence. There were 16 election-related proposed members’ bills in the FPTP era, nine of which were highly partisan. This compares with nine such bills under MMP, five of which were highly partisan—though the percentage of highly partisan members’ bills remained constant at 56 percent. Almost across the board, then, this study failed to reveal compelling evidence that MMP has reduced the incidence of partisan election lawmaking.

Table 7.1: FPTP vs. MMP-Era Election Lawmaking—Number of Election Enactments		Participatory Effect			Total
		Demobilizing	Neutral	Mobilizing	
Partisanship	Partisan	2 → 2	2 → 7	3 → 2	7 → 11
	Non-partisan	3 → 0	10 → 10	9 → 5	22 → 15
Total		5 → 2	12 → 17	12 → 7	29 → 26



		Participatory Effect			Total
		Demobilizing	Neutral	Mobilizing	
Partisanship	Partisan	7% → 8%	7% → 27%	10% → 8%	24% → 42%
	Non-partisan	10% → 0%	34% → 38%	31% → 19%	76% → 58%
Total		17% → 8%	41% → 65%	41% → 27%	100% → 100%



In contrast, the corollary to Hypothesis 1—that switching from a two-party to a multiparty system reduces the incidence of partisan manipulation of election laws—was evidenced. Logistic and MLR tests revealed a statistically significant relationship between the effective number of parties and partisan election lawmaking. The higher the effective number of parties, the less likely election reforms were to be partisan. However, this was not found to be true for the total number of parliamentary parties, nor for vote-based measures of the party system. It seems that increased fragmentation of the party system reduces the incidence of partisan election lawmaking—something that has happened unevenly under MMP. This result clues us into the causal mechanism that links PR and diminished partisan election lawmaking. The increased number of veto players seems to be a more compelling reason for the relationship than reduced incentives to pursue marginal electoral shifts.<sup>111</sup>

I also uncovered evidence to support a relationship between the leverage of non-voters and partisan election lawmaking, with logistic and MLR tests both producing statistically significant results. Higher leverage of non-voters (i.e., lower turnout) is correlated with more partisan election enactments. Conversely, the analysis failed to substantiate a relationship between electoral competitiveness and partisan election lawmaking. A wide range of additional factors are likely exacerbating the level of partisanship in Aotearoa New Zealand election lawmaking. The presence of a left-right SES cleavage structure, a strong preference gap between voters and non-voters, high inequality, elevated polarization, and the lack of constitutional constraints help explain the

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<sup>111</sup> A few interviewees suggested this would be the case (Interviews J, W).



high degree of partisanship. The only two significant mitigating factors examined were a unitary state and increasing procedural constraints.

The record of enacted election laws and proposed members' bills revealed significant evidence that the areas of partisanship have changed from the FPTP to MMP eras. There has been a shift in disagreements over the electoral system from wholesale reform to minor changes such as to the electoral quota and one-seat coattails provision. Partisan disagreements over registration and voting administration laws have both diminished. They have also shifted; in the former case, from radical registration reforms and rules for determining place of residence to continuous enrollment, and in the latter case, from pre-election information mailers to the design of ballot papers and use of EasyVote cards. There has also been a decline in disagreements over franchise rules and boundary drawing provisions. On the flip side, there has been increasing partisanship over member qualifications, especially party hopping and dual citizenship provisions, and finance and electioneering rules.

### Demobilizing Election Lawmaking

**Hypothesis 2:** Aotearoa New Zealand's switch from a plurality to a proportional electoral system has reduced the incidence of demobilizing election lawmaking.

The evidence confirms Hypothesis 2, with an important caveat. Table 7.1 (above) shows that there were five demobilizing election enactments under FPTP compared with only two under MMP. The percentage of election enactments that demobilized declined from 17

percent to 8 percent (Table 7.2 and Figure 7.2). Although the descriptive data is compelling, chi-squared and logistic regression tests did not uncover a statistically significant relationship. The small n-size involved likely plays a role, as statistical tests of rare events are more likely to lead to biased results. The analysis also failed to evidence a relationship between party system and the incidence of demobilizing election reforms, likely for the same reason.

The analysis did support the claim that PR systems are likely to reduce the incidence of mobilizing reforms and (by extension) all reforms that affect participation. There were 12 mobilizing election-related enactments in the FPTP era, compared with seven in the MMP era. This translates to a decrease in mobilizing legislation from 41 percent to 27 percent of all election laws passed in the respective eras. Overall, 17 out of the 29 election-related enactments in the FPTP era affected participation (59 percent), compared with nine out of 26 in the MMP era (35 percent). A chi-squared test revealed a statistically significant relationship between era and the passage of election reforms that affect participation. Of the two causal mechanisms proposed, reduced incentives to pursue marginal electoral shifts and increased number of veto players, the latter mechanism is more likely when considering the null result for partisanship. It would make little sense for reduced incentives to pursue election reforms to stop the enactment of participatorily impactful changes but not partisan ones. More plausible is that increased constraints from additional parliamentary veto players is making election laws that impact turnout more difficult to pass.

Tentative evidence was uncovered for a relationship between demobilizing reforms and the leverage of non-voters. Counter to initial expectations, it seems that higher-turnout

elections correlate with more demobilizing election lawmaking. This implies that higher turnout simultaneously encourages demobilizing election lawmaking and discourages partisan election reforms—a finding demanding further study. Conversely, the analysis did not substantiate a relationship between electoral competitiveness and demobilizing election lawmaking. The presence of Māori as marginalized subjects with discordant preferences has seemed to exacerbate the incidence of demobilization. Additionally, the supposed relationship between party and demobilizing election lawmaking is supported. National-led governments passed five demobilizing election laws, whereas Labour-led governments passed only two. Logistic regressions revealed this relationship to be statistically significant, both for election enactments that were overall demobilizing and for election enactments that contained demobilizing provisions.

### *Implications*

One important implication of these findings is the fact that several aspects of Aotearoa New Zealand election law continue to be unsettled. The electoral threshold and one-seat coattails provision, prisoner voting, party hopping, campaign finance rules, the registration period, and provisions for Māori electorates continue to be fought over and regularly changed. There is every indication this situation will continue. Both a senior member of the Electoral Commission and a former Chief Electoral Officer noted that a thorough updating of the Electoral Act is long overdue (Interviews F, J), while Justice Minister Little has pledged a “ground up, thoroughgoing review” of election laws if the Labour government is re-elected in 2020 (740 NZPD 15421, 3 December 2019). Additionally,

population growth in the North Island is putting the mechanical power of MMP's proportionality at risk by increasing the number of electorates at the expense of list seats (Interview V). The eventual solution for this—increasing the size of parliament, reallocating electorate seats to the North Island, or fixing by statute the proportion of electorate to list seats—is likely to incite fierce partisan disagreement.<sup>112</sup>

Many components of Aotearoa New Zealand's election system continue to present barriers to full participation. The onus for voter registration still lies with electors rather than the government, creating an unnecessary obstacle to the ballot box (Interview T). All prisoners are currently disenfranchised. Even if Labour goes ahead with its proposed reforms, prisoners serving sentences of more than three years will be denied suffrage. The country also lacks a meaningful public referendum mechanism and an enforceable right to vote. It is worth reiterating that 25 percent of eligible voters routinely do not participate in elections, equating to nearly one million people.<sup>113</sup>

Unfortunately, the goals of consensus and mobilization are oftentimes at cross-purposes. The source of partisan disagreement is usually the fact that laws might increase participation. Such is the case with the latest proposal for election reform, Labour's Electoral Amendment Bill 2019. There are no clear normative judgements in such instances; the mobilizing aspect is desirable but the partisan aspect is undesirable. Neither aspect "wins". Rather, we are left with moral ambiguity. One potential solution is the use of citizens' assemblies for election reform, which would take some power-making decision

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<sup>112</sup> The Electoral Commission in its 2012 Report on the Review of the MMP Voting System recommended the third option, with an electorate-to-list seat ratio of 60:40 favored (Electoral Commission 2012b: 30).

<sup>113</sup> Another barrier worth mentioning is the strict restriction on election day electioneering, which runs counter to creating an atmosphere conducive to youth engagement and participation (Interview AA).

out of the hands of self-interested politicians (Bennett 2013; Hayward 2014; Interview L). This model has been used in both Canada and the Netherlands and might prove a fruitful avenue in Aotearoa New Zealand.

A related normative quandary raised by this study is that proportional electoral systems both protect against voter demobilization and inhibit reforms that expand participation. Is it a normative good to prefer proportional electoral systems if they depress both types of reforms? One argument in favor of PR is that it is more important for institutional structures to discourage demobilizing laws than it is to encourage mobilizing ones. Enactments that prevent or discourage democratic participation inherently erode confidence in the election system and create social norms of exclusion that are difficult to erase. Thus, demobilizing election reforms ultimately cause more harm to democracy than mobilizing laws prove beneficial. Another argument is that institutional structures should be created to discourage frequent changes to the rules of the game, regardless of their character or effect. Although it is obviously a normative good for mobilizing laws to be enacted, the priority for designers of government (and especially legislative) systems should be first and foremost to make the passage of demobilizing laws extremely difficult. My research indicates that PR systems are better equipped to do so than non-PR systems.

This study has focused on the record of Aotearoa New Zealand election reforms and its switch to MMP. Its findings should be applicable to every established democracy. Despite the country's reputation as a model democracy where consensus-based election reforms are the norm, partisan election lawmaking was found to occur regularly, and instances of demobilizing election reforms were also identified. Considering the severely understudied nature of election lawmaking internationally, this evidence suggests that the

manipulation of election rules may be a more widespread problem worldwide than is currently understood. This is especially so considering Aotearoa New Zealand's strong culture of consensus and long record of stable elections and governance, making it something of a baseline for the presence of deleterious election lawmaking.

Perhaps most importantly, the results indicate that proportionality alone is not enough to mitigate deleterious election reforms. Rather, the effect of proportionality on creating a multiparty electoral system is what generates barriers to partisan and demobilizing election lawmaking. This research should caution American scholars against claims that adopting a PR electoral system could diminish intense partisanship around election rules (see Minnite 2010; Piven et al. 2009). If electoral system reform fails to alter party dynamics and instead maintains a two-party system, it is unlikely for the reform to prove successful in ameliorating intense partisanship.

