

BUCKLE, BOARD, TEAM OR NETWORK? UNDERSTANDING CABINET

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In New Zealand, as in other Westminster systems, the lack of constitutional definition of the key elements of the political executive has led to a series of metaphors being used to define Cabinet. Cabinet has thus been depicted as a "buckle", a board of directors, a team and, more recently, a "hollow crown" and a policy network. This paper argues that, in the absence of constitutional definition, analysing the metaphors employed by observers and participants leads us to reconsider particular aspects of the tradition and practice of Cabinet government, including the relationship between prime minister and Cabinet. For example, "buckle" directs attention toward Cabinet's relationship with the legislature, including the collective Cabinet responsibility rule. Exploring this aspect shows the changing relationship between Cabinet and Parliament during the post-MMP years. The board image directs attention towards relationships between ministers and public servants, while the idea of the team reinforces the collegial tradition that is a feature of New Zealand Cabinets. The more recent (and less normatively-loaded) metaphors of the hollow crown and of a policy network redirect attention towards other features: the reasons why core executives have expanded themselves in the former and the distribution of political resources in the latter.

I INTRODUCTION

It is a well known fact that the key institutions of "Cabinet" and, to a lesser extent, "prime minister", have escaped constitutional statutory definition in New Zealand. Cabinet itself is a constitutional convention, even if its operating rules, such as Cabinet collective responsibility and ministerial responsibility, may not be similarly classified. The Executive Council, chaired by the

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Governor-General, has statutory recognition¹ but the Council's more important political persona, Cabinet, chaired by the prime minister, does not. Neither the Letters Patent 1983 nor the subsequent Constitution Act 1986 included the office of prime minister. The explanations for this situation are familiar: Cabinet and prime minister evolved in Britain, were similarly outside statute law in that country and were transplanted to a 19th century colony where they were "patriated" and subsequently continued to evolve into distinctly New Zealand political institutions. There have been no political or constitutional crises occasioned by such events as a war of independence, civil war or a battle over political succession that would have demanded a codified constitution to sort out power relationships. Federalism did not exist for long enough to necessitate detailed adjustments of the political arrangements between the central State and the provincial centres of power.²

In short, no precipitating event has yet propelled New Zealand into the major constitutional redrafting that might have included defining the institutions of prime minister and Cabinet. Rather, piecemeal constitutional change has characterised New Zealand's political development, although the sum total of those adjustments has been sweeping and radical, particularly in the areas of the protection of individual rights against the State and, of course, electoral system reform. The institutions of the prime minister and the Cabinet, although affected by these reforms, have survived very much intact, and this includes their continued central existence inside the constitution but beyond written definition.³ Indeed, the primary documentation of how New Zealand's system of Cabinet government has operated has been contained in the successive editions of the *Cabinet Office Manual*, now the *Cabinet Manual 2001*.⁴ There has been a sustained and successful series of attempts to improve written clarification of the rules, a story that is beyond the scope of this paper.⁵

The absence of statutory definition of the two institutions that together comprise the political executive has had two principal effects, one theoretical and the other practical. These are the themes of this paper. Scholars have had to search for conceptual labels in order to help understand the roles and powers of prime ministers and Cabinets; while prime ministers and, to a lesser extent, ministers have had a degree of latitude in demarcating the extent of their roles and the ways in which the

1 Constitution Act 1986.

2 New Zealand Constitution Act 1852 (UK) created six provincial councils. These were abolished in 1876.

3 The exceptions are where specific pieces of legislation specify particular roles, for example, the Ombudsmen Act 1975, the Official Information Act 1982 and the Intelligence and Security Committee Act 1996.

4 Cabinet Office *Cabinet Manual 2001* (Wellington, 2001).

5 See Jonathan Boston "Advising the Prime Minister in New Zealand: The Origins, Functions, and Evolution of the Prime Minister's Advisory Group" (1988) 23 *Politics* 8–20; Elizabeth McLeay *The Cabinet and Political Power in New Zealand* (Oxford University Press, Auckland, 1995) 147–159 [McLeay *The Cabinet and Political Power in New Zealand*]; and Elizabeth McLeay "What is the Constitutional Status of the New Zealand Cabinet Office Manual?" (1999) 10 *PLR* 11–17.

institution of Cabinet operates. The two factors – the theoretical search for understanding and the practical flexibility of the institutions – have affected one another. I should add that there is also a third, overlapping effect that is somewhat less affected by the lack of constitutional definition. This is the stream of ideas about what ought to exist: the idealised forms of Cabinet government, the evaluative elements that are very often tucked in behind legal and empirical analyses of the institutions of Cabinet and prime minister in New Zealand and elsewhere.

