



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Research Paper
No. 4 2002–03

Politician Overboard: Jumping the Party Ship

ISSN 1328-7478

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Published by the Department of the Parliamentary Library, 2003

I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 4 2002–03

Politician Overboard: Jumping the Party Ship

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24 March 2003

Acknowledgments

I would like to thank Martin Lumb and Janet Wilson for their help with the research into party defections in Australia and Cathy Madden, Scott Bennett, David Farrell and Ben Miskin for reading and commenting on early drafts. My thanks also to those who attended the workshop where the paper was discussed.

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Executive Summary

'Give back our seat' is a common cry in Australia when a Member or Senator chooses to quit the party on whose platform s/he was elected while retaining her or his seat in parliament. To hold on to the seat while joining another party or sitting alone as an independent is seen as 'little short of a fraud upon the voters'.¹ That is, such an action is seen as impairing democracy in that the decision of voters as expressed at a democratic election has been overturned.

In discussions of what should be done about party jumping, some argue that the Australian party system has developed to the point where voters no longer vote for candidates personally; rather, they vote for parties. In addition, an individual is unlikely to be elected without the party label, the party money, the party workers and the party preference deals. Therefore, an elected Member or Senator has no right to a seat because it 'belongs' to the party.

However, others argue that the seat rightly belongs to the voters, who want their representative to exercise judgment on their behalf—and that means defecting if the representative believes this is in the voters' best interests.

The question of seat 'ownership' is important because party jumping can have significant consequences—Senator Meg Lees's decision to quit the Australian Democrats to sit as an independent in July 2002 changed the political dynamics of the Senate and may yet allow the Howard Government to pass legislation that it could not pass before the defection.

Given the potential consequences of defecting, should there be legislation to control it as has been suggested in editorials commenting on recent Australian defections and as New Zealand decided to do in December 2001?² Both arguments outlined above—party ownership versus representative ownership—do not preclude the option of forcing a defecting politician to surrender the seat and put her or his decision and the justifications for it to an immediate test in a by-election. In fact, going back to the electorate is a common demand in the wake of a defection. Most recently, South Australian MP Kris Hanna's party jump from the Australian Labor Party to the Greens in February 2003 prompted a demand that 'Australia's electoral laws ... be changed to compel politicians to stand aside from parliaments in such circumstances'.³

But is it possible—and more importantly, is it desirable—to control such party jumping? Does legislation to force party jumpers to relinquish their seats when they quit their parties

contravene basic freedoms, such as those of conscience and association, or does it ensure that the voters' will as expressed at an election is maintained throughout the legislative term? Would such a law resolve the alleged democratic deficit or would it create new problems?

At its most basic, an anti-defection law would force those politicians who quit their parties to quit parliament. But an immediate problem arises: if an MP knows that the price of defecting is leaving the legislature and in all likelihood not returning—because, historically, few defectors are re-elected—then why would s/he resign?⁴ Such a law may provide the incentive to stay within the party and agitate—to be a 'politician-in-exile', so to speak.⁵ Of course, a party can expel a dissenting, disloyal politician from its ranks, but would this count as a defection in terms of the legislation?

To be effective, the law would have to allow for expulsion from the party to count as a defection, but this opens a new question about the power of parties. If voters elect their favoured candidate to a seat, is it democratic to allow a party to expel that person and force a by-election if s/he dissents from the party line? Does this give a party a level of power that would stop politicians from exercising their judgment and speaking against bad policy? What if the politician is simply following the will of her or his voters, who may disagree with a specific national policy? And if dissent is acceptable in this case, then when might it not be acceptable and who is to judge?

Before looking at the viability of legislation to prevent party defections, it is worth examining some more general issues. Why, for example, are there not more defections? One reason is that parties, not individual politicians, have become the central organisational pillars of today's democracies. Politics without established parties can descend into chaos, as has been the experience in Papua New Guinea. However, another reason that more politicians do not defect is that there are considerable tangible and intangible benefits to party membership, including electoral, collective, institutional and distributive advantages. That said, on the other side of the ledger, politicians must pay for these advantages by relinquishing some of their freedom to make independent choices on policy issues. Rather, in most cases, they must obey the dictates of the party.

Members of the legislature carry the burden of multiple responsibilities, being responsible to their voters, their party, the 'greater good' and their own consciences. Generally, they are able to balance the oft-competing demands that arise from these different responsibilities. However, occasionally one of these areas may come to outweigh the others, and when that occurs, a politician may choose to defect to another party or to independence while retaining the seat in the legislature.

Defectors advance in the public arena a number of common reasons to justify their action, especially their 'right' to keep the seat. These reasons include: that their party has changed while the defector has not, that they are obeying the voters' will, or that they are exercising judgment on behalf of the greater good. These reasons are not mutually exclusive, nor are

they exhaustive. In fact, cynical observers would suggest that there are often unspoken self-interested motivations behind the defection.

As noted above, the question of seat 'ownership' has convincing arguments that can be advanced on both sides. In the absence of legislation, there appears to be no correct answer—it may be that, like the children's game of musical chairs, the seat 'belongs' to whoever is sitting in it at the time.

Evidence suggests that the consequences of party jumping for politicians are two-fold: they substantially change their behaviour in order to fit with the demands of the new party (if switching to another party), but ultimately their level of support usually falls. In short, defection brings 'short-term fame but long-term obscurity'. (There are, of course, exceptions to this generalisation as will be canvassed in the paper.)

Although defections in Australia are usually accompanied by a hue and cry about the party jumper's right to retain the seat, there is nothing beyond this expression of outrage that can be done—Australia has no law to control what should happen when a defection occurs.

It is rare for a country to have legislation to control party jumping. As this paper reveals, while anti-defection law may suit the circumstances of countries, such as Papua New Guinea where it may help to impose order on a chaotic party system in order to stabilise government, its usefulness in other countries is less clear. Elsewhere, the legislation is problematic at best and unworkable at worst. India has experienced more party jumping since introducing anti-defection legislation than it encountered before; New Zealand's legislation, implemented in December 2001, has been a dismal failure, unable to cope with even the most obvious cases of 'waka [canoe]-hopping'.

In short, a law to cover such instances is not a sensible option in Australia, especially given the low numbers concerned, and is likely to create more problems than it resolves. Such a law would not necessarily enhance democracy or lead to more democratic outcomes.

Introduction

'I've had enough': with these words, Senator Meg Lees quit the Australian Democrats on 26 July 2002, adding that it was in 'the best interests of the Australian Democrats that I leave and sit on the cross benches as an independent senator for South Australia'.⁶

Her decision brought immediate calls for her to resign from the Senate and 'give back' her seat to the Democrats. The argument was that South Australian voters had not voted for Lees personally, but for the Democrats, which meant that Lees had no right to her Senate seat because it 'belonged' to the party. The party also emphasised that Lees had signed a pledge to resign from the seat if she ever quit the party.

However, Lees claimed an equal right to keep the seat on the basis that it was the party that had shifted and that her principles had not changed.⁷ Hence, any pledge that she may have signed was not binding because the party had broken the contract first. Building on this argument, Lees contended that she more accurately reflected the views of South Australian voters and '[a] solid base of 40 per cent [of the party] are in tune with my way of thinking'.⁸

With no legal way to force Lees to surrender the seat, the Democrats have been able to do nothing but grumble. South Australian voters will not get to express their own views on the seat until a few months before Lees's six-year term expires on 30 June 2005 (unless there is a double dissolution).