#### *Future Research Directions*

As this is a one-country case study, its findings are inherently exploratory rather than definitive. The logical continuation of this project is to undertake a broader cross-nation comparison of the relationship between electoral system and partisan/demobilizing election lawmaking. The reason why such a study has yet to be undertaken is likely due to the difficulty in finding simple empirical measurements for the variables of interest. This thesis makes a first attempt to define and operationalize partisanship and demobilization. This work can be replicated in new contexts to uncover more empirical evidence for the factors that determine the politics of election lawmaking.

My analysis substantiated a relationship between partisan election lawmaking and the effective number of parties, providing a promising path forward for future scholarship. Whereas Aotearoa New Zealand is the only case where an in-country analysis can be conducted on the effects of switching between non-PR and PR electoral systems, many countries have experienced significant fluctuations in the effective number of parties over time. This means additional research could examine the relationship between party system and election lawmaking across a variety of countries, utilizing a natural case study design to increase the chances of discerning a causal link.

Another promising research direction concerns whether good democratic procedures have been followed to change the democratic rules of the game in Aotearoa New Zealand. While undertaking this study, I have uncovered several worrying instances of undemocratic procedures being used to change election rules. Governments have truncated the debate process, skipped select committee consideration, held middle-of-the-night floor votes, passed urgency motions to eliminate cool off periods between readings, used supplementary order papers to bring in major election reforms at the last minute, and utilized other means to prevent election reforms from receiving full and open legislative deliberation. These practices continue to this day. As a case in point, the latest amendment to election law, the Electoral Amendment Act 2019, was passed in a single House sitting under urgency after being announced the very same day.<sup>114</sup> It is especially worrisome when undemocratic procedures collide with partisanship and demobilization, making this a priority for additional study. This line of inquiry could also test whether consensus-based

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<sup>114</sup> The legislation strengthened restrictions on foreign donations.

processes increase the chances of consensual outcomes, as suggested by McLeay (Interview H).

An adjacent area of scholarship involves the voter turnout strategies employed in Aotearoa New Zealand. Do campaigns focus exclusively on voter mobilization? Or do they ignore certain segments of the population and intentionally demobilize unsupportive demographics? Demobilizing campaign strategies should go together with demobilizing election laws (Minnite 2010; Piven et al. 2009). Additionally, how have campaigns responded to (frequent) changes to the rules of the game? There is evidence that effective counter-mobilization strategies to the passage of restrictive laws in the United States can mitigate their effects (Rocha and Matsubayashi 2014; Valentino and Neuner 2017; Voris 2016). There is little existing scholarship in Aotearoa New Zealand on the turnout effects of passed election reforms, but campaign strategy is an important piece of the puzzle that has received no attention thus far.<sup>115</sup>

If anything, my findings present a clarion call for scholars everywhere to take the politics of election reform seriously and for additional scholarship to pinpoint which electoral and parliamentary arrangements best insulate democracies from harmful changes to election laws. In the face of worldwide democratic decline, this should form a central research agenda to ensure that the power of legislatures to alter the rules of the game is not abused.

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<sup>115</sup> Encouragingly, the scholarship that does exist on turnout effects is recent, indicating this is currently a research focus for academics. See Galicki 2017, 2018; Garnett 2018.



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## APPENDIX A: ELECTION ENACTMENT DESCRIPTIONS

Name	Description
Electoral Amendment Act 1971	Allowed certain polling places to be used for two districts and for more than one scrutineer to be at a polling booth simultaneously, updated provision disqualifying electors who are in prison or have serious mental illness, and increased the maximum amount of election expenses from \$1000 to \$1500.
Electoral Amendment Act 1972	Prevented candidates from being nominated under a new name less than six months before the close of nominations.
Electoral Amendment Act 1974	Lowered the voting age from 20 to 18.
Electoral Amendment Act 1975	Renamed non-Māori electorates as 'general' electorates, introduced the Māori electoral option at five-year intervals, and allowed for variations in the number of Māori electorates based on the results of the Māori electoral option. Extended the franchise to prisoners, permanent residents, and those "ordinarily resident" in Aotearoa New Zealand. Proposed increasing the size of parliament to 121 seats, but this provision was defeated.
Electoral Amendment Act 1976	Fixed the number of Māori electorates at four, repealing the provision of the Electoral Amendment Act 1975 for a varying number of electorates according to the size of the Māori electoral population.
Electoral Amendment Act 1977	Repealed several provisions in the Electoral Amendment Act 1975. Extended the requirement for residency in an electorate from one month to three, disenfranchised all prisoners, and disqualified unregistered but otherwise qualified electors from voting. Increased maximum election expenses from \$2000 to \$4000, reversed a ban on the use of loudspeakers, and expanded regulations on candidate advertisements.
Electoral Amendment Act 1979	Allowed the use of a single up-to-date composite roll for by-elections. A temporary solution to problems with the roll used in the 1978 general election.
Electoral Amendment Act 1980	Overhauled the registration system, transferred responsibility for roll revision from the Chief Electoral Officer to the Post Office, updated statutory language from "European" to "general", removed party designations from the ballot paper, restricted the franchise from those "ordinarily resident" to permanent residents, and delayed exercise of the Māori electoral option by a year.
Electoral Amendment Act 1981	Required the Representation Commission to consider minor party feedback and publish responses to criticism, reduced the Māori electoral option from three months to two, prevented switching enrollment outside the Māori option, increased accessibility of polling places, increased penalties for failing to enroll, and made a variety of additional changes to registration, administration, and electioneering procedures.
Electoral Amendment Act 1983	Enfranchised those who turn 18 on the week of an election, itinerant voters who have not spent three months in any one electorate, those who were previously qualified for an electorate but recently moved, and those who were allocated to the wrong electorate due to official error. Allowed non-Māori registered for a general electorate while erroneously included on a Māori roll to be able to cast a valid vote without re-enrolling. Made minor changes to roll registration, extended the prohibition against candidate name changes from six to 12 months, clarified that electors must be qualified to vote at the time of voting and not earlier, increased the election expenses limit from \$4,000 to \$5,000, and allowed the cross-referencing of habitation indexes with the electoral roll.

Name	Description
Electoral Amendment Act 1985	Increased flexibility for the statutory timing of electoral tasks, including roll revision and the work of the Representation Commission. Extended the time period for registration applications from received by writ day to postmarked by writ day. Provided for the Māori electoral option to be carried out concurrently with general re-enrollment.
Electoral Amendment Act (No 2) 1985	Reduced the residential qualification for registration from three months to one. Made the dormant electoral file publicly available and authorized its updating.
Electoral Amendment Act 1986	Provided that Māori electoral boundaries be determined within six months of the Representation Commission's formation, aligning them with the reporting of general electorate boundaries.
Electoral Amendment Act (No 2) 1987	Prevented the holding of a by-election in any seat that was or became vacant before the 1987 general election.
Broadcasting Act 1989	Established the Broadcasting Commission. Prohibited the broadcasting of election programs for a fee and required broadcasters to allow political parties to broadcast election advertisements free of charge in an election period. Empowered the Parliamentary Service Commission to determine the allocation of broadcasting time for each broadcaster and the allocation among qualifying political parties according to their electoral representation and public support. Empowered the Broadcasting Standards Authority to make rules prescribing standards on election programs. Required political parties to receive prior approval for their broadcasts to ensure compliance.
Electoral Amendment Act 1989	Created more leniency for voters to determine their place of residence for the purposes of enrollment, nullifying the Wairarapa electorate court decision.
Broadcasting Amendment Act 1990	Appropriated commercial radio airtime for political party broadcasts, substantially increasing the amount of free political advertising. Mandated the airing and simulcasting of opening and closing addresses on all television channels, free-of-charge.
Broadcasting Amendment Act (No 2) 1990	Established a new system of parliamentary election broadcasting. Made broadcasters' participation voluntary, instead inviting broadcasters to volunteer time for election programs. Provided for equitably proportioned, publicly funded radio and television for political party broadcasters.
Electoral Amendment Act 1990	Extended the registration period until the day before polling day and allowed for those with mental disabilities to receive assistance when registering. Altered the calculation of the Māori electoral population to include a proportion of unregistered individuals equivalent to the proportion of Māori who opt to enroll on the Māori roll. Implemented a question of Māori descent asked to all persons and mandated that only those identifying themselves as being of Māori descent be targeted in the Māori option. These clauses set up the machinery for a fluctuating number of Māori electorates. Altered the method of marking the ballot paper from crossing out names to an affirmative tick, allowed candidates to include their party affiliation on the ballot paper, raised the election expenses limit to \$10,000, permitted the release of age-specific roll data to researchers, updated the definition of "electoral expenses", and gave the House the ability, with a 75 percent majority, to cancel by-elections to be held within six months of a general election.
New Zealand Bill of Rights Act 1990	Declared electoral rights for all adult Aotearoa New Zealand citizens.
Term Poll Act 1990	Established a referendum on increasing the parliamentary term from three to four years, to be held alongside the 1990 general election.