II CABINETS AND PRIME MINISTERS IN PARLIAMENTARY SYSTEMS

When scholars interested in executive power have looked at Cabinets and prime ministers comparatively, they have found institutions that, although distinct from one another in shape and practice, are united by a few core ideas. As far as the office of prime minister is concerned, there are certain characteristics that are common to all systems of parliamentary government. Prime ministers:

- are the key advisers to the sovereign or president;
- are the leaders of their parties;
- have significant patronage powers, including shaping their ministries;
- chair meetings of ministers, including Cabinet;
- are responsible for ensuring that their governments retain the confidence of Parliament; and
- in some sense or other represent their governments within their own countries and externally.⁶

Beyond these characteristics, however, it is hard to generalise. For example, prime ministers are the leaders of their parties, but they are chosen in a wide range of ways, which affect their personal power and authority. Most prime ministers select all their ministers, while Australian and New Zealand Labour leaders have to accept a team that is elected by their parliamentary colleagues.⁷ Some prime ministers have to face confirmatory votes in Parliament (the German Chancellor, for

6 See Elizabeth McLeay "Leadership in Cabinet under MMP" in Raymond Miller and Michael Mintrom (eds) *Leadership and Political Change in New Zealand* (Auckland University Press, Auckland, 2006) 92–112 [McLeay "Leadership in Cabinet under MMP"]. For a summary of New Zealand prime ministerial roles see *Cabinet Manual 2001*, above n 4, paras 2.3–2.11; and Geoffrey Palmer and Matthew Palmer *Bridled Power: New Zealand's Constitution and Government* (4 ed, Oxford University Press, Melbourne, 2004) 68–73. The external roles of prime ministers are to an extent defined by their international responsibilities to represent their countries as heads of governments. See, for example, Vienna Convention on the Law of Treaties (23 May 1969) 1155 UNTS 331, art 7(2) where prime ministers, along with Heads of State and Ministers of Foreign Affairs, are deemed represent their States "for the purpose of performing all acts relating to the conclusion of a treaty".

7 The Labour prime ministers do allocate the portfolios, however, and New Zealand Labour prime ministers have been authorised by caucus rules to appoint ministers outside Cabinet.

example), while others do not. Some prime ministers chair Cabinets comprising one party while others lead multi-party Cabinets. These different factors have significant effects on their offices. Thus, as far as similarities across political systems are concerned:⁸

Cabinet government allows no neat description or model. It is better understood as a pattern of meetings and opportunities than as a distinct set of procedures which, if followed, will constitute some proper balance of powers (however defined). The prime ministers' changing participation in those arenas will determine their influence. We need to examine the role of the prime ministers in Cabinet, not isolate their influence from it.

The very flexibility of the prime ministerial office, together with other factors such as the complexity of the decisions faced by contemporary governments everywhere and the personalisation of politics in the mass media, has led to a whole series of arguments, some of them rather fruitless, as to whether in particular countries Cabinet government has been superseded by prime ministerial government and whether or not prime ministerships have become "presidentialised".⁹

In comparison with the office of prime minister, ministers are relatively easy to define: they have prescribed roles defined by the portfolios delegated to them; some of the powers within their portfolio responsibilities are legally defined; and in all systems of parliamentary government, ministers answer to Parliament either directly or indirectly for their policies and behaviour, although the sanctions that are brought to bear on erring ministers vary through time and across political systems. Nonetheless, even here there are definitional problems. Ministers in some systems do not necessarily have to be members of Parliament; in others they vacate their seats for the duration of their ministerial tenures; and in bicameral systems, ministers can be drawn from the upper as well as the lower house. Inventions such as associate ministers can also be difficult to define. Altogether, though, we know what a minister is, even within the arrangements of multi-party governments, for example, when two MPs (Winston Peters, New Zealand First and Peter Dunne, United Future) were appointed to portfolio positions outside Cabinet in the Labour-led, post-2005 election government. Ministers hold executive warrants (or their equivalent) in every system of parliamentary government

8 Patrick Weller "Prime Ministers, Political Leadership and Cabinet Government" (1991) 50 AJPA 135.

9 See Richard Heffernan "Why the Prime Minister Cannot be a President: Comparing Institutional Imperatives in Britain and America" (2005) 58 *Parliamentary Affairs* 53–70. Note the use of the label "presidential" as media hyperbole in New Zealand. See for example Fran O'Sullivan "The Presidential Predilections of Helen Clark" (29 March 2005) *New Zealand Herald* Auckland <<http://www.nzherald.co.nz/feature/story.cfm>> (last accessed 16 November 2005).

and they are responsible for particular areas of public policy. Through deduction, we also know who is not a minister, and this includes parliamentary private secretaries and MPs who are spokespersons for particular policy areas.¹⁰

Cabinets, however, are altogether more slippery bodies to pin down. Cabinets in systems of parliamentary government:

- are meetings of the top group of ministers drawn from the predominant parliamentary party or parties;
- are chaired by prime ministers/premiers/chancellors; and
- are composed of ministers who are drawn from one or more than one political party (or very occasionally, independents).

These three general characteristics exhaust the commonalities across Cabinet systems.¹¹ Cabinets may or may not comprise all the ministers; Cabinets may or may not meet regularly; Cabinets may make decisions collectively, or ministers, with the prime minister, may make decisions unilaterally and bilaterally; Cabinets may be collegial or hierarchical in style; Cabinet committees may or may not exist and, if they do exist, may or may not be significant groups in the policy-making process; Cabinets come in a variety of sizes; Cabinets may form the entire ministry, most of it (New Zealand), or involve a minority of ministers (Britain); Cabinet collective responsibility, although a feature of all systems of parliamentary government, is honoured to a greater or lesser extent across jurisdictions and through time in particular countries; and prime ministers may dominate Cabinet or take a more facilitating role. To some extent, these differences are systemic and relate to emphases within constitutions, but the differences also reflect changing ideas about executive powers, the different traditions and practices of different political parties, and diverse prime ministerial visions of their roles and authority.