Quitting the party under whose banner a politician has been elected to federal parliament while retaining the seat is not new. Since federation, 114 Members and Senators have left their parties but remained in parliament and 13 of these have done so more than once.⁹ (These figures will be explored in a separate, forthcoming Parliamentary Library publication on the history of party defections in Australia. The purpose of this paper is to discuss party jumping in general, using Australian and overseas examples. While defection also occurs at the state level, these cases will not be examined here because the focus is on federal politics. That said, the general points are applicable to both levels of politics.)

Nor is quitting the party while retaining the seat a phenomenon confined to Australia. In some countries, party switching is a common political behaviour. Well-known politicians who have quit their party to join the ranks of another include Winston Churchill, who entered Parliament in 1901 as a Conservative, but crossed to the Liberal benches in

1904—a move that led some to refer to him as 'the Blenheim rat'.¹⁰ (Churchill later 'reratted' and returned to the Conservatives.)

What makes the Lees defection worthy of particular note is its potential impact on Australian politics. In a single move—quitting her party to sit as an independent—Lees changed the political dynamics of the Senate, wresting away from the Democrats the king-making ability the party had had for 19 of the past 22 years.¹¹ Today, if the Howard Government can attract the support of all three independents (Lees, Brian Harradine and Shayne Murphy) and One Nation Senator Les Harris, then it has more votes than Labor, the Democrats and the Greens combined. This makes it possible for the Coalition Government to proceed with legislation that previously it may have had little chance of having passed.

Again, the potential for defections from political parties to have significant consequences is not peculiar to Australia. In the United States in May 2001, Vermont Senator Jim Jeffords changed the balance of power in the Senate when he abandoned the Republicans to sit as an independent, albeit one who caucuses with the Democrats.¹² In New Zealand in 1997 and 1998, party jumpers kept the minority National government in power for several months, a move that angered the Opposition parties so much that they pledged to introduce legislation to ban what became known by the derogatory term 'waka [canoe] hopping'.¹³

Thus, the issue of a politician jumping overboard from the party ship while keeping the seat as a life-buoy for her or his political career is not simply a matter of vexing the party to which the politician formerly belonged, but of potentially altering the political horizon.

This paper is not concerned with those politicians who move to another party and surrender their seats when doing so (for example, Cheryl Kernot). Nor is it concerned with those who are in parliament under one party's banner and are re-elected at some later date under another party's banner. That is, those who change affiliation outside parliament (for example, Peter Slipper, who was with the National Party for a term from 1984–87, but returned to parliament in 1993 under the Liberal Party's banner).

In addition, this paper is not concerned with 'crossing the floor'; a separate, forthcoming Department of the Parliamentary Library publication will deal with crossing the floor and its consequences for a politician. Rather, the focus is on the instances in which politicians quit their parties to sit as independents or join another party while retaining the seat to which they were elected. This is known in much of the literature and media commentary as 'jumping the party ship' or party jumping.

Section 1 examines defections in general, discussing the following questions:

- why do so few politicians defect?
- why do politicians choose to abandon their parties and how do they justify keeping their seats when doing so?

- who has the 'right' to the seat: the party or the politician?
- what are the consequences of jumping for politicians in terms of both their post-defection behaviour and their chances of re-election?

Section 2 discusses attempts to legislate against party switching in Papua New Guinea, India, South Africa and New Zealand. It argues that such legislation may be effective in resolving Papua New Guinea's debilitating problem with defections, but elsewhere such law has proved to be problematic at best and unworkable at worst.

The paper concludes by suggesting that, although politicians quitting the party while keeping their seats may raise the ire of both the party and voters, attempting to control such defections through legislation is not a sensible option.

Section 1: Defections

An important initial issue to settle before proceeding is what should be counted as a defection or a party switch. Jumping to another party or to sit alone is obviously a defection, but is the politician overboard when s/he votes against the party in the legislature? Counting this as a defection would prevent a politician from ever crossing the floor to vote against the party, unless the party had given permission for the dissenting vote or there was a free (or conscience) vote.¹⁴ Yet, as will be discussed below, this is the case in some countries that have legislation prohibiting party jumping (see Section 2, pp. 23–33). The aim of such a strict interpretation of what constitutes a defection may be to prevent a politician from staying with a party while continually opposing its decisions (a 'rat in the ranks' or a 'politician-in-exile' within the party). However, its effect may be to curtail a politician's freedom to exercise her or his judgment and act against party policies and procedures. As noted above, this paper is not concerned with this interpretation of 'defection'.

Disgruntled party members, furious with the decisions and actions of their party, have long had the option of cutting up their party membership cards and either joining the other side or staying out of active political involvement.¹⁵ However, the focus here is not on party members but on sitting politicians. What happens when politicians decide to quit the parties with which they were associated when running for office but retain their seats in the legislature? Are they under any obligation—legal or moral—to forfeit the seat when they jump off the party ship?

Given that political defections are common in some countries, it could be assumed that such questions had been explored in depth over time and could easily be answered. For example, in several countries party defections are part of the political culture and party jumping is an expected—and, to an extent, accepted—behaviour. One author notes that 'Japan, Bolivia, Ecuador, Nepal, Russia, the Philippines, France, Italy, Brazil ... suffer, or have suffered bouts of frequent [party] switching'.¹⁶

In Brazil, for example, party switching in the Congress of Deputies is routine and growing. Since Brazil returned to democracy in 1985, party defections have increased from 25 per cent in the period 1987–90 to about 40 per cent in the period 1999–2002.¹⁷ All of the switchers have kept their seats when jumping and the 'lack of party loyalty is accepted by most Brazilians who expect nothing better from politicians'.¹⁸ Ecuador, too, has experienced high levels of party switching, with about 12 per cent of congressmen joining another party or becoming independent in the period 1979–96.¹⁹ Writing on this 'common phenomenon in Ecuadorian politics', political scientist Andres Mejia-Acosta observes that politicians and voters alike perceive party switching, also known as 'camisetazo' or 'change of shirt', as 'an expected feature of legislative behavior that does not undermine the individual reputation of the switcher'.²⁰

In other countries, party switching may not be common, but nevertheless it does occur. For example, in the United States, since 1990 12 members of the House of Representatives and the Senate have either switched to another party or become independents. In the United Kingdom, there have been eight such jumps since 1990.²¹ In Australia, the number for the same period is 17: eight Senators and nine members of the House of Representatives have defected.

The differences in the level of party defections across countries may be attributable to a number of factors, including a country's political culture or electoral and party systems. However, the concern of this paper is not with the level of jumping or why there are more defections in some countries than in others. While these are interesting questions, worthy of further investigation, the focus of this paper is more general, looking at issues to do with party defections that are common to all countries, regardless of culture or system.

Despite the (overall) considerable number of occurrences of party jumping around the world, and the media coverage that such defections often attract, there is little in-depth analysis of the phenomenon. The academic literature contains only a few country-specific discussions—mostly of party switching in the United States, India and Latin America—and most of the focus is on party cohesion and party discipline rather than the rules—or lack of them—governing defections. There appears to be no cross-country comparison of party jumping, and no consolidated discussion of the issues surrounding those sitting members of legislatures who decide to quit their parties but keep their seats. Thus, before exploring the effects of political culture or electoral and party systems, it is worth probing some general issues surrounding party jumping that are applicable across countries and that have, thus far, been overlooked, namely:

- to whom is the politician chiefly responsible: herself (or himself), the voters or the party? (That is, is a politician obliged to exercise judgment on behalf of voters, obey the voters' will or follow the party line?)
- to whom does the seat 'belong': the politician or the party?