Name	Description
Electoral Amendment Act 1991	Provided for the appointment of deputies for the Representation Commission when members are incapacitated, ended the designation of party representatives as unofficial members, removed the position of Director-General of the Post Office (which had ceased to exist), enabled all parties in Parliament and any that receive 5 percent of the votes cast at the previous general election to make submissions to the commission. Added the chief executive of the Ministry of Māori Affairs and two Māori party voting members to the commission when determining the boundaries of the Māori electorates.
Electoral Referendum Act 1991	Provided for the holding of an indicative referendum on changing the electoral system. Presented voters with two questions, the first on retaining or changing the electoral system, and the second on the preferred alternative electoral system. Four alternatives were offered: preferential voting, MMP, supplementary member, and single transferable vote.
Electoral Amendment Act 1992	Rectified a legal problem in the Representation Commission's work after it was found that the figures contained in the report of the Government Statistician to the commission used to calculate the Māori electoral population had not been calculated in accordance with the law. Defined how to calculate the number of Māori children and validated the past interpretation of the law.
Broadcasting Amendment Act 1993	Updated election broadcasting regulations to allow more flexibility. Allowed relationships between parties to be considered when allocating airtime and funding for election programs. Permitted parties to spend their own funds to purchase airtime up to a specified level. Required state-owned broadcasting services and certain private broadcasters to carry the opening and closing addresses of all parties.
Citizens Initiated Referenda Act 1993	Instituted procedures for the holding of indicative referenda.
Electoral Act 1993	Detailed the specifics of the MMP electoral system reform put to voters in a binding referendum (see Table 3.1). Altered the ballot paper, giving voters a party vote and an electorate vote. Allocated list seats on a proportional basis. Increased the number of MPs to 120, adding 50 list seats. Established an Electoral Commission to regulate parties and conduct public information campaigns. Implemented a party vote threshold of 5 percent. Permitted the number of Māori electorates to vary based on the results of the Māori electoral option. Enfranchised prisoners with sentences of less than three years.
Electoral Amendment Act 1993	Closed the electoral rolls on writ day instead of the day before polling day. Increased candidate deposits. Created an Electoral Commission to register political parties, conduct public information campaigns, and report on electoral matters to the House.
Electoral Referendum Act 1993	Provided for the holding of a binding referendum on the electoral system. Gave voters a choice between retaining FPTP and switching to the MMP system detailed in the Electoral Act 1993.
Referenda (Postal Voting) Act 2000	Enabled the holding of indicative referendums by postal vote. Established a voting period of three weeks, the compilation of a nationwide electoral roll, and a mechanism for following up with any voters that had not received voting papers in the initial mail-out.
Electoral (Integrity) Amendment Act 2001	Provided that the seat of any MP becomes vacant when they cease to be a member of the political party for which they were last elected. Empowered party leaders to expel members under this mechanism, effectively banning party hopping. Expired after two general elections.

Name	Description
Electoral Amendment Act 2002	Implemented continuous enrollment, allowed for the early counting of advance and hospital votes, and validated the party votes of electors who voted in the wrong district. Made procedural changes to donation disclosure, allowed for the bulk nomination of candidates, and updated procedures for the death or incapacitation of candidates. Provisions banning the publishing of opinion polls in the month before an election and imposing tougher defamation laws were removed in the committee stages.
Electoral (Vacancies) Amendment Act 2003	Ensured that no member of the current parliament loses their seat because they swear allegiance to or obtain the citizenship of another country, so long as they do not renounce their Aotearoa New Zealand citizenship. Applied only to the current parliament. Specifically enacted to prevent Harry Duynhoven's disqualification for applying for Dutch citizenship, preventing a by-election from taking place.
Broadcasting Amendment Act 2004	Repealed the requirement for the Electoral Commission to invite broadcasters to provide free or discounted time for electoral broadcasting. Restricted eligibility for allocations of broadcasting time and money to registered parties.
Electoral Amendment Act 2004	Clarified provisions relating to the disqualification of sitting MPs for swearing allegiance to a foreign power. Excluded cases where an MP is entitled to citizenship by birth or descent, renews an existing foreign passport, or automatically acquires citizenship as a result of marriage. Ensured that only the Speaker can exercise the party-hopping provisions. Made minor changes to the Electoral Commission's membership and quorum for election broadcasting matters. Implemented a regime to manage certain aspects of electoral signs.
Electoral Amendment Act 2005	Made a minor change to the submission of list candidates involving the consent of candidates to be included.
Appropriation (Parliamentary Expenditure Validation) Act 2006	Retroactively validated Labour's "pledge card" spending using parliamentary funds and established an interim meaning of funding entitlements for parliamentary purposes.
Appropriation (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2007	Extended the Appropriation (Parliamentary Expenditure Validation) Act 2006. Continued the validation of improper campaign expenditures and the interim meaning of funding entitlements for parliamentary purposes until 2009.
Broadcasting Amendment Act (No 2) 2007	Provided a common start date for candidates and parties for the broadcast of election programs. Simplified the process for making complaints about election broadcasts.
Electoral Amendment Act 2007	Increased penalties for corrupt and illegal practices, created a new power to investigate suspected illegal practices, removed the requirement for political representatives to be appointed to the Electoral Commission for the purposes of determining the broadcasting allocation, and made several changes consequential to the enactment of the Electoral Finance Act 2007.
Electoral Finance Act 2007	A wide-sweeping act that regulated electioneering and electoral finance and placed extensive limits on election campaigning. Amended the rules for political donations, election expenses, and third-party advertising. Implemented a variety of new compliance and enforcement provisions.
Electoral Amendment Act 2009	Repealed the Electoral Finance Act 2007. Retained the act's donation limits to political parties and candidates and provisions relating to the compliance and enforcement of electoral finance offences.

Name	Description
Parliamentary Service (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2009	Extended the interim meaning of funding entitlements for parliamentary purposes established by the Appropriation (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2007 through the end of 2010, with minor changes.
Electoral (Administration) Amendment Act 2010	Amalgamated the Chief Electoral Office and the Electoral Commission. Established the Electoral Commission as an independent Crown entity. First of a two-stage process to amalgamate electoral governance institutions into one body.
Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010	Disqualified all prisoners from voting. Previously, only those serving a sentence of three years or more were disqualified.
Electoral (Finance Reform and Advance Voting) Amendment Act 2010	Established various regulations and restrictions on election advertisement, election spending, and campaign fundraising. Increased constraints on MPs and their political parties for using parliamentary funding for electioneering purposes. Instituted no-excuse advance voting.
Electoral Amendment Act 2010	Simplified the process for updating the electoral roll in the case of an elector's marriage or civil union.
Electoral Referendum Act 2010	Initiated a two-question indicative referendum on the MMP voting system. The first question asked voters whether they wished to retain MMP, and the second inquired about voters' preferred alternative. Four alternatives were offered: FPTP, preferential voting, single transferable vote, and supplementary member. If MMP was retained, set in motion a review of MMP by the Electoral Commission.
Parliamentary Service Amendment Act 2010	Prevented parliamentary funding entitlements from being used for election-related purposes. Defined what advertisements are considered "election advertisements". Prevented funds from being used for any persuasive election publicity during the regulated period or to influence referenda.
Electoral (Administration) Amendment Act 2011	Transferred statutory responsibility for enrollment functions from the Chief Registrar of Electors to the Electoral Commission. Second of a two-stage process amalgamating Aotearoa New Zealand's electoral governance institutions. Allowed for the online updating of registration details. Improved the sharing of immigration status information for the purposes of enrollment eligibility.
Electoral Amendment Act 2013	Made minor changes to how political party deposits can be paid.
Electoral Amendment Act 2014	Provided for full online enrollment and online exercise of the Māori electoral option using RealMe. Amended regulations for party logos, disclosure rules, campaign expenditures, and the handling of loans to parties and candidates. Clarified the procedure for the reallocation of list seats in the event of a successful election petition. Removed a requirement for the Minister of Justice to sign writs for elections and referenda.
Broadcasting (Election Programmes and Election Advertising) Amendment Act 2017	Modernized election broadcasting regulations to enable more flexibility in party communication. Removed the requirement that parties make opening and closing addresses and for Television NZ and RNZ to provide free time for these addresses. Allowed political parties to use their funding allocation on internet advertising. Required parties to file a return of their allocation spending.

<b>Name</b>	<b>Description</b>
Electoral Amendment Act 2017	Simplified electoral forms by depresscribing their contents. Allowed the counting of advance votes to begin earlier. Prohibited electioneering inside and close to advance voting places. Removed references to the historical separation of election administration services between agencies. Required the publishing of all objections to proposed electoral boundaries online.
Electoral (Integrity) Amendment Act 2018	Almost identical to the Electoral (Integrity) Amendment Act 2001. Provided that the seat of any MP becomes vacant when they cease to be a member of the political party for which they were last elected. Empowered party leaders to expel members under this mechanism, effectively banning party hopping.

## APPENDIX B: ELECTION BILL DESCRIPTIONS

\*Indicates a government bill. All other bills are members' bills.

Name	Description
Electoral Amendment Bill 1972	Sought to lower the voting age to 18.
Elections and Polls Bill 1978	Proposed leaving enrollment open through polling day and expanding provisions for election scrutineers.
Electoral Amendment Bill 1978	Sought to alter the Representation Commission to include representatives from parties receiving at least 5 percent of the vote.
Electoral Amendment Bill (No 2) 1978	Sought to instruct the Electorate Officer to take all reasonable and necessary steps to ensure that all those eligible to vote are enrolled. Sought to validate the eligibility of electors who were formerly enrolled but, as the result of an electoral boundary change, became eligible to be enrolled in another district.
Voting Rights Protection Bill 1978	Proposed removing the registration requirement for voting eligibility.
Electoral Amendment Bill 1980	Proposed leaving enrollment open through polling day and enacting an immunity clause against prosecution for failing to register.
Second Ballot Bill 1980	Proposed the holding of a second ballot between the top two candidates in electorates where no candidate wins a majority on the first ballot.
Popular Initiatives Bill 1983	Sought to implement a binding referendum system for initiatives that receive at least 100,000 signatures.
Popular Initiatives Bill 1984	Sought to implement a binding referendum system for initiatives that receive at least 100,000 signatures.
Electoral (Representation Commission) Amendment Bill 1986	Sought to allow the participation of all bona fide political parties in the process of setting electoral boundaries.
Political Advertising Bill 1986	Proposed prohibiting political advertising by ministers or MPs using public funds.
Public Finance (Restraint of Political Advertising) Bill 1988	Sought to require the itemization of all money spent on advertising government policies and political parties or members.
Electoral Expenses Bill 1989	Proposed abrogating the limit on total election expenses for the 1987 general election to validate the campaign expenditures of Reg Boorman, who had been removed from parliament as a result of a violation of the statute.
Mixed Member Proportional Representation Poll Bill 1990	Proposed a binding referendum on MMP at the 1990 general election.
Proportional Representation Indicative Referendum Bill 1990	Proposed the holding of an indicative referendum on whether proportional representation should be adopted.
Mixed Member Proportional Referendum Bill 1992	Proposed a binding referendum on MMP in 1993 prior to the general election, and for the Representation Commission to prepare new district boundaries in case MMP was approved.