The more complex the institutions and groups involved in the central political executive, the more complex the trade-offs tend to be. This formula can also be reversed: the smaller the number of political institutions involved, the more likely it is that power is concentrated, to the extent that challenges and constraints to that power are ineffectual. George Tsebelis has helpfully identified these sources of constraint (within jurisdictions) as institutional veto players (such as second chambers, courts with powers of judicial review, and sub-State structures) and partisan veto players

10 The post-2005 election governing arrangements made two Green MPs spokespersons for particular policy developments. There was no question that they were not ministers, but the administrative support they were allocated did stimulate controversy because that support came from Ministerial Services, part of the Internal Affairs Department.

11 See Thomas T Mackie and Brian W Hogwood (eds) *Unlocking the Cabinet: Cabinet Structures in Comparative Perspective* (Sage, London, 1985).

(for example, political parties).¹² The mixed-member proportional system (MMP) has added the latter to the policy process in New Zealand.

Given the challenges of finding out about the powers and relationships of political executives, it is perhaps unsurprising that scholars and political actors alike have sought to understand Cabinet and prime ministerial powers through the use of metaphors. This is particularly a feature of the commentary on the non-constitutionally defined Westminster political executives. Given the inherent flexibility of the prime ministerial role, it is easy to see how metaphors have linked that role with particular ideas about how Cabinets operate or ought to operate. Compare the efforts at depicting Cabinet with approaches to other political institutions. Although parliaments exist in many shapes and have varying degrees of policy influence, there are no lasting metaphors that I can think of (that are not derogatory) that have been developed to describe them, because we know what they are: they have constitutional definition and although parliaments and legislatures in liberal democratic States differ all around the world, their core shapes and roles can readily be identified. The same can be said of the courts and of core government agencies. In contrast, we do not always know what we are talking of when we talk about Cabinet as an institution and it is even more difficult to locate prime ministerial and Cabinet powers. The perils for scholars and commentators are obvious: to generalise across political systems, or even historically within one political system, can be a chancy undertaking. More significantly, perhaps, to assume that certain power characteristics are automatically associated with either the office of prime minister or the committee that is labelled "Cabinet" can lead to inaccurate portrayals of the nature of a political executive.

In the following sections of this paper, I briefly discuss how three metaphors have been used to describe what Cabinets do – the images of the buckle, the board, and the team. (These continue a tradition, for the term "Cabinet" is itself a metaphor derived from the small room in which the advisers to the sovereign once met.) The three labels of buckle, board, and team, each with its own set of normative assumptions, have been generated by political participants as well as by observers of political power. In a sense, they encapsulate modest theories of the world of the political executive, particular models of political institutions. Nevertheless, although the metaphors provide insights into particular aspects of Cabinets and prime ministerial power and the constitutional arrangements that underpin that power, those insights are incomplete. In particular, they can lead to an exaggerated, even misleading, notion of how constitutional conventions operate in practice and also of their actual importance in guiding human behaviour.

12 George Tsebelis "Veto Players and Law Production in Parliamentary Democracies" in Herbert Doring (ed) *Parliaments and Majority Rule in Western Europe* (Campus, Frankfurt and St Martins Press, New York, 1995); George Tsebelis "Veto Players and Institutional Analysis" (2000) 13 *Governance* 441–474; and George Tsebelis *Veto Players: How Political Institutions Work* (Princeton University Press, Princeton, 2002).

I then turn to the fourth and fifth images, discussing the "hollowing out" and "network" metaphors of executive government. These two models have much to offer as conceptual approaches to understanding the political executive although, as with all metaphors, there are limitations to their explanatory powers. However, they do offer particular insights into the distribution of political power and they are also sufficiently flexible to be applied to institutions that are continuously being rethought and reformulated. An assumption of the network approach as applied to prime minister and Cabinet is that analysis needs to be expanded to the wider "core executive" in order to understand these institutions.

III CABINETS AS BUCKLES

After the term "Cabinet" developed, another early and influential metaphor of Cabinet was used at Westminster: the idea of Cabinet as a "buckle". In 1867, journalist Walter Bagehot famously wrote that:¹³

A Cabinet is a combining committee – a *hyphen* which joins, a *buckle* which fastens, the legislative part of the State to the executive part of the State. In its origin it belongs to the one, in its functions it belongs to the other.

Bagehot was particularly intent on abolishing false pretensions about the separation of executive and legislative powers within the British constitution, in part by comparing his own country's system with the presidential system of the United States (one which he did not understand and for which he had a low regard). He also attacked John Stuart Mill's perceptions of parliamentary politics including his disregard for Cabinet power.¹⁴ As Richard Crossman has pointed out, Bagehot did not fully appreciate how party government, based on cohesive and disciplined parties arising from enfranchisement (the Reform Act 1867 (UK)) and thence the development of mass parties, would emerge and change Cabinet itself.¹⁵ Bagehot wrote at a time when governments were indeed undone by their parliamentary colleagues – making his formulation perhaps more relevant to New Zealand today than to New Zealand between 1935 and 1993. We might also note that the two-party, mass party system is now in decline in New Zealand.¹⁶

Bagehot's key insight, which of course his analogies were intended to highlight, was that Cabinet linked the executive and legislative functions of the State (although the notion of the State was not one that someone like Bagehot would be familiar with, because at this time the State was a

13 Walter Bagehot *The English Constitution* (C A Watts and Co Ltd, London, 1964) 68 (emphasis in original). This work was originally published in 1867.

14 Richard Crossman "Introduction" in Bagehot, above n 13, 20–24.

15 Crossman, above n 14, 39–46.

16 Raymond Miller *Party Politics in New Zealand* (Oxford University Press, Melbourne, 2005) especially 87–94 and 235–251.