Comments on party jumping both in Australia and overseas show that, in the main, defection is regarded negatively; quitting the party while keeping the seat is regarded as breaking faith with voters, who elected the politician on a particular platform that is associated with a particular party. While, as noted, voters in some countries have come to accept defections, generally those who switch allegiance are condemned as 'unscrupulous' and 'opportunistic', 'unethical', and 'self-serving'.²² Their behaviour is 'unconscionable', a 'breach of contract', and an act of 'treachery to the party'.²³ They are considered to have 'defrauded constituents', pandered to their own 'large egos', engaged in 'corporate theft', and to be in possession of 'stolen property'.²⁴

There is, however, an opposing view (to be explored in detail later in the paper) that appeals to the theory of political philosopher Edmund Burke (1729–97), who argued that elected representatives do not owe voters their blind obedience, but rather their judgment.²⁵ That is, according to Burke, politicians best serve their constituents when they exercise their judgment on voters' behalf and do not simply follow the demands of voters' or their parties. Today, this can be interpreted to mean that it is acceptable for a politician to, at times, go against the specific wishes of voters and leave the party if s/he thinks that such an action is in the voters' best interests.²⁶

A party's attitude to party jumpers appears to depend on where it stands in relation to the defector. In Australia, for example, the Australian Labor Party traditionally has condemned in scathing terms any 'rats' who desert the party—recall Senator Robert Ray's caustic description of Senator Mal Colston as the 'quisling Quasimodo from Queensland' who was treated as 'anyone who rats on the Labor Party' deserved.²⁷ Yet, just over a year later, this same party welcomed Senator Cheryl Kernot—until then the leader of the Australian Democrats—into its ranks, albeit under different circumstances in that Kernot surrendered her Senate seat.²⁸

Generally, Australian parties have an overwhelmingly negative view of party defectors who retain their seats, with one journalist observing after Bob Katter's defection from the National Party in July 2001 that Katter was now 'as popular as a brown snake in a sleeping bag with some of his Canberra colleagues'.²⁹ That said, it has been the case that the Liberal Party has not been as harsh over the years as the Australian Labor Party. The same cannot be said of the British Conservative Party, which launched a bitter smear campaign against defector Shaun Woodward in 1999.³⁰

In the United States, both major parties encourage their opponents to jump to their side, with one journalist describing the observations of these efforts as a 'biennial Washington parlor game'.³¹ However, when a defection occurs, the losing party generally is furious.³²

How voters feel about defecting politicians is less clear. In the long term, the most obvious test is whether or not a party-jumping politician is re-elected at the next election and the evidence here is not good for defectors, with many of them failing to retain their seats in open contest. (Election results for defecting politicians will be discussed further below.) In the short term, however, a defecting politician may attract some support for demonstrating

independent judgment, 'rather than slavishly implementing party directives'.³³ Such support may be considerable at a time when increasing numbers of voters are not aligned with either of the major parties, respecting instead those who stand apart from parties and the party discipline that may cause politicians to vote against the interests of their local constituents.³⁴

The Party Line

Before looking at why politicians quit their parties, it is worth canvassing why politicians belong to parties in the first place. That is, a different approach to the central concern of this paper may be the following question: why don't more MPs defect? The answer can be divided into two main sections:

- 1) the role and strength of parties in a democracy, and
- 2) the benefits that a politician obtains from party membership

The Role and Strength of Parties

Parties have become a central organisational pillar of today's democracies. It is no longer possible to have the direct democracy of 5th century Athens, in which all concerned citizens were required to participate directly in legislating because such tasks could not be delegated to others. Instead, modern societies have representative democracy in which voters elect representatives to make political decisions on their behalf. Parties arise out of this system; as one author notes, 'parties are inevitable. No one has shown how representative government could be worked without them'.³⁵

Parties are devices that organise collectively to place their representatives in the legislature and thus achieve their particular policy goals. This is not to say that parties are always formally recognised as part of a country's political system. While some countries have parties institutionalised in their constitutions (for example, France), others do not (for example, until relatively recently, Australia).³⁶

However, whether formally recognised or not, parties have become entwined with contemporary democracies through the tasks that they perform. Generally, parties:

- recruit and nominate candidates for elective office
- mobilise electoral support for their candidates and stimulate electoral participation
- generate symbols of identification and loyalty and simplify choices for voters
- aggregate specific interests into broader electoral and governing coalitions and articulate those interests
- contribute to the formulation of policy alternatives

- form and sustain governments, and
- integrate citizens more broadly into the nation-state and its political process.³⁷

Thus, one answer to the question—why don't more MPs defect?—is that parties, not individuals, are the organising focus of a democratic electoral system. (Whether or not voters back the party or candidates personally will be canvassed below.)

Benefits of Party Membership

It is not simply the *role* of parties that keeps elected politicians within their party's ranks. Undoubtedly, politicians also derive significant *benefits* from belonging to a political party that they would not receive were they standing alone. Some of these are intangible, such as the degree of personal satisfaction a politician may derive from membership in a party whose ideological viewpoint is the same as the politician's own.³⁸ However, other benefits of party membership for politicians are distinctly tangible and include electoral, collective, institutional and distributive advantages.

Electoral Advantages

Parties can enhance a politician's chances of being elected and re-elected.³⁹ This is not to say that independents cannot be elected; rather, that it is more likely for a candidate to be elected if she or he is associated with a political party.⁴⁰ Parties supply a 'brand name' that allows voters to recognise easily a politician's basic policy positions and match them with their own preferences. Political scientist Scott Desposato notes that parties can also facilitate voters' assignment of blame or reward for a failed or successful administration: 'Voters do not have to research all candidates' platforms or ties to the current administration—they just use a party label to summarize that information'.⁴¹

Politicians themselves use party labels to provide credibility to their claims to represent various segments of society, and to support their claims to be part of, or oppose, the current administration.⁴²

In terms of material electoral advantages, parties provide considerable practical assistance to their politicians, supplying electorate volunteers, finance for campaigns, resources to mobilise and organise voters, and general advice. As political researcher Michel Rossignol observes, 'only the party has the resources to mount the costly campaigns in the mass media which are an essential ingredient of modern day elections'.⁴³

Collective Advantages

Politicians benefit from belonging to a group that collectively has power to implement its objectives. Parties act as like-minded voting coalitions, working to advance common policy agendas and to defeat their opponents' agendas.⁴⁴ Thus, politicians benefit from being part of a larger collective when trying to implement policies that voters demand,

both those that apply across all constituencies and those in a particular constituency. That is, politicians are able to seek—and, to an extent, expect—support from their colleagues for policies that may relate only to their own constituents in return for reciprocal support for fellow party members in the future.

Institutional Advantages

Parties may hold the keys to a politician's career in that they have a considerable amount of control over institutional factors that govern both the chances of a politician being elected and the career opportunities available once a politician is in the legislature.

In an election, parties may control such factors as the order in which candidates appear on the ballot paper and on a party's list. In the legislature, parties may control access to institutional resources, including the nominations for desirable political offices, committee assignments and leadership posts. These positions may enhance a politician's career by raising the legislator's profile within both the party and the electorate. While parties in opposition may be confined to internal promotions rather than external posts, they can offer longer-term advantages, rewarding those who are loyal while in opposition once they are in power.⁴⁵

Such is the power of parties to control these institutional resources that, even if a non-party-aligned politician is elected to a legislature, s/he may find herself or himself without the institutional capacity to achieve policy and career goals.