Name	Description
Electoral (Party Registration) Bill 1997	Sought to prevent party-hopping by mandating a vacancy when parliamentary members resign their party membership.
Electoral Amendment Bill 1998*	Sought minor changes to the regulation of election expenses and donations, party list submissions, and procedures for declaring candidates incapacitated. Inserted into the Electoral Amendment Act 2002.
Broadcasting (Election Broadcasting) Amendment Bill 1999*	Sought to remove the requirement for the Electoral Commission to invite broadcasters to make offers of free or discounted broadcasting time for election programs and to remove the allocation of broadcasting funds for by-elections. Elements of this bill were incorporated into the Broadcasting Amendment Act 2004.
Electoral (Public Opinion Polls) Amendment Bill 2000	Proposed a month-long ban on the publication of opinion polls prior to a general or by-election.
Electoral (Racially-Based Representation) Referendum Bill 2002	Sought to hold a referendum on elimination of the Māori electorates. Required the results of the referendum to be referred to parliament if approved with two-thirds majority support.
Electoral Options Referenda Bill 2002	Proposed the holding of a two-step referenda process on electoral system reform: the first an indicative referendum on whether the electoral system should be altered, and the second a binding referendum on what that alternative system should be.
Electoral (Integrity) Amendment Bill 2005*	Almost identical to the Electoral (Integrity) Amendment Act 2001. Provided that the seat of any MP becomes vacant when they cease to be a member of the political party for which they were last elected. Empowered party leaders to expel members under this mechanism if they have the support of at least two-thirds of their parliamentary party members.
Electoral (Reduction in Number of Members of Parliament) Amendment Bill 2006	Proposed a reduction of the number of MPs from 120 to 100 by reducing the number of list members to 20.
Electoral (Adjustment of Threshold) Amendment Bill 2013	Sought to implement the recommendation of the Electoral Commission's review of MMP to reduce the seat allocation threshold from 5 percent to 4 percent and remove the one-seat electorate rule. Proposed commencing another Electoral Commission review after three general elections.
Electoral (Registration by Special Vote) Amendment Bill 2017	Sought to allow unregistered voters to register by completing a special vote to ensure that their votes are counted.
Electoral (Entrenchment of Māori Seats) Amendment Bill 2018	Proposed entrenching the Māori electorate provisions.
Electoral Access Fund Bill 2018	Proposes the creation of a fund to be used by disabled candidates to cover disability-related costs of standing in a general or by-election (currently pending).

## APPENDIX C: CLASSIFICATION OF ELECTION LAW TYPE

A nine-part typology of election law type is used, dividing reforms into electoral system, registration administration, voting administration, franchise, boundaries, finance and electioneering, governance, member qualifications, and ballot initiatives.

The electoral system determines the translation of votes into seats. This category includes both “major” electoral system reform, consisting of shifts from one category of electoral system to another (à la Renwick 2010), and “minor” electoral system reform, which involves changes to single components of the voting system.<sup>116</sup> Legislation in the latter category might alter the number of general or Māori electorates, the electoral quota, the formula used to allocate seats, and additional rules that affect the allocation of seats from votes cast. It also includes changes to the term length of parliament and the conditions under which by-elections are triggered.

Election administration is defined by James as “the administrative procedure used for casting votes and compiling the electoral register” (2012: 3). Considering the significant breadth of this categorization, I split election administration into its two constituent components: laws dealing with registration and laws dealing with voting. Registration administration includes when and how citizens can register, who takes responsibility for registration (the government or the individual), how frequently the roll is updated and what technology is used in the process, whether registration is required, and whether identification is needed to do so. Voting administration includes rules concerning how the physical task of voting is conducted, ballot design, the number and location of polling places, poll worker procedures, voter identification, the voting date, polling hours, polling place scrutinizers, early voting, postal and absentee voting, vote compulsion, voter information cards, vote-counting, and election security.

Franchise laws, also commonly known as suffrage rules, concern who is legally eligible to vote. Even in an era of supposedly universal voting rights, restrictions still exist in established democracies on the basis of age, mental capacity, citizenship, residence, and criminal status. This category also includes nomination rules (the requirements for individuals or parties to stand for election to parliament), ballot access (the rules for getting on the ballot), and general electoral rights.

Electoral boundaries, also known as redistricting or redistribution, refers to the process of redrawing electorate boundaries for parliament. To maintain equal district sizes, the boundaries of electorates must be redrawn on a regular basis to accommodate population fluctuations. In Aotearoa New Zealand, this happens every five years following a census and is undertaken by the Representation Commission. The category

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<sup>116</sup> These “categories” of electoral systems according to Renwick include single-member plurality (first-past-the-post), block vote, alternative vote, two-round system, list proportional representation, single transferable vote, mixed-member proportional, mixed-member majoritarian (parallel systems), single non-transferable vote, and cumulative vote. Renwick’s classification is, in turn, based largely on Reynolds et al. 2005.

consists of changes to the redistricting process, for instance to the criteria for deciding new boundaries, the district tolerance for variations in population size, the membership of the Representation Commission, and the location of electorate districts. It does not refer to routine redistricting decisions, as these are non-legislative changes delegated to the Representation Commission.

Campaign finance and electioneering legislation concerns the funding and operation of election campaigns. Finance legislation can alter the source of campaign funding (i.e., private or public), who is legally allowed to donate to campaigns, how much they can donate, and what information they must disclose to do so. Finance laws determine spending limits on parties and candidates, regulations on political advertising and election-related parliamentary service expenditures, and broadcasting allocations for parties. This category also encompasses the what, where, and when of campaigning for parties and individual candidates, illegal and corrupt electioneering practices, and the penalties for these infractions.

Electoral governance refers to the regulation of election institutions, or the person(s) or body who oversees the running and regulating of elections. Laws in this category concern which institutions run national elections, their membership and statutory independence, and their competencies. Governance bodies might be granted the ability to administer elections, adjudicate election complaints, advise electoral participants and the public on compliance with election laws, educate the public on upcoming elections, and recommend legislative reforms.

Member qualifications concern what actions can be taken by MPs once they become representatives. Laws in this category affect the formal independence of elected officials while in office. If candidates are elected with certain disqualifying features but are seated, are they allowed to continue as members? Can list MPs change their party affiliation when in office, or does this disqualify them from holding office? The latter question, known as party hopping, has proven to be one of the most divisive issues in election law under MMP.

Ballot initiatives, also known as referendums or citizen initiatives, are a form of direct democracy where electors vote on a policy question rather than on an individual or party to represent them. This category involves the machinery governing the ballot initiative process rather than the initiatives themselves. Legislation in this category determines whether there is a ballot initiative process, the administrative aspects of that process, the requirements for initiating a referendum, and the legal effect of the referendum's outcome (i.e., whether the result is binding or merely indicative). Bills that initiate a referendum on aspects of election law are categorized into the subject matter they concern rather than as ballot initiatives. Bills that initiate one-off ballot initiatives or referendums unrelated to election law are not included.



### APPENDIX D: LIST OF INTERVIEWS

Reference Letter	Date	Location	Name	Affiliation (If Applicable)
A	April 12, 2019	Phone	James Christmas	
B	April 19, 2019	Phone	Lorraine Minnite	Rutgers University-Camden
C	April 29, 2019	Wellington	Matthew Gibbons	Victoria University of Wellington
D	April 29, 2019	Wellington	Jack Vowles	Victoria University of Wellington
E	April 30, 2019	Wellington	Neill Atkinson	Chief Historian/Manager, Heritage Content at the Ministry for Culture and Heritage
F	May 1, 2019	Wellington	Anonymous	Senior Member, Electoral Commission
G	May 2, 2019	Wellington	Nigel Roberts	Victoria University of Wellington
H	May 2, 2019	Wellington	Elizabeth McLeay	Victoria University of Wellington
I	May 2, 2019	Wellington	Ryan Malone	
J	June 19, 2019	Wellington	Robert Peden	Former Chief Electoral Officer
K	June 19, 2019	Wellington	Rob Marsh and Allison McPherson	Electoral Commission
L	June 19, 2019	Wellington	Rob Salmond	Director, Labour Leader's Office
M	June 19, 2019	Wellington	Sir Geoffrey Palmer	Former Prime Minister; Victoria University of Wellington
N	June 19, 2019	Wellington	Anonymous	Former Minister of Justice
O	June 20, 2019	Wellington	Bryce Edwards	Victoria University of Wellington
P	June 20, 2019	Wellington	Anonymous	Senior Member, Electoral Commission; Former Secretary, Representation Commission
Q	June 20, 2019	Wellington	Robert Peden	Former Chief Electoral Officer
R	July 7, 2019	Phone	Anonymous	Ministry of Justice
S	July 29, 2019	Christchurch	Therese Arseneau	University of Canterbury
T	August 12, 2019	Auckland	Lara Greaves	University of Auckland
U	August 12, 2019	Auckland	Lewis Holden	Research Officer, Royal Commission on the Electoral System
V	August 12, 2019	Auckland	Sir Hugh Williams	Former Chairperson, Electoral Commission
W	August 12, 2019	Auckland	Anonymous	Formerly Ministry of Justice
X	August 12, 2019	Auckland	Michael Bassett	Former Minister, Labour MP

<b>Reference Letter</b>	<b>Date</b>	<b>Location</b>	<b>Name</b>	<b>Affiliation (If Applicable)</b>
Y	August 13, 2019	Auckland	Barry Gustafson	University of Auckland
Z	August 13, 2019	Auckland	Peter Aimer	University of Auckland
AA	August 13, 2019	Auckland	Celestyna Galikci	Public Policy Institute – University of Auckland
AB	August 20, 2019	Phone	Jeanette Fitzsimons	Former Green Party co-leader, MP
AC	September 8, 2019	Wellington	Robert Peden	Former Chief Electoral Officer
AD	September 9, 2019	Wellington	David McGee	Former Clerk of the House
AE	September 10, 2019	Wellington	Craig Thompson	Chair, Representation Commission; Counsel, Royal Commission on the Electoral System
AF	September 10, 2019	Wellington	Sir Kenneth Keith	Victoria University of Wellington; Member, Royal Commission on the Electoral System
AG	September 10, 2019	Wellington	Nick Smith	National MP, Spokesperson for Electoral Reform

## APPENDIX E: PROVISIONS IN ELECTION ENACTMENTS THAT AFFECT ELECTORAL PARTICIPATION

Note: Provisions in red were included with the legislation as introduced but removed prior to passage. They were not considered in determining the overall participatory effect of each act.