European concept rather than a British one). The legislature really only exerted power at times of the appointment and dismissal of prime ministers with their Cabinets: effective power for the rest of the time was in the hands of the executive. This view of the realities of political power has continuing relevance because, as well as supplying all or most of the political executive, parliaments support those executives as much as they oppose and scrutinise them in systems of parliamentary government. This is the essence of parliamentary government and perhaps its inherent internal contradiction, and those who call for further separation of powers have to understand this basic fact before they prescribe what they see as reforms.

To what extent does Cabinet exist today as the "buckle" between Parliament and the political executive? The key New Zealand conventions remain in place – Cabinet and prime minister are drawn from Parliament and are responsible to it, depending on it for their support – but the buckle's design has changed. One of the consequences of a sequence of events and changes in New Zealand, from the political crisis of the 1984 government succession to the creation of the reformed committee system in 1985 and the development of post-MMP fractured, multiparty Parliaments, is that the boundary between Parliament and government has in some senses become more porous. At the same time, that boundary has become more formalised in other ways.

The merging at the edges of the two institutions, Parliament and Cabinet, was the direct product of the minority governments that prevailed from mid-1997 onwards. A series of coalition governments that together held a majority of seats would not have had the same impact. Various levels of consultation and communication on policy issues were developed between the political executive and the non-governing political parties. This reached an interesting stage in the post-2005 governing arrangements. As stated earlier, two parties supporting the Labour–Progressive minority government on supply and confidence were each allocated a minister outside Cabinet. Hence they were outside normal Cabinet collective decision-making, including the Cabinet committees, although within the decision-making circles on particular issues. Equally interesting was the situation where Green Party spokespersons would work with ministers on certain issues – not so surprising for parties supporting minority governments – but retain the right to abstain on votes of confidence and supply, a somewhat more unusual feature.

The evolution of the collective Cabinet responsibility rule is another example of blurred boundaries. Leaving aside the issue of whether or not this rule is a constitutional convention, it has certainly been an operating principle of New Zealand Cabinet government.¹⁷ Any idea that has sufficient validity in political practice for it to provide a continuing guide on how individuals should

17 On New Zealand, see Grant Gillon "Collective Responsibility in New Zealand: How Relevant is the Doctrine under MMP?" (Paper presented at the annual general conference of the Australasian Political Studies Association, 28–30 September 2005); McLeay *The Cabinet and Political Power in New Zealand*, above n 5; Elizabeth McLeay "Cabinet" in Raymond Miller (ed) *New Zealand Government and Politics* (3 ed, Oxford University Press, Melbourne, 2003) [McLeay "Cabinet"]; and Palmer and Palmer, above n 6.

behave must be regarded as an institutional rule. Exceptions to the rule exist and always have existed, but they remain exceptions. Collective Cabinet responsibility developed from political necessity – to enable the political executive to club together against the Crown on the one hand and Parliament on the other. The latter reason has not disappeared. Indeed, in an age of mass democracy and a powerful and critical mass media industry, it remains important for the political executive to share responsibility for its actions simply because to do otherwise looks disorganised, untidy and unreliable. Further, when governments as a general practice maintain collective Cabinet responsibility, voters are able to make judgments on their collective actions.

The collective responsibility rule has, therefore, had continuing utility. As has always happened, whatever New Zealand's electoral rules, prime ministers are the judges of when it is politically advisable to apply the rule to dissident ministers and when to choose not to notice. Prime ministers rein in ministers or discipline them only when their own authority or the reputation of their government is at stake.

The continuing debate over the precise status of the collective responsibility rule and whether or not it is actually a "constitutional convention" has become rather sterile. Perhaps it is time to distinguish between "high" and "low" conventions. High conventions are those that support fundamental democratic principles, for example, the conventions that the Governor-General approves legislation and that the principles of "caretaker government" are obeyed. Low conventions are simply unwritten rules that in normal circumstances form part of how government institutions have traditionally worked, but that are continually reshaped and reinterpreted by political participants. High conventions, furthermore, have the potential to become statute law (whether or not that is advisable in every case), whereas low conventions do not. On both these criteria – its democratic significance and its potential as written law – collective cabinet responsibility fails to fall within the high convention category.¹⁸

Given the continuing application of the collective responsibility rule, it is not surprising that the "agree to disagree rule" that was a feature of the 1999, 2002 and 2005 coalition agreements was sparingly used. This rule permitted governing parties to adopt different positions or policies.¹⁹ It was applied when Labour advocated the free trade agreement with Singapore while its coalition partner, the Alliance, opposed it. It is also unsurprising that individual ministers generally adhered to the collective responsibility rule, with the exceptions easily explained: in 2005, the innovative idea of having ministers drawn from parties outside the core coalition and outside Cabinet was accompanied by an explanation that these ministers would obey Cabinet collective responsibility on matters relating to their portfolio responsibilities. This was recognition of the significance of the rule

18 On conventions, see Philip Joseph *Constitutional and Administrative Law in New Zealand* (2 ed, Brookers, Wellington, 2001). On conventions in the UK, see Geoffrey Marshall *Constitutional Conventions: The Rules and Forms of Political Accountability* (Clarendon Press, Oxford, 1984).