Distributive Advantages

Parties may also be able to offer politicians the opportunity to distribute resources to political advantage. As Desposato observes, parties aligned with, or controlling, government are privileged in access to government resources, including such things as 'road construction, military procurement contracts, social security pensions, and even cash that can be distributed directly to constituents'.⁴⁶ These resources allow politicians to deliver promised policy outcomes. Politicians who are members of ruling parties can garner significant credit from voters, and thus enhance their political careers, if they can fulfil their election promises as well as distribute extra goods to their constituents.

The opportunity for access to such resources is a powerful incentive for politicians to stay attached to their parties. Again, independent politicians are unlikely to have the same access to these distributional advantages.

Paying for the Party Favours

In short, then, the role of parties within a democratic political system and the benefits that politicians obtain from party membership are strong inducements for politicians interested in a long-term political career to both join parties and stay within their ranks.

However, there are costs to party membership, with one of the most important being that a politician is not free to make an independent choice on most policy issues. Joining a political party implies a voluntary contract to support that party and its views. In some parties, the contract is formalised through a signed pledge in which politicians promise to uphold the party's aims and constitution.⁴⁷ In Australia, both the ALP and the Democrats have such pledges. (The effectiveness of such pledges will be discussed below.)

To an extent, the contract with the party is a two-way obligation: as the politician agrees to support the party, so the party agrees to remain true to its manifesto—unless it can justify its deviations. It is the alleged breach of the party's side of this contract that many party jumpers use to vindicate their decisions to defect. That is, a common explanation for leaving the party is that the politician's principles remain unchanged (and aligned with the voters' will) whereas the party has abandoned core principles and is heading in a different direction. This will be discussed further below.

Politicians do have the option of going against the party while remaining within its ranks. On some policy issues, parties allow a free (conscience) vote in which their members do not have to adhere to the party's preference—or the party may have no preference—but may vote according to their own beliefs.⁴⁸ At other times, politicians may choose to defy party instructions and 'cross the floor' to vote with the opposition. However, consistently voting against one's party carries the risk of punishment, which may include reduced access to party resources, less influence on the party's legislative agenda or—in the worst case—expulsion from the party.⁴⁹ In some systems, of course—including Australia's—a single act of defiance may be enough to bring such punishment, as when Labor Postmaster-General Joe Lyons and his supporters voted in favour of a motion of no-confidence in the Labor government in 1931.

Party Discipline and Defections

Parties cannot achieve their goals if politicians continually choose to pursue their own individual agendas. A constant stream of floor-crossings undermines the ability of party leaders to maintain coherent policy platforms and may damage the party's reputation with voters, who may withdraw their support from a fractious and divided party. As political scientist Timothy Nokken observes, 'collective benefits are only enjoyed if members do not defect, if the party maintains cohesion'.⁵⁰

Academics Shaun Bowler, David Farrell and Richard Katz stress the importance of party cohesion to parliamentary systems, arguing that:

Cohesion and discipline matter in the daily running of parliaments. The maintenance of a cohesive voting bloc inside a legislative body is a crucially important feature of parliamentary life. Without the existence of a readily identifiable bloc of governing politicians, the accountability of the executive to both legislature and voters falls flat. It can be seen, then, as a necessary condition for the existence of responsible party government.⁵¹

A difficulty for parties in maintaining cohesion is that parties are comprised of individuals, each of whom is capable of independent action and each of whom has her own set of priorities that may differ from that of the party.⁵²

One way that parties maintain cohesion is through party discipline or, in colloquial parlance, ensuring that its members 'toe the party line'. Some methods of discipline that parties have at their disposal are obvious. Parties in parliamentary systems, for example, have 'whips' or officers responsible for both keeping members informed of the party line on various issues and issuing any necessary directives (or whips) for how the party wants members to vote on specific issues on the floor of the House.⁵³ Sanctions that may be imposed on disobedient MPs include expulsion from the caucus or the denial of the opportunity to ask questions at Question Time.⁵⁴

Less obvious means of discipline at a party's disposal include the ability to offer or withhold desirable promotions and positions from recalcitrant members. Thus, 'loyal MPs may be promoted and disloyal MPs demoted'.⁵⁵ Dissenters may also lose office accommodation and staff or assistance with constituency work. Some of the ultimate sanctions at a party's disposal include withdrawing its support for the politician in the pre-selection for the seat at the next election or expelling the member from the party, both of which may potentially end a politician's political career.⁵⁶

These forms of discipline mean that, even in systems where discipline is characterised as 'weak', such as that of the United States, because there are few overt sanctions for those going against the party, politicians cannot afford to defy the party on every vote. This casts doubt on the claim that defections are less likely in countries with weak party discipline because such weakness allows politicians to vote however they please, meaning that a politician has no reason to defect.

Even where party discipline is 'weak' and politicians have 'relatively free rein to cast ... votes in nearly any manner they see fit', the underlying contract with the party governs—to a degree—a politician's behaviour.⁵⁷ Thus, even in the United States, politicians cannot always vote against the party line because doing so 'may alienate their core electoral constituencies and thus increase the likelihood of a strong challenge in primary elections'.⁵⁸

In addition to these 'negative' reasons for conforming to party discipline, there are several 'positive' ones, most notably those discussed above in the section on benefits of party membership. Political scientists Michael Laver and Kenneth Shepsle also argue that politicians submit to party discipline because it creates 'more powerful bargaining units' that are able to achieve policy goals that are close to the 'ideal points' of those submitting to the discipline.⁵⁹ That is, politicians recognise that they are more likely to achieve their aims when they work with others.

Last, but not least, politicians who owe their seats in parliament to their position on a party's list may feel a particular obligation to adhere to the line of the party that put them

in power.⁶⁰ In summary, then, politicians are tied to their parties and the policies of those parties in a number of often overlapping ways. Generally, politicians gain significant benefits from party membership in terms of brand recognition, administrative and financial support and so on. However, on the cost side, the voluntary contract that binds politicians to a party also obliges them to support that party. They may also be bound by a pledge, owe their seat to their position on a party's list, or face disciplinary action up to and including loss of endorsement for their electorate if they fail to obey the party's rules and decisions.

Thus, the role of the party in democratic systems, the benefits of party membership and the costs of disobedience are among the reasons why politicians choose to stay aligned to their parties rather than jump overboard from the party ship.

After the Party's Over: I've Had Enough

Given the reasons discussed in the previous section for why politicians choose to remain with their parties, how can we account for those who choose to defect?

Justifying the Jump: Reasons for Defecting

According to a common understanding of representative democracy, politicians are responsible to those who elect them, either the people of a particular constituency or the people in general if the politician's seat has been allocated from a party list. However, as flagged earlier, another notion comes from Edmund Burke, who claimed that MPs were responsible to their consciences rather than voters. In an oft-cited speech to the electors of Bristol in 1774, he said that while voters' wishes and opinions should have 'great weight' with an MP:

his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. ... Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.⁶¹

In this view, politicians do not always have to vote as the electorate desires. Yet both of these notions—responsibility to voters and responsibility to conscience—may conflict with that of politicians owing their loyalty to their parties.