Legislation	Type	Key provisions	Direction	Magnitude
Electoral Amendment Act 1971	Voting administration	Allows group polling places for two or more specified districts.	mobilizes	marginal
	Voting administration	Harmonizes Chatham Islands voting procedures with the rest of the country, extending poll closing time from 4 pm to 7 pm.	mobilizes	marginal
	Franchise	Disqualifies accused persons who are unfit to plead or to be tried in criminal proceedings, persons acquitted on account of insanity, persons found on conviction to be mentally disordered, and convicted persons transferred to mental hospitals.	demobilizes	marginal
Electoral Amendment Act 1974	Franchise	Lowers voting age from 20 to 18.	mobilizes	minor
Electoral Amendment Act 1975	Electoral system (minor)	Māori electoral districts no longer fixed at four but vary based on size of the Māori electoral population.	mobilizes	minor
	Registration administration	Māori defined by self-identification rather than blood quotient, can choose whether to register on the Māori roll or general roll, and can change this decision at each census.	mobilizes	minor
	Registration administration	A person is qualified to vote if they are qualified to be registered, are not registered, but believe on reasonable grounds that they are or should have been registered (allows election day registration).	mobilizes	minor
	Registration administration	The responsibility for enrolling electors and compiling the electoral rolls is transferred to the Post Office.	mobilizes	marginal
	Registration administration	Applications for registration do not need to be witnessed to be valid.	mobilizes	marginal
	Registration administration	Increases the maximum fine for failing to register as a voter from \$4 to \$20, and the maximum fine for failing to deliver an application for registration from \$100 to \$500.	mobilizes	marginal

Legislation	Type	Key provisions	Direction	Magnitude
Electoral Amendment Act 1975	Voting administration	A list of all candidates with their party designations and a list of all polling places are mailed to each residential letter box ten days before polling day.	mobilizes	marginal
	Voting administration	Ballot papers are to show the party designations of candidates.	mobilizes	marginal
	Voting administration	Allows blind voters to take a nominated person into the voting booth with them to assist in the ballot's marking, removes the requirement for the Deputy Returning Officer to witness the vote, and removes the requirement for the person assisting a blind, disabled, or illiterate person to sign the back of the ballot paper as a witness.	mobilizes	marginal
	Voting administration	A ballot paper is not to be disallowed as informal by reason of some error or omission on the part of an official.	mobilizes	marginal
	Voting administration	Increases the deposit required for running as a constituency candidate from \$20 to \$100.	demobilizes	marginal
	Franchise	Expands the franchise to non-citizens.	mobilizes	minor
	Franchise	Expands the franchise to prisoners.	mobilizes	marginal
	Franchise	Expands the franchise to mental health patients.	mobilizes	marginal
	Franchise	Reduces the period of residence in an electorate required for enrollment from three months to one.	mobilizes	marginal
	Franchise	Reduces the residential qualification for enrollment from one year to three months.	mobilizes	marginal
Electoral Amendment Act 1976	Electoral system (minor)	Māori electoral districts are again fixed at four and are no longer based on the size of the Māori electoral population.	demobilizes	minor
Electoral Amendment Act 1977	Registration administration	Removes the provision that a person is qualified to vote if they are qualified to be registered, are not registered, but believe on reasonable grounds that they are or should have been registered (removes election day registration).	demobilizes	minor
	Voting administration	Removes the requirement that a list of all candidates with their party designations, and a list of all polling places are mailed to each residential letter box ten days before polling day.	demobilizes	marginal
	Franchise	Voting rights are retained for those abroad for more than three continuous years who are children or spouse of a public servant.	mobilizes	marginal

<b>Legislation</b>	<b>Type</b>	<b>Key provisions</b>	<b>Direction</b>	<b>Magnitude</b>
Electoral Amendment Act 1977	Franchise	Increases the period of residence in an electorate required for enrollment from one month to three.	demobilizes	marginal
	Franchise	Disqualifies prisoners from voting.	demobilizes	marginal
Electoral Amendment Act 1980	Registration administration	Allows persons to apply for registration with any Registrar of Electors, not just the Registrar for the district they are qualified for.	mobilizes	marginal
	Registration administration	Simplifies the registration procedures for marriages of women.	mobilizes	marginal
	Registration administration	Delays the Māori electoral option by a year. When the census and election take place in the same year, postpones the Māori option until after the election takes place.	demobilizes	marginal
	Voting administration	Removes party designations from the ballot paper.	demobilizes	marginal
	Franchise	Disenfranchises citizens who are outside Aotearoa New Zealand and have not been to the country within the last three years.	demobilizes	minor
	Franchise	Disenfranchises permanent residents who are outside Aotearoa New Zealand and have not been to the country within the last 12 months.	demobilizes	marginal
	Franchise	Restricts the franchise from those "ordinarily resident in New Zealand" to citizens and permanent residents only.	demobilizes	marginal
	Franchise	Disenfranchises persons detained in hospitals under the Mental Health Act 1969 and who are subject to a reception order.	demobilizes	marginal
	Finance	Expands restrictions on polling day advertising to include the use of party names, emblems, slogans, and logos, except for ribbons, streamers, or rosettes in the party's colors.	demobilizes	marginal
	Boundaries	Persons in psychiatric hospitals and all inmates of penal institutions (excepting persons detained in police lock-ups pursuant to a conviction) are excluded from calculation of the 'European population'.	demobilizes	marginal

Legislation	Type	Key provisions	Direction	Magnitude
Electoral Amendment Act 1981	Registration administration	Requires a person to apply for registration within one month if they are qualified to register but are removed from a roll during a roll revision exercise. Increases the fines for failing to enroll from \$20 to \$50, and for subsequent offenses from \$50 to \$100.	mobilizes	marginal
	Registration administration	Allows applications by physically disabled persons to be signed on their behalf by one who holds a power of attorney.	mobilizes	marginal
	Registration administration	Allows the Registrar to accept applications for registration received shortly before the close of writ. Grants them six days after the close of the writ to check the applications for completeness.	mobilizes	marginal
	Registration administration	Reduces period of Māori electoral option from three months to two.	demobilizes	marginal
	Registration administration	Allows the Registrar to reject applications for registration that are not signed or fail to include the applicant's age or date of birth.	demobilizes	marginal
	Registration administration	Does not allow changes between the Māori and general roll outside Māori electoral options.	demobilizes	marginal
	Voting administration	At least one polling place within the limits of each district shall provide suitable access for persons with physical disabilities.	mobilizes	marginal
	Voting administration	Electors enrolled in a Māori electorate can cast a special vote at any general polling place, rather than only general polling places more than two miles from a Māori polling place.	mobilizes	marginal
	Voting administration	Blind, disabled, and illiterate voters can be given greater assistance in the polling place.	mobilizes	marginal
	Finance	The accessibility of polling places is to be indicated in advertisements for polling places.	mobilizes	marginal
	Finance	Advertisements for candidates and polling places are to include the party affiliations of candidates.	mobilizes	marginal

Legislation	Type	Key provisions	Direction	Magnitude
Electoral Amendment Act 1983	Registration administration	Where a qualified elector is registered in more than one district or on both the Māori and general rolls, their registration is not invalid only by reason of this fact.	mobilizes	marginal
	Registration administration	Electors no longer need to fill in a normal application for registration when they fill in a roll revision card showing they have changed electorates more than three months earlier.	mobilizes	marginal
	Registration administration	The Registrar must notify applicants of registration received shortly before the issues of the writ if the application is ineligible. The applicant may be restored if deletion is found to be in error.	mobilizes	marginal
	Registration administration	After a roll revision period, every elector who has completed a roll revision form will receive notice of the status of their registration.	mobilizes	marginal
	Voting administration	Where an elector has been registered by error and has exercised their vote in good faith and without notice of the error, their vote shall not be disallowed by reason only of that error.	mobilizes	marginal
	Franchise	Allows electors who attain three months' residence in a new electorate during the week before an election to qualify for that election.	mobilizes	marginal
	Franchise	Ensures that a person who has never resided continuously in any one electoral district for at least three continuous months but is otherwise eligible to vote can vote in the electoral district in which they currently or last resided. Previously this provision was limited to certain specified occupations.	mobilizes	marginal
	Franchise	Allows those who turn 18 during election week to vote.	mobilizes	marginal
	Franchise	Persons must be qualified to be registered as an elector for the district at the time they vote, rather than simply being lawfully on the electoral roll and qualified to vote. In other words, they must be qualified to vote at the time they vote, and not at some earlier time.	demobilizes	marginal

<b>Legislation</b>	<b>Type</b>	<b>Key provisions</b>	<b>Direction</b>	<b>Magnitude</b>
Electoral Amendment Act (No 2) 1985	Franchise	Reduces the period of residence in an electorate required for enrollment from three months to one.	mobilizes	marginal
	Finance	Candidates and political parties may purchase the dormant file of registrations.	mobilizes	marginal
Electoral Amendment Act 1985	Registration administration	Extends the time within which late applications for registration can be accepted, from received by 6 pm on writ day to postmarked by writ day.	mobilizes	marginal
	Registration administration	Holds the roll revision concurrently with the Māori option.	mobilizes	marginal
	Registration administration	Makes clear that the Registrar can place the name of a person omitted from the roll by error on the roll at any time.	mobilizes	marginal
	Voting administration	Electors have nine days after polling day, rather than seven, to satisfy the Registrar of their eligibility to vote.	mobilizes	marginal
Electoral Amendment Act (No 2) 1987	Electoral system (minor)	No writ shall be issued for a by-election before the next general election. Stopped a by-election from being held to fill a vacancy.	demobilizes	major
Electoral Amendment Act 1989	Registration administration	Allows voters to register at the place where they choose to make their home, rather than their "usual" place of residence. In practice, allows students to register at their familial home or their school residence.	mobilizes	marginal
Electoral Amendment Act 1990	Registration administration	Closes the registration roll at 4 pm the day before polling day rather than on writ day. Allows those who register after writ day but before 4 pm the day before polling day to vote by special vote. Previously, only those who became qualified to vote within this period could enroll.	mobilizes	Minor
	Registration administration	Persons with mental disabilities can receive assistance in registering.	mobilizes	marginal
	Registration administration	Those who are 17 years and 9 months old can lodge an application for registration, rather than waiting to turn 18 years old.	mobilizes	marginal
	Registration administration	Increases the maximum fine for failing to enroll to \$100 on a first offence and \$200 on subsequent convictions, and for failing to deliver an application to \$2000.	mobilizes	marginal