19 *Cabinet Manual 2001*, above n 4, para 3.23.

rather than an indication that it had lost its normative authority.²⁰ The fact remains that "Collective Responsibility is the element that fuses the Executive and Legislative branches of government".²¹ The opposition parties elected in 2005 (National, the Māori Party, and ACT) certainly reinforced the rule, when Parliament sat again after the 2005 election, through their attacks on the unusual governing arrangements. Any perceived internal differences within the ministry as a whole will also always be attacked, by the media as well as the Opposition, another incentive for governments to continue to follow collective Cabinet responsibility.

In New Zealand, in comparison to these unsettled and uncertain borders between government and legislature, and partly in response to them, a number of rules have developed or have been revived from various strands of the Westminster tradition that do precisely the opposite: they define the borders between the executive and the legislature.²² These indicate two overlapping trends: the separation of the executive from the legislature; and the enhancement of the powers of the latter against the domination of the former. One example of the first trend is that after 1985, Cabinet ministers were excluded from membership of the subject select committees although ministers outside Cabinet occasionally (and unfortunately) occupied committee places. A second example results from MMP: minority regimes have to create policy coalitions in order to get their legislation through the House, which means consultation. To enable information to be communicated from government to MPs while at the same time protecting the relationship between public servants and their ministers, the rules relating to interaction between officials and MPs (who are not ministers) were re-emphasised. For example, public servants have always had to have the permission of their ministers to brief caucuses, a convention that was elaborated after MMP was introduced. Thirdly, the House was permitted to confirm its support of the government on occasions beyond the vote of no confidence traditionally moved by the Leader of the Opposition in the address in reply. When, in 1998, Jenny Shipley's National-led administration lost its Deputy Prime Minister, Winston Peters, and some of the other New Zealand First members, the Prime Minister subsequently successfully moved a vote of confidence in her government.

In addition, government action has been constrained in a couple of ways. The caretaker government rules were defined successively from 1986 onwards, confining caretaker governments to routine matters and reconfirming the dependence of government on having a majority of votes

20 At the time of writing (May 2006), it was too early to tell whether or not the New Zealand First and United Future ministers would demarcate their parties' policies from those of the core coalition, as seemed to be the aim, or whether they would keep their peace on issues with which they disagreed.

21 Palmer and Palmer, above n 6, 89.

22 On the "Westminster tradition" see especially R A W Rhodes and Patrick Weller "Westminster Transplanted and Westminster Implanted: Exploring Political Change" in Haig Patapan, John Wanna and Patrick Weller (eds) *Westminster Legacies: Democracy and Responsible Government in Asia and the Pacific* (University of New South Wales Press, Sydney, 2005).

behind it if significant decisions were to be made in interregnum periods.²³ Executive action was also constrained insofar as treaty-making was concerned, since some international treaties, mainly multilateral and bilateral treaties that would become binding, were referred to select committees for examination from mid-1998 onwards.²⁴ The last example of executive constraint by the legislature is the way in which leaders rid themselves of ministers who err, thus taking action rather than having to defend the indefensible to coalition partners and support parties. The incidence of ministers having resigned or having been dismissed on the grounds of personal and primary ministerial responsibility rose markedly after the advent of coalition and minority governments.²⁵

The notion of the buckle thus directs attention to the central relationship between Parliament and the political executive. Where Bagehot's conceptual understanding has its limitations is perhaps in underestimating the actual influence of parliaments in situations where governments are more vulnerable to parliamentary influence because the governing party or parties do not separately or together command a majority of seats in the House. The minority governments under MMP might have sympathy with another of Bagehot's observations that: "A Parliament is nothing less than a big meeting of more or less idle people. In proportion as you give it power it will inquire into everything, settle everything, meddle in everything".²⁶

IV CABINET AS A BOARD OF DIRECTORS

Bagehot not only likened Cabinets to buckles (and hyphens, a less persuasive metaphor) but also referred to the British Cabinet as "a board of control chosen by the legislature".²⁷ When discussing "how little is known" about Cabinet, Bagehot commented that: "It is said to be sometimes like a rather disorderly board of directors, where many speak and few listen – though no one knows".²⁸ The concept has had enduring persuasiveness. Many years later, Harold Laski wrote that "the House of Commons must have confidence in, as it were, its board of directors; otherwise there will either be a new board of directors or a new Parliament".²⁹ New Zealanders have also used the analogy of a

23 *Cabinet Manual 2001*, above n 4, paras 4.1–4.31.

24 *Cabinet Manual 2001*, above n 4, paras 5.83–5.91; New Zealand House of Representatives *Standing Orders* (Wellington, 2005) SO 387–390; and David McGee *Parliamentary Practice in New Zealand* (3 ed, Dunmore, Wellington, 2005) 591–598.

25 McLeay "Cabinet", above n 17, 94.

26 Bagehot, above n 13, 186.

27 Bagehot, above n 13, 67.

28 Bagehot, above n 13, 68.

29 Harold Laski *Parliamentary Government in England: A Commentary* (Allen and Unwin, London, 1938) 222–223.

board of directors. For example, note the following dialogue between a political commentator, Austin Mitchell, and Keith Holyoake, who was Prime Minister during 1957 and between 1960 and 1972:³⁰

A.M. I wonder whether you have ever thought of a brief definition of the job of Prime Minister. Or is it a job that's too all-embracing to be defined in that way?

K.J.H. I think it's much too all-embracing for any brief definition, for in a modern democracy, government has a tremendous scope of activity and responsibility. I think the best definition is that I see Cabinet as the board of directors of the biggest business in the country and the Prime Minister as chairman of that board of directors.