Generally, politicians are able to keep the demands of their voters, their party and their consciences in balance. However, they may feel they have no option but to defect if one of these competing demands comes to outweigh the others. It may also be that simply dissenting or abstaining on a vote 'would not indicate the full measure of their disenchantment'.⁶²

Academics Timothy Nokken and Keith Poole note that studies of party defections over a 'wide swath' of American history (1789–1984) have found that party switching usually

coincides with important political events, such as military conflict or changes in partisan control of legislatures or key economic indicators.⁶³ This suggests that a politician may jump when her or his view on a major policy position differs from that of the party.

In Australia, the periods with the largest number of defections support the contention that most party jumping coincides with important political events. For example, large numbers defected in 1931 and 1936 over policies to deal with the Depression.⁶⁴ (Further details of party defections since federation will be supplied in a separate, forthcoming Parliamentary Library publication.)

Looking at more recent party switching in the United States, Nokken and Poole observe that defections over the past two decades are associated more with ideologically cross-pressured members or those members whose views do not sit obviously on one side of the left–right political spectrum and who, therefore, may feel at home in more than one party. The increase in defections for this reason fits with the idea that defections are less likely in highly polarised systems; that is, those systems in which parties have distinctly different ideological views that manifest in opposing views on policy issues.⁶⁵ In a highly polarised system, it is unlikely that a left-wing politician would jump to a right-wing party or vice versa.

However, today's major parties are more likely to appear towards the centre of the left–right ideological spectrum, which itself has become a less useful descriptive tool in a complicated world in which party views no longer fit so neatly into a single position on the left–right scale. As parties move to 'centre' positions, and even the same position on some issues, then there is an overlap that may lead to those in a 'right' faction of a 'centre-left' party jumping to the 'left' faction of a 'centre-right' party and vice versa. The jumps are justified with the claim that the new party offers a better match with the views of the politicians and their constituents. This helps to explain Nokken and Poole's observation on recent defections in the United States, where politicians are more likely to switch to another party than to sit as independents.

The following sub-sections discuss some of the most common reasons that politicians advance to justify their defections. Two points must be made with regard to these reasons:

- 1) they are not mutually exclusive nor exhaustive; party jumpers may use more than one justification when explaining their decisions and may offer other reasons not explored here
- 2) they are the publicly given reasons for the defections; there may, of course, be other underlying factors and circumstances that are not made public.

Deserting the Deviating Ship

A common explanation for leaving a party is that the party has changed while the defecting politician has not. The claim here is usually that the defector is still 'true' to the

party's principles whereas the party has either abandoned those principles or twisted them beyond recognition.

Much of the justification that Meg Lees offered for her defection from the Australian Democrats in July 2002 was based on the claim that the party had shifted and her principles had not changed:

My very strong argument is that I haven't moved anyway as far as my philosophy, my principles are concerned ... It's the party that has shifted.⁶⁶

Senator Shayne Murphy used similar arguments when he resigned from the Australian Labor Party in October 2001 to sit as an independent. He responded to demands that he resign his seat with the following statement:

I remain very committed to the Labor ideals I took up years ago. Indeed, I believe I am more committed to those ideals than many of my former Labor colleagues.⁶⁷

Further afield, in the United States, when Vermont Senator Jim Jeffords resigned from the Republican Party in May 2001 over differences on education spending, taxes and environment issues, he noted that he was increasingly finding himself in disagreement with the party on whose ticket he was first elected to Congress in 1974. Justifying his decision to jump from the Republicans to sit as an independent aligned with the Democrats, he said:

Given the changing nature of the national party, it has become a struggle for our leaders to deal with me and for me to deal with them. I have changed my party label, but I have not changed my beliefs.⁶⁸

In a similar vein, in the United Kingdom, MP Shaun Woodward, who quit the Conservative Party in December 1999 to join Labour, argued that he had not 'ratted' on his party; rather, the party had 'ratted' on him:

I can no longer support the increasingly right-wing policies of the Conservative Party ... it is not me who is leaving my Party. My Party has left me ... It is the Tory Party that has changed in the last 2½ years ... They have left me and they, therefore, have left the people of Witney [Woodward's constituency], too.⁶⁹

When politicians believe that their parties are deviating from agreed core principles such that they find they can no longer vote along party lines, then they may feel they have no option other than to quit their parties. However, they retain their seats because they believe that they still represent the principles that attracted the support of voters.

Obeying the Voters' Will

Another explanation for party jumping is that the politician is obeying the will of the voters, who either no longer have faith in the party or have changed their political

viewpoint. For example, in the United States, Jeffords's defection from the Republicans was seen to reflect that Vermont had changed in the past forty years 'from one of the nation's most reliably Republican states into one of the most strongly Democratic'.⁷⁰

A similar argument can be made in Australia to account for Bob Katter's decision to quit the National Party in July 2001 to sit as an independent. Katter claimed that the party's policies were crippling people in his constituency and:

The question is not why I'm leaving but how could I possibly stay? ... This has been the hardest decision of my life but the team I play for is the team of Far North Queensland and Far Western Queensland. ... I'm doing it because I can't do the right thing by the people I represent otherwise.⁷¹

That is, Katter believed the party's policies were no longer of benefit to Katter's rural Queensland constituents. Country residents themselves argued that the party had 'become city orientated and forgotten the country'.⁷²

When politicians consider that their parties no longer reflect the interests of their local constituents, then they may feel that they have no option but to quit their parties. Again, they retain the seats because they believe that this is what the voters want.

Exercising Judgment

Falling somewhat between the two previous justifications for why politicians choose to jump from the party ship is another explanation: that a politician has exercised her or his judgment and decided that it is in the voters' best interests for the politician to defect. This justification clearly reflects Burke's position, as outlined above, that representatives must use their own critical faculties when assessing policy options, taking into account party and electorate views but ultimately making what they believe is the best decision for voters and 'the country'.

There are many examples of politicians using this reasoning to justify quitting their parties. In the United States, Democrat Matthew Martinez (a member of the House of Representatives) jumped to the Republican Party in July 2000 on the grounds that his Democratic colleagues had:

lost sight of what's fair for the American people [whereas] the Republican agenda stands up for what the American values are and what most people in this country really want their government to do for them.⁷³

Jeffords claimed in May 2001 that he had no other option than to quit the Republicans, even though it would give control of the Senate to the Democrats: 'I knew it was my responsibility to do what I truly believed was in the best interest of our country'.⁷⁴

In the United Kingdom, Paul Marsden, who quit the Labour Party to join the Liberal Democrats in December 2001, argued that the electorate was suffering as a result of the

Government failing to deliver on its promises. In his view, the Liberal Democrats were the better alternative: 'Having thought about this over many months, I am convinced that the Liberal Democrats stand for honest and credible policies which can change this country for the better'.⁷⁵ Two years earlier, Woodward had justified his defection from the Tories on the grounds that the party's policies towards Europe were 'foolish and irresponsible' and had 'consequences that are anything but in Britain's national interest'.⁷⁶

In Australia, when MP Andrew Theophanous quit the Labor Party to sit as an independent in April 2000, he blamed—among other things—the party's 'unacceptable policies' on immigration, stating: 'My conscience can no longer allow me to pursue the party line in relation to these policy matters'.⁷⁷

Of course, the stories behind the defections are usually much more complex than this justification suggests, but the appeal to acting for the greater good is common. When politicians believe that, in their view, the voters are best served by moving away from the party, then this may justify the decision to move to another party or to become an independent. As before, the justification also supports the retention of the seat.