<b>Legislation</b>	<b>Type</b>	<b>Key provisions</b>	<b>Direction</b>	<b>Magnitude</b>
Electoral Amendment Act 1990	Registration administration	In future Māori options, only those persons who have previously identified themselves as being of Māori descent will be sent Māori option cards.	demobilizes	marginal
	Registration administration	Persons who have been sentenced to a full-time custodial sentence will now have their registrations removed.	demobilizes	marginal
	Voting administration	Method of vote indication changed from crossing out all candidates not wanted to a positive tick for the desired choice.	mobilizes	marginal
	Voting administration	Candidates may include the name of their political party or the word "independent" on the ballot paper.	mobilizes	marginal
	Voting administration	Increases the deposit required for running as a constituency candidate from \$100 to \$200.	demobilizes	marginal
	Boundaries	The definition of the Māori population is changed to include unregistered people of Māori descent.	mobilizes	marginal
Citizens Initiated Referenda Act 1993	Ballot initiative	Allows non-binding indicative referenda.	mobilizes	N/A
Electoral Referendum Act 1993	Electoral system (major)	Binding referendum on the electoral system, providing the opportunity to switch to a mixed-member proportional electoral system.	mobilizes	minor
Electoral Amendment Act 1993	Electoral system (minor)	Requires registered parties to follow democratic procedures in candidate selection.	mobilizes	marginal
	Registration administration	Those who are 17 years, rather than 17 years and 9 months, can lodge an application for registration.	mobilizes	marginal
	Registration administration	Closes the registration roll on writ day (postmarked) instead of at 4 pm the day before polling day. The Registrar will have 6 days after writ day to determine whether last-minute registrations are valid. Allows those who become qualified to vote between writ day and the day before polling day to register and cast a special vote. These electors have nine days after polling day to prove their eligibility.	demobilizes	minor
	Voting administration	Those who have reading disabilities or are illiterate may receive assistance with the marking of ballot papers (not just those who are blind).	mobilizes	marginal

<b>Legislation</b>	<b>Type</b>	<b>Key provisions</b>	<b>Direction</b>	<b>Magnitude</b>
Electoral Amendment Act 1993	Voting administration	Establishes an Electoral Commission responsible for promoting public awareness of electoral matters by conducting education and information programs.	mobilizes	marginal
	Voting administration	Increases the required number of accessible polling places in each district from one to six.	mobilizes	marginal
	Voting administration	Increases the deposit required for running as a constituency candidate from \$200 to \$300.	demobilizes	marginal
Electoral Act 1993	Electoral System (major)	Switches Aotearoa New Zealand's electoral system from FPTP to MMP. Increases the number of MPs to 120. Sixty will be elected through party lists and 60 through single member constituencies. Includes a 5 percent party threshold and coattails provisions.	mobilizes	minor
	Electoral System (minor)	Permits the number of Māori electorates to fluctuate based on the proportion between the Māori electoral population and the general electoral population. When creating Māori electoral districts, consideration will be given to communities of interest among Māori tribes. Provides for Māori to be able to exercise a fresh electoral option if the MMP option is carried at the referendum.	mobilizes	minor
	Electoral system (minor)	Requires registered parties to follow democratic procedures in candidate selection.	mobilizes	marginal
	Registration administration	Closes the registration roll on writ day (postmarked) instead of at 4 pm the day before polling day. The Registrar will have 6 days after writ day to determine whether last-minute registrations are valid. Allows those who become qualified to vote between writ day and the day before polling day to register and cast a special vote. These electors have nine days after polling day to prove their eligibility.	demobilizes	minor
	Voting administration	Those who have reading disabilities or are illiterate may receive assistance with the marking of ballot papers (not just those who are blind).	mobilizes	marginal
	Voting administration	Increases the required number of accessible polling places in each district from one to six.	mobilizes	marginal

Legislation	Type	Key provisions	Direction	Magnitude
Electoral Act 1993	Voting administration	Increases the deposit required for running as a constituency candidate from \$200 to \$300. Changes the required votes needed to return the deposit from one-fourth the constituency candidate winner to 5 percent of the total constituency electorate votes.	demobilizes	marginal
	Franchise	Enfranchised prisoners with sentences of less than three years.	mobilizes	marginal
	Governance	Establishes an Electoral Commission responsible for promoting public awareness of electoral matters by conducting education and information programs.	mobilizes	marginal
Referenda (Postal Voting) Act 2000	Ballot initiative	Enables the holding of indicative referendums by postal vote. Establishes a voting period of three weeks.	mobilizes	N/A
	Ballot initiative	Establishes a follow-up mechanism for any voters that have not received voting papers in the initial mail-out. Application must be made before noon on the fourth to last day of the voting period.	mobilizes	N/A
	Ballot initiative	All papers received before 7 pm on the last day of voting are valid. Voting papers may be returned as late as four days after the last day of voting, so long as they are postmarked within Aotearoa New Zealand no later than the last day of the voting period, or before the last day of the voting period if postmarked outside the country.	mobilizes	N/A
Electoral Amendment Act 2002	Registration administration	Provides for a system of continuous enrollment. Previously, electors had to return an enrollment form periodically to remain registered. Electors now remain on the roll even if they do not return the form, and only must return it if their details have changed. If the inquiry card is returned undeliverable, the voter will be placed on the dormant roll.	mobilizes	minor
	Registration administration	If a registration inquiry form or Māori option form cannot be delivered for some reason, the Registrar must make enquiries as to the whereabouts of the person before moving their name to the dormant roll.	mobilizes	marginal
	Registration administration	Māori on the dormant roll will now be counted in the Māori electoral population.	mobilizes	marginal

<b>Legislation</b>	<b>Type</b>	<b>Key provisions</b>	<b>Direction</b>	<b>Magnitude</b>
Electoral Amendment Act 2002	Registration administration	Persons who are disabled, mentally incapable, or outside Aotearoa New Zealand can allow designated individuals to sign the registration application form and the Māori option form on their behalf.	mobilizes	marginal
	Registration administration	Provides for information matching between several government departments to identify persons who are qualified to register, encourage these persons to register, and keep the rolls up to date.	mobilizes	marginal
	Voting administration	Counts the party votes of registered electors who vote in the wrong electorate.	mobilizes	minor
	Voting administration	Māori voting facilities are to be in every polling place rather than in separate tangata whenua locations. This means that Māori only must fill in a special vote if they are outside their electorate, not if they are outside their designated polling place.	mobilizes	marginal
	Voting administration	Deprescribed the method of receiving and returning ballots from Aotearoa New Zealand overseas dependencies, simplifying overseas voting procedures.	mobilizes	marginal
	Voting administration	Implements a \$1000 deposit requirement for parties submitting party lists of candidates, returned if the party obtains at least 0.5 percent of the total party vote or wins a constituency seat.	demobilizes	marginal
	Franchise	Discontinues the allowance that persons who are not Aotearoa New Zealand citizens can stand as candidates if they were enrolled on 22 August 1975.	demobilizes	marginal
Electoral (Vacancies) Amendment Act 2003	Member qualifications	Members' seats are not vacated if they involuntarily acquire foreign citizenship through marriage or maintain dual citizenship. The seats of members elected to the 47th Parliament are not vacated by acquiring dual citizenship. Effectively prevents a by-election from taking place.	demobilizes	major
Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010	Franchise	Disqualifies all prisoners from voting. Previously, only those serving sentences of three years or more were disqualified.	demobilizes	marginal

Legislation	Type	Key provisions	Direction	Magnitude
Electoral Amendment Act 2010	Registration administration	Simplifies the process for updating the electoral roll where changes to an elector's details are required as a result of a marriage or civil union.	mobilizes	marginal
Electoral (Finance Reform and Advance Voting) Amendment Act 2010	Voting administration	Implements no-excuse advance voting. Previously, voters had to assert certain special grounds to vote before polling day and complete a written declaration.	mobilizes	minor
Electoral (Administration) Amendment Act 2011	Registration administration	Introduces online enrollment of electors using RealMe, giving voters the option to re-enroll and update enrollment details online without having to complete and sign a written form.	mobilizes	marginal
	Registration administration	Electors' immigration status checked at the same time as their enrollment applications are processed, rather than after they are enrolled. Allows information for new and renewed Aotearoa New Zealand passports to be provided to the registrar of electors for enrollment purposes and provides a notice of procedure for applicants that fail the pre-enrollment immigration status check.	mobilizes	marginal
Electoral Amendment Act 2014	Registration administration	Allows full online enrollment, but electors must first register a verified identify with RealMe.	mobilizes	marginal
	Registration administration	Māori can exercise the Māori electoral option electronically.	mobilizes	marginal
	Registration administration	Registered electors who give late notice to the Registrar of Electors of a change in address are not liable to be prosecuted for an earlier failure to do so.	mobilizes	marginal
	Voting administration	An elector who applies to vote must verbally give or confirm their name and any other particulars necessary to find their name or may do so with a gesture or by means of assistance. Might remove the ability of certain electors to cast an independent vote.	demobilizes	marginal
	Voting administration	EasyVote cards can be used as a record that an ordinary vote has been cast and in lieu of a declaration form for special voters, reducing the number of special votes issued.	mobilizes	marginal

Legislation	Type	Key provisions	Direction	Magnitude
Electoral Amendment Act 2014	Finance	Reduces the allowed exemption to the prohibition of electioneering on election day from the wearing of ribbons, streamers, rosettes, and lapel badges by any persons who is not an electoral official to only the wearing of rosettes by scrutineers inside polling places.	demobilizes	marginal
Electoral Amendment Act 2017	Registration administration	Same-day enrollment implemented, so voters can simultaneously enroll and vote at advance voting places.	mobilizes	minor
	Registration administration, voting administration	Deprescribes enrollment and voting information forms such as nomination and polling place information, allowing the Electoral Commission to make them easier to use.	mobilizes	marginal
	Registration administration, voting administration	Enables the Electoral Commission to provide information to voters by email.	mobilizes	marginal
	Registration administration	Implements real-time enrollment information so that voters can accurately tell their enrollment status.	mobilizes	marginal
	Registration administration	Allows electors to inform the Electoral Commission of a residence change a month in advance. Once the one-month residency requirement is met, the enrollment change will be made automatically.	mobilizes	marginal

## APPENDIX F: PROVISIONS IN PROPOSED BILLS THAT AFFECT ELECTORAL PARTICIPATION

Note: Provisions in red were included with the legislation as introduced but removed prior to passage. They were not considered in determining the overall participatory effect of each act.