An interesting feature of the board analogy is that it includes (or implies) that the board has a chair, the prime minister. It also suggests, first, that there is a connection between the board and a larger body, the shareholders, to whom the board is responsible; and second, that behind or perhaps below the board there are those who actually carry out the detailed administrative and even policy functions of the State. Thus, there is a distancing between ministers, as board members, and the heads of government agencies. Perhaps, too, there is also a faint hint, a mere whisper, of businesslike efficiency. So with the board metaphor we have a certain depiction of the nature of executive power and the role of the prime minister and, as with all chairs, there is a degree of flexibility as to how the prime minister defines her or his role.

A more usual metaphor than that of the board, particularly in New Zealand, has been the depiction of the Cabinet as a "team".

V TEAMS OF PLAYERS

As well as using the board analogy, Keith Holyoake spoke the language of "teamship". In response to a question by Mitchell on whether he was a consultative prime minister, Holyoake responded: "I am a great believer in teamwork, and the spreading of responsibility".³¹ The use of the "team" analogy has been so frequently used by political actors and commentators as to become ubiquitous. It is a flexible notion, suggesting either a team led by a dominant and creative captain or one with a less dominating and more consultative personal style. It also implies a trust relationship amongst team members and can easily carry and indeed perpetuate the idea of collective responsibility. Chris Brady explored the notion of the Cabinet as a team when discussing collective

30 Austin Mitchell *Government by Party: Parliament and Politics in New Zealand* (Whitcombe and Tombs, Christchurch, 1966) 100.

31 Mitchell, above n 30, 110.

responsibility, which, he argued, is primarily a managerial device: "How this teamness is viewed, developed and managed is at the heart of the collective Cabinet responsibility debate".³²

The team analogy has been employed by all parties, whether in office or in Opposition, when attempting to persuade voters of the strength of their top people and the cohesion of that group. Unlike all the other expressions discussed in this paper (except perhaps the board of directors analogy), the team metaphor has a rhetorical usefulness and power.³³ The "team" serves as a "hurrah" word with its sporting connotations of "team spirit" and cooperative action. Its use is reinforced by media coverage which very frequently also uses this analogy. Despite the inherent ordinariness of the metaphor, and perhaps its gendered nature, it has some significance for the understanding of how New Zealand's system of Cabinet government actually works.³⁴

"Team" implies playing the game together and one of the distinguishing characteristics of New Zealand Cabinets has been their collegial style of decision-making. By collegial, I mean a system where ministers' voices are treated as having equal value, albeit with degrees of political authority according to seniority and portfolio significance. Collegiality is not the same as collective decision-making, which involves groups and which can be contrasted with individual decision-making. As Andeweg has pointed out, just because there is a rule on collective responsibility, it does not necessarily follow that collective decision-making has taken place.³⁵ This point is usually quickly recognised by new ministers outside Cabinet who are excluded from the latter except for their participation in Cabinet committees. A possible problem for the government formed after the 2005 general election was that a two-tier system was constructed as far as collective decision-making was concerned: most decisions would be made by the parties represented in Cabinet whereas the parties holding portfolios outside Cabinet would have to be content with limited input into decision-making on a limited range of issues and with second-hand knowledge about key decisions. The important tradition of using Cabinet committees for most decision-making might have ameliorated these effects to some extent. However, the fact that Winston Peters and Peter Dunne are absent from the committees meant that these bodies could not help smooth over the wrinkles of the highly unusual 2005 governing arrangements the way overseas Cabinet systems might.

32 Chris Brady "Collective Responsibility of the Cabinet: An Ethical, Constitutional or Managerial Tool?" (1999) 52 *Parliamentary Affairs* 214, 217.

33 Thanks to my colleague Robert Deuchars for alerting me to this point.

34 The political idea of the team has more than a faint tinge of male mateship – boys together on the rugby field, perhaps. Helen Clark, however, has occasionally used the team metaphor. On 25 July 2005, she was reported as saying: "What you are looking at is a leadership team in this government ...", see New Zealand Government Director <<http://www.nzgovtdirectory.com/Visitors/Election>> (last accessed 16 November 2005).

35 See Rudy Andeweg "Collegiality and Collectivity: Cabinets, Cabinet Committees and Cabinet Ministers" in Patrick Weller, Herman Bakvis and R A W Rhodes (eds) *The Hollow Crown: Countervailing Trends in Core Executives* (Macmillan, Houndmills, Basingstoke, 1997) 60–63.

After the 2005 election, a tripartite system was put into place as far as collective responsibility was concerned. In the first group, there were the Labour and Progressive ministers inside Cabinet, party to all decisions and also bound by collective Cabinet responsibility on all issues (except in the special circumstances outlined above). The second group contained the handful of Labour ministers outside Cabinet who, while not being involved in Cabinet decision-making, were bound by collective responsibility on all issues. In the third group were the New Zealand First and United Future ministers, more fully informed than their Labour colleagues outside Cabinet because their parties' votes were needed to shore up the government on confidence and supply as well as on particular pieces of legislation, but who were constrained by collective responsibility only on issues for which they had portfolio responsibility. The team was no longer united.

In a general sense, however, New Zealand Cabinet government has exhibited the traits of a collective and collegial political executive. Of course, some New Zealand prime ministers have behaved more collegially than others. But the idea of the team, the idea that important decisions are made collectively by a full Cabinet and that most decisions are formally confirmed by it, is a significant governing tradition in this country. The collegial tradition has been picked up in leadership rhetoric. For example, when Helen Clark said that: "We work very collegially as a government. We work the phones pretty hard and on a basis of 'no surprises' consult with each other a great deal".³⁶ Further, as already noted, collective and collegial decision-making by groups of ministers is continued within the lively system of Cabinet committees.