Self-interest

A final explanation for defection to be explored in this paper is one to which politicians would seldom—if ever—admit, yet is one of which they are often accused: acting in their own self-interest. No matter what justification politicians offer for their actions, it often appears to outside observers that a substantial amount of self-interest is involved.

If we assume that politicians are interested in being re-elected, then self-interest in achieving such a goal can be applied to explain everything from the varied timing of defections to the appointment of politicians to desirable posts in the aftermath of defections.

Timing: Politicians who defect early in their elected term often have a considerable amount of time before they have to contest an election and face voters' judgment of their actions. Jumping soon after their election (or mid-way through their term) may give politicians time to explain to voters the reasons for the defection, to win over voters and to prove their ability to independently achieve positive outcomes for constituents. Examples of politicians who quit early in their terms include Lees in Australia, who quit in July 2002 and whose term expires in June 2005, and Jeffords in the United States, who quit in May 2001 and whose term expires in 2006.

At the other end of the time scale are those who quit their parties shortly before an election, perhaps in order to distance themselves from unpopular policies that they fear may cost their parties—and therefore themselves—the chance of success at the election. Desposato notes that, in such instances, the benefit of a 'brand name' that party membership supplies may prove to be a disadvantage (or an advantage if the opposing party is in power). That is, he writes:

Th[e] electoral label role of parties can create strong incentives for switching parties—to avoid a discredited or unpopular label, or to join and cash in on a successful governing administration.⁷⁸

This reasoning may partially explain the rash of defections from the two major parties in New Zealand before the 1996 election. Both the Labour and the National parties had lost support as a result of introducing a range of unpopular policies when in government in the 1980s (Labour) and the early 1990s (National) such that minor parties attracted 30 per cent of the vote in the 1993 election. Before the 1996 election, thirteen Labour and National MPs quit to form their own parties or join existing minor-party alternatives.⁷⁹

American commentators anticipate this type of party-switching occurring in the United States before the next congressional elections in 2004, given the Republican Party's success at the November 2002 mid-term elections and the belief that Republican control over both chambers of Congress will continue for several election cycles.⁸⁰

Losing pre-selection: Politicians who lose pre-selection for their seats may feel betrayed by their parties such that they decide to quit and stand as independents. This occurred in Australia in 1996 when two sitting Liberal Party MPs, Alan Rocher and Paul Filing, 'fell foul of the swirling factional politics within the West Australian Liberal Party' and lost party pre-selection.⁸¹ Both stood successfully as independents at the 1996 election (but were defeated at the following election).

Desirable posts: Politicians may change their party affiliation in order to obtain access to desirable political posts, such as committee or leadership positions, or to retain their current assignments. Desposato argues that preserving committee assignments was the motivation behind several American legislators switching from the Democrat Party to the Republican Party in early 1995.⁸² The formal 'courting' of politicians, where one party tries to coax members of another party to swap sides, appears to be an accepted practice in the United States.⁸³ In the United Kingdom, Conservative Party leaders responded to Woodward's 1999 defection with allegations that he had made a deal with Labour to get a ministerial job, a claim Woodward vehemently denied.⁸⁴ However, in what could be interpreted as a 'reward' for jumping, Woodward was later selected for the safe Labour seat of St Helens at the 2001 election.⁸⁵

Where the offer of desirable position induces politicians to jump to another party, the system may be open to allegations of corruption. In India, for example, which—as will be discussed below—has a particular problem with defections, a review of electoral processes argued that rewarding defectors with political positions 'and other such perquisites' encouraged corruption at the highest level.⁸⁶

While it may be tempting to assume that such 'rewards' are not offered in Australia, this is not necessarily the case. The Coalition Government elected Mal Colston as Deputy President of the Senate after his defection from the Labor Party in August 1996 in what many commentators saw as a reward for quitting Labor and supporting the Government on

the sale of Telstra. Political commentator Alan Ramsey subsequently claimed that Colston had 'ratted on his party in 1996 for John Howard's irresistible 30 pieces of silver (the Senate deputy presidency)'.⁸⁷

Desirable resources: If parties in power have access to desirable resources, then politicians in opposition parties may decide to jump to (or support as an independent) the resource-rich parties in order to obtain these goods for their voters. In New Zealand, for example, defecting politicians who supported the minority National government in the 1996–99 parliamentary term were allegedly rewarded with leadership budgets and special treatment as well as ministerial portfolios.⁸⁸

'Give Back Our Seat': Rights and Ownership

Politicians who decide to quit the party on whose platform they were elected while retaining their seats in the legislature usually face immediate demands from the original party to 'give back' the party's seat. The claim is that the seat belongs to the party and not the individual politician because people voted for the former and not the latter.⁸⁹ In response, defectors usually present one of the justifications outlined above and can also argue that the seat is 'theirs' because the electorate voted for them personally as much as they voted for the party.⁹⁰

Most countries do not have legislation to dictate what should happen in the case of defections; those that do can find such law troublesome. This will be discussed further in Section 2, pp. 23–33.

In the absence of legislation forcing a politician to relinquish the seat, some parties ask their candidates to sign a party pledge that they will give up the seat if they quit the party. However, such pledges are not a watertight guarantee, as the Australian Democrats found with Meg Lees in July 2002.

The Democrats alleged that Lees had signed a party pledge according to which Democrat candidates agree to resign from parliament if they quit the party. Initially, Lees was reported as saying that she had not signed any document.⁹¹ Two days later, however, she was reported as saying that she might have signed something agreeing to abide by the party's constitution, which contains the following clause regarding the obligations of candidates:

11.2b If elected the candidate agrees that whilst he may retain the right to resign from the Party, if he does so he will resign the parliamentary seat beforehand.⁹²

The problems the Democrats encountered in seeking to enforce such a pledge are universal to all such party allegiance pledges:

- once the politician quits the party, s/he is outside its rules and cannot therefore be disciplined for any breaches of contract

- the pledge is not legally supported and it is unlikely that a court would 'countenance compacts of a political kind that would impinge on a member's freedom to act in good conscience, or on a member's right to hold and perform the functions of office'⁹³
- the pledge is not legally binding; rather, as Democrat leaders noted at the time, it is only 'morally' enforceable.⁹⁴

In the absence of an anti-defection law, then, the question of the 'right' to the seat becomes a moral, rather than a legal, issue and the arguments can be divided into two major streams of thought:

- 1) that parties are the modern units of politics and that politicians elected on party platforms are bound to follow the dictates of the parties—and the voters—who put them in parliament. Therefore, politicians should surrender their seats if they quit their parties.
- 2) that politicians are obliged to exercise their judgment on behalf of their constituents rather than their parties (Burke's notion, outlined above). Therefore, they should have the right to quit their parties without sanction if, in their judgment, the voters are best served by this course of action.

As can be seen from these arguments, a key question is whether parties or individuals are considered to be the central elements of the political system.