\*Indicates a government bill. All other bills are members' bills.

Legislation	Type	Key provisions	Direction	Magnitude
Electoral Amendment Bill 1972	Franchise	Lowers the voting age from 20 to 18.	mobilizes	minor
Elections and Polls Bill 1978	Registration administration	Repeals provisions for closure of the rolls, extending registration from writ day to election day.	mobilizes	major
	Registration administration	Voters registered for wrong electoral district may transfer their registration to the correct electoral district before the close of polls.	mobilizes	minor
	Registration administration	Grants immunity from prosecution for past non-enrollment for persons who become enrolled.	mobilizes	marginal
	Registration administration	Allows Māori enrolled in a general or Māori district contrary to their intention to transfer their registration to the electoral district of their choice.	mobilizes	marginal
Electoral Amendment Bill (No 2) 1978	Registration administration	Places the responsibility for enrollment on the government. Instructs the Electorate Office to take "reasonable and necessary" steps to ensure that all those eligible to vote are enrolled.	mobilizes	major
	Registration administration	Ensures that electors affected by electoral boundary changes are qualified to vote.	mobilizes	marginal
Voting Rights Protection Bill 1978	Registration administration	Removes the requirement for persons to be enrolled to cast a valid vote. Those who are not enrolled can cast special votes.	mobilizes	major
	Registration administration	Registration period extended from writ day to end of polling day.	mobilizes	major
	Registration administration	Special voting declarations operate as new enrollments or amendments to existing enrollments.	mobilizes	minor

<b>Legislation</b>	<b>Type</b>	<b>Key provisions</b>	<b>Direction</b>	<b>Magnitude</b>
Voting Rights Protection Bill 1978	Registration administration	Voters registered for the wrong electoral district may transfer their registration to the correct electoral district before the close of polls or make a special voting declaration at the polls.	mobilizes	minor
	Registration administration	Persons who will become entitled to vote by election day may enroll beforehand.	mobilizes	marginal
	Registration administration	Allows Māori enrolled in a general or Māori district contrary to their intention to transfer their registration to the electoral district of their choice.	mobilizes	marginal
	Registration administration, voting administration	Votes will not be disallowed through errors or omissions of polling officials.	mobilizes	marginal
Electoral Amendment Bill 1980	Registration administration	Repeals provisions for closure of the rolls, extending registration from writ day to election day.	mobilizes	major
	Registration administration	Grants immunity from prosecution for past non-enrollment for persons who become enrolled.	mobilizes	marginal
Popular Initiatives Bill 1983	Ballot Initiative	Requires a binding referendum to be held if petitioned by 100,000 electors.	mobilizes	N/A
Popular Initiatives Bill 1984	Ballot Initiative	Requires a binding referendum to be held if petitioned by 100,000 electors.	mobilizes	N/A
Mixed Member Proportional Representation Poll Bill 1990	Electoral system (major)	Provides for a binding referendum on electoral system reform. If approved by a majority of voters, switches Aotearoa New Zealand's electoral system from FPTP to MMP. Increases the number of MPs to 120. Fifty-six will be elected through party lists, four will be Māori electorates, and 60 elected through single-member constituencies. Includes a 4 percent party threshold.	mobilizes	minor



Legislation	Type	Key provisions	Direction	Magnitude
Mixed Member Proportional Referendum Bill 1992	Electoral system (major)	Provides for a binding referendum on electoral system reform. If approved by a majority of voters, switches Aotearoa New Zealand's electoral system from FPTP to MMP. Increases the number of MPs to a minimum of 100. Forty-six will be elected through party lists, four will be Māori electorates, and 50 will be elected through single-member constituencies. Includes a 4 percent party or one-seat threshold, and grants parliament the ability to wave the threshold for disadvantaged groups.	mobilizes	minor
Electoral Amendment Bill 1998*	Voting administration	Implements a \$1000 deposit requirement for parties submitting party lists of candidates, returned only if the party obtains at least 0.5 percent of the total party vote or wins a constituency seat.	demobilizes	marginal
Electoral (Racially-Based Representation) Referendum Bill 2002	Electoral system (minor)	Referendum on elimination of the Māori electorates in parliament. Requires the results to be referred to parliament if approved with two-thirds majority support.	demobilizes	minor
Electoral Options Referenda Bill 2002	Electoral system (major)	Provides for the holding of both an indicative and binding referendum on electoral system reform, with the proposed alternatives being FPTP, preferential, supplementary member, and single transferable vote.	demobilizes	minor
Electoral (Registration by Special Vote) Amendment Bill 2017	Registration administration	Unregistered electors can register and cast special votes.	mobilizes	minor
	Registration administration	Electors can use a special vote to update their registration details.	mobilizes	minor
Electoral Access Fund Bill 2018	Suffrage	Disabled candidates can access funds to support their participation in general elections.	mobilizes	marginal
	Finance	Not-for-profit entities can utilize funds to make election education events accessible.	mobilizes	marginal
	Finance	Registered political parties can utilize funds to support access needs of any member for full internal participation.	mobilizes	marginal

### APPENDIX G: LEVERAGE CALCULATION

Year	Election Day	Number Eligible	Number Registered	Number Voted	Official Turnout	VEP Turnout	Leverage (100% – VEP Turnout)	Notes and Sources
1969	Nov 29	1,655,663	1,519,889	1,340,168	88.9%	80.9%	19.1%	Age-eligible population, number voted, and VEP: Nagel 1988
1972	Nov 25	1,758,960	1,583,256	1,401,152	89.1%	79.7%	20.3%	Age-eligible population, number voted, and VEP: Nagel 1988
1975	Nov 29	1,999,636	1,953,050	1,602,777	82.5%	80.2%	19.8%	Age-eligible population, number voted, and VEP: Nagel 1988
1978	Nov 25	2,083,549	2,487,594	1,710,173	79.9%	82.1%	17.9%	Original official turnout: 69.2%. Corrected official turnout: 79.9%. Age-eligible population, number voted, and VEP: Nagel 1988
1981	Nov 28	2,166,835	2,034,747	1,801,303	91.4%	83.1%	16.9%	Age-eligible population, number voted, and VEP: Nagel 1988
1984	Jul 14	2,255,096	2,111,651	1,929,201	93.7%	85.5%	14.5%	Age-eligible population, number voted, and VEP: Nagel 1988
1987	Aug 15	2,282,660	2,114,656	1,883,394	89.1%	82.5%	17.5%	VEP: Chief Electoral Office 2009
1990	Oct 27	2,400,360	2,202,157	1,877,115	85.2%	78.2%	21.8%	VEP: Electoral Commission Enrolment and Voting Stats 1990–2002 Report
1993	Nov 6	2,506,110	2,231,664	1,978,092	85.2%	78.9%	21.1%	VEP: Electoral Commission Enrolment and Voting Stats 1990–2002 Report
1996	Oct 12	2,642,400	2,418,587	2,135,175	88.2%	80.8%	19.2%	VEP: Electoral Commission Enrolment and Voting Stats 1990–2002 Report
1999	Nov 27	2,755,800	2,509,365	2,127,245	84.8%	77.2%	22.8%	VEP: Electoral Commission Enrolment and Voting Stats 1990–2002 Report
2002	Jul 27	2,835,240	2,670,030	2,055,404	77.0%	72.5%	27.5%	VEP: Electoral Commission Enrolment and Voting Stats 1990–2002 Report
2005	Sep 17	2,990,300	2,847,396	2,304,005	80.9%	77.1%	23.0%	VEP: Chief Electoral Office 2009
2008	Nov 8	3,138,000	2,990,759	2,376,480	79.5%	75.7%	24.3%	VEP: Chief Electoral Office 2009
2011	Nov 26	3,276,000	3,070,847	2,278,989	74.2%	68.0%	32.0%	VEP: Vowles 2015a
2014	Sep 20	3,391,100	3,140,417	2,446,279	77.9%	71.0%	29.0%	VEP: Vowles 2015a
2017	Sep 23	3,569,700	3,298,009	2,605,854	79.8%	73.0%	27.0%	Electoral Commission 2018

\*Additional sources: 1969–2002 data is from Atkinson 2003, except where noted. Method of calculating official turnout changed over this time period; before 1978, it was valid votes plus informal votes as a percentage of total enrolled electors plus allowed special votes. From 1981 onwards, it was valid votes, informal votes, and disallowed special votes as a percentage of total enrolled electors. 2005–11 data (excepting VEP and age-eligible population) is from Electoral Commission 2012a. 2014 data and 2005–11 voter age-eligible data is from Electoral Commission 2015.