New Zealand's particular traditions of collectivity and collegiality might be unnoticed by commentators were it not for comparative analyses of how parliamentary governments work elsewhere. The United Kingdom, notable for prime ministers who did not always consult their Cabinets on major issues,³⁷ abandoned any last pretence of collegial decision-making under Margaret Thatcher's prime ministership. Tony Blair usually had Cabinet meetings of no more than 30–45 minutes. Discussion papers were not issued, Cabinet committee decisions were automatically endorsed and by far the majority of ministerial decisions were not even reported to Cabinet.³⁸ Even Cabinet committee decisions were "heavily predetermined" by earlier meetings.³⁹ As an example of a European rather than Westminster-derived Cabinet, Cabinet meetings in Germany are rubber-stamping occasions and the Cabinet committee system is weak.

36 In Fran O'Sullivan "The Presidential Predilections of Helen Clark" (29 March 2005) *New Zealand Herald* Auckland.

37 For example, see "Cabinets and the Bomb" in Peter Hennessy *Cabinet* (Basil Blackwood, Oxford, 1986) 123–162.

38 Richard Heffernan "Prime Ministerial Predominance? Core Executive Politics in the UK" (2003) 5 *BJPIR* 347, 358.

39 Heffernan, above n 38, 359.

When Cabinets are referred to as "teams", we recognise that the usage might at times be more an acknowledgement of how things ought to operate than how they function in practice. However, we also need to recognise the enduring strength of this feature as a tradition in New Zealand's Westminster system. One writer noted that when collegiality is absent, it has consequences for prime ministerial power, for: "Bilateralism reinforces the location of the prime minister at the centre of core executive networks".⁴⁰

Having signified the importance of the collective and collegial traditions in New Zealand, I wish now to emphasise their practical significance for power and the constitution. In my view, these traditional ways of conducting Cabinet government have helped to ease the transition between the single-party majority governments under the former electoral rules and the coalition and minority governments under MMP. It is hard enough to work with one's own party colleagues, but much harder to learn to work with or indeed to trust ministers from outside one's own party. This is one of the reasons why post-MMP New Zealand might have experienced a predominance of minority, single-party governments. Nevertheless, working relations between National and New Zealand First (1996–1998) and Labour and the Alliance (1999–2002) seemed to work adequately at the cooperative level. Aspects that did not work so smoothly related to the accountability aspect of New Zealand's constitutional history rather than the collegial aspect – the tradition of assuming a uniform notion of executive power rather than a bifurcated version, with the minor parties feeling that they bore the blame but not the credit for governmental performance.

In the end, though, the notion of the team is inherently exclusionary. Like "citizenship", it suggests that some people fit within the category while others are outside it, perhaps a problem for the government formed after the 2005 election.

VI HOLLOW CROWNS, POLITICAL RESOURCES AND POLICY NETWORKS

A more recent metaphor used by scholars of Cabinet government pushes analysis towards wider developments within State and world politics. Recent scholarship has addressed the substantial question of the extent of State autonomy given the contemporary "hollowing out" of government roles and capacity. Hollowing out, it has been argued, is a phenomenon that occurs from three directions: upwards (from regional bodies, world organisations and economic globalisation), downwards (through the privatisation and commercialisation of State functions) and sideways (through decentralisation and devolution).⁴¹ (In New Zealand the third trend would include the shifting of the control of some resources to Māori.) The resulting erosion of authority, it is argued, puts governmental policy capacity at risk. In response, governments in countries such as Australia,

40 Heffernan, above n 38, 360.

41 See especially R A W Rhodes *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability* (Open University Press, Buckingham, 1997).

the UK and New Zealand attempted to create (or re-create) "joined-up government" or adopt "whole of government" approaches in attempts to reassert autonomy and authority and find instruments that deliver policy coherence.⁴²

One of the key ways in which governments have tried to address the problems facing them has been to improve capacity through reshaping core executives, extending their range as they see necessary through such mechanisms as adding advisory agencies and political advisors. Thus, the metaphor of "hollowing out" as a description of what has happened to contemporary core executives is helpful because it provides a clue as to why governments have expanded the core advisory groups at the centre of government. This trend also reinforces a point made at the beginning of this paper: that the absence of legal definition of prime minister and Cabinet has enabled these institutions to define themselves, their policy reach and their organisational range. It is this characteristic of modern governments – the extension of political and policy networks – that I briefly discuss next.