Once again, the answer to this question is complex. Some claim that, even when they stand for election on a party platform, constituency politicians are primarily responsible to their electorates, rather than their parties, and this responsibility entitles them to retain their seats should they defect. In addition, it may be that parties are not as much a focus of the system as is suggested. In Australia, for example, parties were not listed against a candidate's name in Australia's official election statistics until 1975.⁹⁵

Political scientist Dean Jaensch counters the primacy of parties in Australia with the following arguments:

- political parties are not mentioned in the electoral parts of the 'sovereign law' of Australia, the Constitution
- members of the House of Representatives are referred to as the member for [the electorate], not the Labor, Liberal or National member for [the electorate]; senators are referred to as Senator [name] and not Senator [name] of the Democrats or the Greens
- political parties do not elect Members of Parliament; voters elect Members and Senators on the basis of personal choice

- more independents are being elected, which weakens the party argument, as independents 'depend for their election on a personal vote, personal appeal and personal support'.⁹⁶

Evidence from New Zealand—where voters have both an electorate and a party vote—supports the claim that party is not the only consideration for voters. Political scientists making a submission to a New Zealand parliamentary committee inquiry into anti-defection law observed that about 35 per cent of voters split their votes in the 1999 election; that is, they did not give their party vote to the same party that their preferred candidate represented.⁹⁷ Such 'split voting', which grew to 39 per cent in the 2002 election, could reflect strategic voting to prevent one party having too great a majority, but it could also reflect that people vote for the candidate they like, even if that candidate represents a party they dislike. That is, they vote for the person and not the party.

In addition, one of New Zealand's most notorious party jumpers—Jim Anderton, who has changed parties several times in the past 20 years—was re-elected in the July 2002 election, despite the controversy surrounding his latest jump earlier that year (see the discussion on New Zealand, pp. 30–33). The outcome indicates that votes for particular personalities may still be an important factor in the New Zealand electoral system, even with the alleged primacy of parties.

Countering this, of course, is the example of elections for the Australian Senate, where most of the votes are cast 'above-the-line' for the party and not against the individual candidates' names.

Jaensch notes that an election is a viable democratic process without parties, but that 'party domination is a "tier" which has grown on the top of the election process like a fungus'.⁹⁸ He argues that it would be insulting to suggest that voters do not care who the candidates are as long as the party label is there and concludes that it is not the politician or the party that owns the seat. Rather:

When it all boils down, the seats are owned by the voters, and the voters say whose bottoms will be warming the comfortable leather. Parties might feel that they 'own' them, but do they? To whom should a member of parliament be accountable? If the answer is to the party, then to whom are the parties responsible?⁹⁹

Those who want defectors to surrender their seats offer a straightforward counter-claim to these arguments. That is: if personally popular constituency MPs are responsible to their electorates before parties, then they should have no objection to putting their popularity—and approval of their decision to defect—to the test by agreeing to surrender their seats and submit to an immediate by-election.

But Jaensch offers a feasible counter-argument:

Between elections, the person elected to the seat owns the seat. The voters cannot remove him or her until the next election ... Hence if the elected member owns the seat,

and carries the burden of representation of the voters, it is an ownership and a burden which exists and continues whether he or she is a party member, a party ship-jumper, an independent or whatever. The label does not own the seat between elections—the person does.¹⁰⁰

Which returns us to the argument about the need for politicians to be able to exercise judgment on behalf of constituents, even when that judgment results in a decision to defect.

In summary, in the absence of legislation, there is no easy answer to the question of who has the moral right to a politician's seat. It may be that, like the children's game of musical chairs, the seat 'belongs' to whoever is sitting in it at the time.

The Consequences of Jumping Overboard

Although many of the reasons for defecting outlined above appear to be perfectly acceptable justifications for the jump, politicians who quit the party while retaining the seat pay a hefty price for their actions. Among the most obvious costs to those who choose to sit as independents are the loss of the benefits of party membership, from material resources through to the deprivation of the company of one's former colleagues.¹⁰¹ Those joining another party may face hostility from their new colleagues, who may be reluctant to trust those who are considered to have 'betrayed' another party. As one journalist observes, defection 'sends a signal of unreliability when crunches come'.¹⁰² Such hostility and lingering doubts over a defector's motivations may have a negative impact on the politician's career and the positions and promotions that s/he would ordinarily expect.¹⁰³

The ultimate price for both new independents and party switchers, of course, is that they may lose the support of voters and thus lose their seats the next time they stand for election. As journalist Steve Richards observes: '... the trauma of being abused by former colleagues and viewed with suspicion by new ones is exacerbated by the prospect of a political void after the election'.¹⁰⁴

So, if the costs of defecting include hostility and suspicion on the part of new colleagues and voters, how does this affect the behaviour of defectors and what are the outcomes for party jumpers at the next election?

Changes in behaviour

Research into the consequences of party switching in the United States suggests that, because defectors feel they have to prove themselves to the new party and to voters, they significantly modify the way they vote in order to fit the line of the new party. Thus, even in a system with weak party discipline, in which there are no overt sanctions to voting against the party, party-switchers are more likely to vote in accordance with their new party's wishes. As Nokken and Poole observe, 'Some legislators may "switch with a

vengeance" in order to show their new colleagues in the new party that they are "real" Republicans or "true" Democrats'.¹⁰⁵

Nokken and Poole count those who quit their parties to sit as independents as party switchers, even when these politicians label themselves as 'independent' members of their original party. Thus, Nokken and Poole's conclusions on the significant shifts in voting patterns can be taken to apply to these defectors as well; that is, both those who join another party and those who become independent change their votes after their defection.

However, while this may be true for the United States, there appears to be little (or no) research outside the United States on the voting patterns of those who quit the party while claiming to remain true to the party's ideals. In Australia, for example, it is not known whether a disaffected Liberal, Labor or Democrat politician continues to vote as if s/he still belonged to the party.

Political journalist Michelle Grattan, writing about Meg Lees in the wake of her defection, noted that Lees still slipped into using 'we' when she spoke of the Democrats. To be fair to Lees, Grattan was writing only a few days after Lees quit. However, Grattan's subsequent point is valid:

The more Lees thinks of herself as a Democrat outside the party, the less you'd expect her votes to be radically different from the Democrat tradition. But the longer she's an independent, the more 'independent' of her past she could become (within the limits of her fundamental values).¹⁰⁶

Given the number of independents in the Australian Parliament (currently six—three in each chamber), it would be useful for future research to examine whether there is a difference in voting patterns between those 'bona fide' independents—those who have never been affiliated to a party—and those independents who were once faithful party members.

Another interesting question is whether or not defectors vote as though they retain a mandate from their electorate for their actions; that is, do party jumpers argue vehemently for particular policies or do they abstain more often than they did when they still belonged to a party?

Of course, the new 'loyalty' need not be confined to voting: reports in the wake of Woodward's defection from the Tories to Labour in 1999 noted that Woodward had become 'one of Labour's most active backbenchers', visiting far-flung constituencies to 'offer his inside knowledge to highlight the dangers posed by the Conservatives'.¹⁰⁷

'Short-term fame and long-term obscurity'

Evidence suggests that defections are not popular with voters in that few party jumpers retain their seats in the longer term. This is not to say that defectors are never re-elected; rather, the number who lose their seats is vastly greater than the number who retain them.