### APPENDIX H: NUMBER OF PARTIES

<b>Election Year</b>	<b>Election Day</b>	<b>Effective Number of Parties</b>	<b>Number of Parties elected to Parliament</b>	<b>Number of Parties with at least 1% support</b>	<b>Number of Parties on Ballot</b>
1969	Nov 29	1.99	2	3	3.65
1972	Nov 25	1.87	2	4	5.3
1975	Nov 29	1.87	2	4	4.77
1978	Nov 25	2.01	3	4	4.58
1981	Nov 28	2.08	3	3	3.67
1984	Jul 14	2	3	4	4.88
1987	Aug 15	1.94	2	3	4.37
1990	Oct 27	1.76	3	5	6.95
1993	Nov 6	2.16	4	5	6.82
1996	Oct 12	3.76	6	7	21
1999	Nov 27	3.45	7	9	22
2002	Jul 27	3.76	7	10	14
2005	Sep 17	2.95	8	8	19
2008	Nov 8	2.78	7	6	19
2011	Nov 26	2.98	8	8	13
2014	Sep 20	2.96	7	7	15
2017	Sep 23	2.67	5	6	16
Average 1969–1993	--	1.96	2.67	3.89	5.00
Average 1996–2017	--	3.16	6.88	7.63	17.38
<p>*Note: For FPTP elections, the number of parties on the ballot is calculated by dividing the total number of candidates for each general election by the number of electorates. For MMP elections, the number of parties is measured by the number of parties fielding nominated lists of candidates.</p>					

### APPENDIX I: CLASSIFICATION OF ELECTION ENACTMENTS

Matrix of Election Lawmaking		Participatory Effect		
		Demobilizes	Neutral	Mobilizes
Partisanship	Partisan	Electoral Amendment Act 1977 Electoral Amendment Act 1993 Electoral (Vacancies) Amendment Act 2003 Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010	Broadcasting Amendment Act (No 2) 1990 New Zealand Bill of Rights Act 1990 Electoral (Integrity) Amendment Act 2001 Appropriation (Parliamentary Expenditure Validation) Act 2006 Appropriation (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2007 Electoral Amendment Act 2007 Electoral Finance Act 2007 Broadcasting Amendment Act (No 2) 2007 Electoral (Integrity) Amendment Act 2018	Electoral Amendment Act 1975 Electoral Amendment Act (No 2) 1985 Electoral Amendment Act 1989 Electoral Amendment Act 2002 Electoral Amendment Act 2014
	Non-partisan	Electoral Amendment Act 1976 Electoral Amendment Act 1980 Electoral Amendment Act (No 2) 1987	Electoral Amendment Act 1972 Electoral Amendment Act 1979 Electoral Amendment Act 1986 Broadcasting Act 1989 Broadcasting Amendment Act 1990 Term Poll Act 1990 Electoral Amendment Act 1991 Electoral Referendum Act 1991 Electoral Amendment Act 1992 Broadcasting Amendment Act 1993 Broadcasting Amendment Act 2004 Electoral Amendment Act 2004 Electoral Amendment Act 2005 Parliamentary Service (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2009 Electoral Amendment Act 2009 Electoral (Administration) Amendment Act 2010 Electoral Referendum Act 2010 Parliamentary Service Amendment Act 2010 Electoral Amendment Act 2013 2017 Broadcasting (Election Programmes and Election Advertising) Amendment Act	Electoral Amendment Act 1971 Electoral Amendment Act 1974 Electoral Amendment Act 1981 Electoral Amendment Act 1983 Electoral Amendment Act 1985 Electoral Amendment Act 1990 Citizens Initiated Referenda Act 1993 Electoral Act 1993 Electoral Referendum Act 1993 Referenda (Postal Voting) Act 2000 Electoral (Finance Reform and Advance Voting) Amendment Act 2010 Electoral Amendment Act 2010 Electoral (Administration) Amendment Act 2011 Electoral Amendment Act 2017

**APPENDIX J: CLASSIFICATION OF PROPOSED ELECTION REFORMS**

Matrix of Election Lawmaking		Participatory Effect		
		Demobilizes	Neutral	Mobilizes
Partisanship	Highly Partisan	Electoral (Racially-Based Representation) Referendum Bill 2002 Electoral Options Referenda Bill 2002	Second Ballot Bill 1980 Electoral (Representation Commission) Amendment Bill 1986 Political Advertising Bill 1986 Public Finance (Restraint of Political Advertising) Bill 1988 Electoral (Public Opinion Polls) Amendment Bill 2000 Electoral (Integrity) Amendment Bill 2005* Electoral (Adjustment of Threshold) Amendment Bill 2013	Elections and Polls Bill 1978 Voting Rights Protection Bill 1978 Electoral Amendment Bill 1980 Popular Initiatives Bill 1983 Mixed Member Proportional Representation Poll Bill 1990 Electoral (Registration by Special Vote) Amendment Bill 2017
	Less partisan	Electoral Amendment Bill 1998*	Electoral Amendment Bill 1978 Electoral Expenses Bill 1989 Proportional Representation Indicative Referendum Bill 1990 Electoral (Party Registration) Bill 1997 Broadcasting (Election Broadcasting) Amendment Bill 1999* Electoral (Reduction in Number of Members of Parliament) Amendment Bill 2006 Electoral (Entrenchment of Māori Seats) Amendment Bill 2018	Electoral Amendment Bill 1972 Electoral Amendment Bill (No 2) 1978 Popular Initiatives Bill 1984 Mixed Member Proportional Referendum Bill 1992 Electoral Access Fund Bill 2018

\*Indicates a government bill. All other bills are members' Bills.

## APPENDIX K: ROBUSTNESS CHECKS

Models of partisan election lawmaking with other measures of party system:

Table K.1: Regression with Number of Parliamentary Parties				
	Estimate	Std. Error	z value	Pr(> z )
(Intercept)	-1.33201	2.39875	-0.555	0.57869
Government National	-4.28994	1.43807	-2.983	0.00285 **
Māori	0.89234	0.96562	0.924	0.35543
Entrenchment	-1.33230	1.54296	-0.863	0.38788
Participatory Effect Mobilizes	-2.99554	1.45437	-2.060	0.03943 *
Participatory Effect Neutral	-3.92322	1.66265	-2.360	0.01829 *
Competitiveness	0.08169	0.06354	1.286	0.19852
Leverage	0.17855	0.14738	1.212	0.22570
Parties Parliamentary	0.06934	0.24584	0.282	0.77791
--				
Significance codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1				
Null deviance: 69.545 on 54 degrees of freedom				
Residual deviance: 46.040 on 46 degrees of freedom				
AIC: 64.04				

Table K.2: Regression with Number of Parties Receiving 1 Percent Support				
	Estimate	Std. Error	z value	Pr(> z )
(Intercept)	-2.18524	2.34966	-0.930	0.35236
Government National	-4.89036	1.70991	-2.860	0.00424 **
Māori	0.79935	0.94918	0.842	0.39970
Entrenchment	-1.90953	1.63856	-1.165	0.24387
Participatory Effect Mobilizes	-3.07884	1.47909	-2.082	0.03738 *
Participatory Effect Neutral	-4.14555	1.73755	-2.386	0.01704 *
Competitiveness	0.07200	0.06607	1.090	0.27579
Leverage	0.31762	0.20057	1.584	0.11329
Parties1Percent	-0.22186	0.33790	-0.657	0.51145
--				
Significance codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1				
Null deviance: 69.545 on 54 degrees of freedom				
Residual deviance: 45.672 on 46 degrees of freedom				
AIC: 63.672				

Table K.3: Regression with Number of Parties on Ballot

	Estimate	Std. Error	z value	Pr(> z )
(Intercept)	-1.09243	2.29291	-0.476	0.63376
Government National	-4.25121	1.42822	-2.977	0.00291 **
Māori	1.06270	1.00934	1.053	0.29240
Entrenchment	-1.17626	1.50455	-0.782	0.43433
Participatory Effect Mobilizes	-3.08603	1.46044	-2.113	0.03459 *
Participatory Effect Neutral	-3.93318	1.66861	-2.357	0.01842 *
Competitiveness	0.08151	0.06418	1.270	0.20411
Leverage	0.14500	0.12651	1.146	0.25175
Parties Ballot	0.06717	0.07887	0.852	0.39442

--  
Significance codes: 0 '\*\*\*' 0.001 '\*\*' 0.01 '\*' 0.05 '.' 0.1 ' ' 1

Null deviance: 69.545 on 54 degrees of freedom  
Residual deviance: 45.376 on 46 degrees of freedom  
AIC: 63.376

Model of demobilizing election lawmaking with effective number of parties:

Table K.4: Regression of Demobilizing Election Lawmaking with Effective Number of Parties

Coefficients:

	Estimate	Std. Error	z value	Pr(> z )
(Intercept)	-3.64522	3.40936	-1.069	0.28499
Parties Effective	2.23154	1.76245	1.266	0.20546
Government National	4.56695	1.94238	2.351	0.01871 *
Māori	0.50455	1.38121	0.365	0.71489
Entrenchment	0.10807	1.88375	0.057	0.95425
Partisan Scale	1.03178	0.37893	2.723	0.00647 **
Competitiveness	0.03887	0.08894	0.437	0.66206
Leverage	-0.51557	0.29502	-1.748	0.08054 .

--  
Significance codes: 0 '\*\*\*' 0.001 '\*\*' 0.01 '\*' 0.05 '.' 0.1 ' ' 1

Null deviance: 41.929 on 54 degrees of freedom  
Residual deviance: 24.744 on 47 degrees of freedom  
AIC: 40.744

Model of any demobilization provisions excluding partisanship measure:

Table K.5: Regression of Demobilizing Provisions Excluding Partisanship				
	Estimate	Std. Error	z value	Pr(> z )
(Intercept)	-1.676695	2.771525	-0.605	0.5452
Era	-0.320689	1.401987	-0.229	0.8191
Government National	0.721174	0.879280	0.820	0.4121
Māori	1.716873	0.769159	2.232	0.0256 *
Entrenchment	1.241332	1.125046	1.103	0.2699
Competitiveness	0.003622	0.059101	0.061	0.9511
Leverage	-0.023448	0.154908	-0.151	0.8797
--				
Significance codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1				
Null deviance: 64.455 on 54 degrees of freedom				
Residual deviance: 49.755 on 48 degrees of freedom				
AIC: 63.755				



## APPENDIX L: DATA TABLES

Table L.1: Level of Partisanship by Era (Scale)		Partisanship Scale						
		0	1	2	3	4	5	6
Era	FPTP	4	7	6	3	2	1	6
	MMP	8	2	3	2	0	4	7

Table L.2: Level of Partisanship by Era (Categories)		Partisanship Scale			
		None	Low	Moderate	High
Era	FPTP	4	13	5	7
	MMP	8	5	2	11

Table L.3: Level of Partisanship by Era (Complex binary)		Level of Partisanship	
		None/Low	Moderate/High
Era	FPTP	17	12
	MMP	13	13