The idea of the network has informed much political science in recent years, having been applied to the distribution of power beyond the formal State in the form of non-governmental organisations as well as to patterns of policy-making.⁴³ It has been useful in considering the shape and nature of institutional and personal political resources. The notion of "political resource" has increasingly been used in the place of "power", especially when it comes to analysing "core executives". "Core executive" has itself been used to replace Cabinet government. It is argued that the newer term can cope with the increased porousness of Cabinet systems, particularly when understanding British politics. In New Zealand, the core executive would include the prime minister and the Prime Minister's Office, Cabinet, the ministers and their ministerial offices, the Department of Prime Minister and Cabinet, including the Cabinet Office, the State Services Commission and Treasury. The advantage of considering the nature and source of political resources through tracing networks is that one avoids the trap of considering power as a win/lose game. Rather, thinking about political resources leads us to understand the interdependency of political actors and political institutions.⁴⁴

The topic of the core executive as a whole is beyond the scope of this paper. Rather, I wish to suggest that the twin ideas of networks and political resources can help us to understand the rapidly changing institutions of prime minister and Cabinet in contemporary New Zealand. Considering these two bodies as the primary elements of the central policy-making and policy-co-ordinating networks, the heuristic strength of the network metaphor can be appreciated through simple

42 Andeweg, above n 35. The reference to a "hollow crown" is from Shakespeare's *Richard II*, Act 3, Scene 2.

43 For New Zealand examples, see Elizabeth McLeay "Policing Policy and Policy Networks in Britain and New Zealand" in David Marsh (ed) *Comparing Policy Networks* (Open University Press, Buckingham, 1998); and McLeay "Leadership in Cabinet under MMP", above n 6.

44 See Martin J Smith *The Core Executive in Britain* (Macmillan Press, Houndmills, Basingstoke, 1999).

examples comparing administrations from the 1960s onwards. From 1960 to 1972, Keith Holyoake's Cabinet was the central co-ordinating body. The National caucus had to be brought alongside Cabinet goals, but that was not a problem so long as the prime minister delivered on the party's key policy promises and got his party returned to power. There were a few under-secretaries, but no ministers outside Cabinet. Apart from dealing with myriad interest groups, political authority was centralised in Cabinet and was directly hierarchical, reaching from minister to top public servant. Switch to the Lange years (1984–90), and the ministers outside Cabinet have to be added to the policy-making network as well as a more substantial prime ministerial and Cabinet advisory and executive apparatus. Jump ahead to Jim Bolger and the National–New Zealand First majority government (1996–97), and the network becomes more complex, although the key people are still retained inside the political executive.

The networks expand substantially, however, when recent minority governments are considered. Policy networks have included the supporting parties on some issues and even non-supporting parties on others. The executive network itself and the co-ordination problems entailed are more complex. The policy-making boundaries are more porous, as already argued. No longer do the prime minister and Cabinet together monopolise the political resources, such as executive authority, expert advice, the ability to make appointments, and control of the public purse. There are partisan veto players outside Cabinet to be consulted and placated and the number of "effective" parliamentary parties – those parties who have policy influence – has risen from one out of (usually) two during the pre-1996 years to five out of eight after the 2005 general election. Even the label of "supporting parties" has to be constantly reconsidered, as has been shown in the most recent round of government formation: "The concept of *supporting party* needs, therefore, to be regarded not as dichotomous, but as incremental: parties more or less support governmental policies as well as the government itself."⁴⁵ The political resources are shared throughout the policy networks: although some political actors have more than others, in general there is a degree of interdependency amongst them that did not exist even a decade ago.

What has been created is a political executive where the largest party in government dominates the policy agenda but where political circumstances and political incentives have meant that negotiation with other political actors has become the norm. Further, the radical alteration in patterns of policy-making has occurred in the context of New Zealand's more influential and assertive system of parliamentary select committees, another feature that is largely the product of

45 Jean Blondel "Towards a Systematic Analysis of Government–Party Relationships" (1995) 16 *IPSR* 130 (emphasis in the original). Blondel argues there are several ingredients to consider: the extent to which internal party discipline is exercised by the party backing the government, the solidarity of the support party with the governing party or parties (their reliability) and whether support parties offer continuing or contingent occasional support. Also, there are different levels of party-government relationships: the allocation of portfolios, the creation of a policy relationship and the allocation of favours or patronage positions (committee chairs, for example).

electoral system reform. Beyond the central legislative and policy implementation agencies, however, are the other networks of internal consultation that modern pluralist society has engendered, from advisory bodies such as the Law Commission to a multitude of interest groups and organisations. These manifestations of "hollowing out" within the State are matched by the complex environment and constraints of the contemporary globalised world.

VII PRIME MINISTERS AND CABINETS: DELIBERATION AND PRACTICE

It has been argued here that the very absence of constitutional clarification of the office of prime minister and the committee called "Cabinet" has led to commentators and participants using a range of metaphors in order to describe how these key institutions have operated, their roles and their rules. These images have contributed specific insights into how prime ministers and Cabinets have interpreted the constitution and have conveyed particular assumptions about the nature and distribution of political power.

The flexibility of the institutions of prime minister and Cabinet has had another interacting effect: it has allowed political actors the scope to shape their offices according to their own priorities and in response to changing circumstances. This flexibility has been particularly useful when adapting New Zealand's tradition of single-party majority government to the new networks of coalition and minority regimes. The development of the rules and conventions relating to Cabinet and prime minister (the "low" rather than the "high" conventions) has been a dialectical process. Those involved, while contributing to the reshaping of the traditions, have themselves been shaped by them. The contemporary results are policy networks within an evolving constitution that could scarcely have been envisaged by earlier occupants of the offices of Cabinet and prime minister. This leads to the question of whether New Zealand needs to rethink its constitutional framework in order to encompass and confine the changes of recent years – and how to do this – or whether the situation should continue to be left in the hands of the political actors and their advisers.

Whatever happens in the future, however, the story of New Zealand Cabinet government shows how the institutions of Cabinet and prime minister have been formed and shaped through democratic deliberation about our traditions, as well as by our history, recent events, and particular political interests. The metaphors produced by practitioners and commentators alike in the course of this discussion have illuminated the understanding and practice of New Zealand's constitutional arrangements.