In the United Kingdom, for example, defections are seen as 'rare and risky' because quitting the party 'tends to bring short-term fame and long-term obscurity'.¹⁰⁸

Whether or not a party-jumping politician is re-elected appears to depend on how believable voters find the justification for the defection. It appears that the chances of re-election decline if voters perceive the action to be based on self-interest. In New Zealand, for example, none of the controversial party jumpers in the 1996–99 parliamentary term were re-elected at the 1999 election, but those who defected at other times have been re-elected and some who defected years ago remain in parliament today.¹⁰⁹

For those politicians who become independents, their re-election chances may depend not only on voters' judgment of the justification for the jump, but also on voters' attitudes towards independents. In Australia, for example, Bob Katter as an independent attracted 47 per cent of the primary vote in the 2001 election, up from the 44 per cent he received as a National Party member in 1998. The result may partially reflect an increased willingness on the part of rural voters to support independent candidates over party candidates. Journalist Cameron Forbes reported on this phenomenon before the election, noting that 'Rural rage is translating into growing support for unaffiliated politicians who will stand up for the home side'.¹¹⁰

However, even when defecting politicians are re-elected, research in the United States suggests that their level of support may be lower than before they quit their parties. Political scientists Christian Grose and Antoine Yoshinaka find that, on average, incumbent politicians who change parties have poorer showings after their switch in both general and primary elections and that these electoral consequences occur in *every* election after their switch.¹¹¹

In summary, then, defection may have several significant costs and consequences for a politician, including:

- hostility from former colleagues and suspicion from new ones
- suspicion and anger from voters that may manifest in an electoral backlash against the politician at the next election
- a more limited ability to undertake independent action because of the burden of proving one's allegiance to the new party
- higher costs at the next election if a politician standing as an independent has to fund and direct a campaign without party support

Given these costs and consequences, a reasonable assumption would be that politicians decide to quit their parties only if—in each particular circumstance—the benefits of doing so outweigh the costs. Such an equation may be a matter for each individual to judge as it is unlikely that all would assign the same weight to the various psychological and material

benefits. That is, some politicians may give greater weight to psychological benefits, such as the personal satisfaction of standing up for one's principles, while others give greater weight to practical considerations, such as the positions or resources they may obtain through the defection.

Section 2: Legislation

Although defections in Australia are usually accompanied by a hue and cry about the party jumper's right to retain the seat, there is nothing beyond this expression of outrage that can be done—Australia has no law to control what should happen when a defection occurs. As noted above, the losing party usually demands the return of the seat to its rightful owner (the party) while the defector claims the moral right to retain the seat for any one of the reasons outlined above. Ultimately, the jump itself generally sinks almost without trace—the only ripple on the political surface being the continued grumbling of the defector's original party.¹¹²

In fact, most countries do not have legislation controlling party jumping. Neither the United States nor the United Kingdom (from which Australia's political system is drawn) has anti-defection legislation. Even those countries in Western Europe that are (or have been) plagued by party jumping—France and Italy among them—have refrained from introducing laws to curb the practice.¹¹³ As noted above, often the only attempt at control is through conditions in a party's constitution.¹¹⁴ Those countries that do have legislation to control defections, including Bolivia, Fiji, India, Namibia, Papua New Guinea, South Africa, Trinidad and Tobago, Vanuatu, Zambia and Zimbabwe, have been dismissed by some as needing the legislation because they are 'dictatorships and fragile democracies'.¹¹⁵

Should there be legislation in place to force party jumpers out of parliament? The question of legal control is vexed because sound arguments can be advanced on both sides. In effect, there are two levels of argument: 1) whether or not the law has a role in controlling political defections and 2) the impact of such anti-defection law on democracy.

The Role of the Law

There are two views on whether or not party jumping is a matter for the law to control. On the one hand, 'the law has a role to play in establishing a moral position, in declaring a standard of behaviour which is acceptable'.¹¹⁶ On the other hand, the law can be a heavy-handed instrument and, because it applies to all cases, cannot distinguish between 'credible' and 'discreditable' party hopping.¹¹⁷

Journalist Gerard Henderson demonstrates the problem with the latter in a different context when he queries the blanket application of the term 'rat' to all ALP defectors, arguing that some had good reason to break from the party.¹¹⁸ Then-Labor leader Kim Beazley had made the same point in 1998 when describing Mal Colston's defection from Labor:

This is the most undistinguished defection from the Labor Party in our hundred-year history. We've had many people leave the Labor Party, some of them for reasons that they saw [as] tremendously sound, and most of it on what you'd call principle. There's been no principle involved here at all.¹¹⁹

Thus, even a party can identify times when party jumps occur for what are deemed to be acceptable reasons. The question is whether it is possible to design a law that could make the same distinction.

Democracy and Anti-Defection Law

Again, there are two views on the impact of the law on democracy. On the one hand, it is argued that anti-defection law ensures 'genuine democracy' is maintained throughout the legislature's term because it:

- ensures that the will of the people as expressed in a democratic election is upheld
- maintains (in proportional electoral systems) the proportionality of the elected parliament
- enforces stability in the legislature by preventing defections that may alter the balance of power between parties
- strengthens party leadership and organisation by preventing politicians from quitting their parties in order to reject party decisions, and
- allows parties to enforce disciplined voting and maintain coherent policy platforms in the legislature.¹²⁰

On the other hand, anti-defection law is said to undermine many of the principles of democracy because it:

- prevents politicians from following their consciences and binds them to a party view, whether or not they believe that view is right or wrong
- stifles free speech and freedom of association (and, by implication, dissociation)
- elevates parties to a position in the political system that may not be justified by a reading of a country's constitution, and
- tightens party control of its elected members to the point that it weakens a key principle of parliamentary democracy, 'namely that a government is kept under control by the possibility of its supporters crossing the floor'.¹²¹

Attempts to Control Defections

As noted above, some countries have implemented legislation demanding that politicians who quit their parties also quit their seats in parliament. In some, the law goes so far as to count as defectors those who vote contrary to party directions, who abstain from voting to avoid following a party directive, or who simply dissociate themselves from their parties.¹²²

How successful are these attempts to control party jumping? In order to examine this question, four case studies are offered:

- Papua New Guinea, which passed legislation in December 2000 in a bid to control the rampant party hopping that had undermined successive governments
- India, which is cited in many of the discussions so far of party jumping because of its staggering number of defections¹²³
- South Africa, which tried to amend its anti-defection law in June 2002, and
- New Zealand, which passed the Electoral (Integrity) Amendment Act in December 2001 in a direct attempt to stop the party hopping that had plagued the 1996–99 parliamentary term.

Papua New Guinea demonstrates that anti-defection legislation may have a valuable role in resolving destabilising problems within the political system. That said, it may be too early to judge whether such legislation has been—or will be—successful. The other three examples reveal many of the difficulties associated with anti-defection legislation and suggest that such laws are problematic at best and unworkable at worst. In India, for example, more defections occurred each year, on average, after an anti-defection law was introduced than occurred before.¹²⁴ In New Zealand, one of the main proponents of the anti-defection legislation found a way to obey it in practice but disobey it in spirit before the July 2002 election.

Papua New Guinea: an Essential Law

Background

Although Papua New Guinea 'boasts one of the developing world's most impressive records of democratic longevity', having held elections for almost 40 years, democracy in practice has been difficult—no government since independence in 1975 has survived a full five-year parliamentary term.¹²⁵ A major problem has been the fragmented and unstable party system, which suffers from rampant party jumping. MPs have regularly switched allegiance in return for 'ministerial posts, perks, and other financial inducements'.¹²⁶ As political scientist Benjamin Reilly observes:

Because most political parties are simply vehicles for achieving and then maintaining political power, and have little in the way of a common ideology or policy agenda, there is a great deal of 'party hopping' by elected parliamentarians moving from one party label or camp to the next, often in exchange for rewards such as the promise of a ministry or more direct financial inducements.¹²⁷

Underlying the fractured party system is the ethnic diversity of the country, which Reilly describes as being 'both a blessing and a curse'. That is, it is a 'blessing' in that it makes it unlikely for one group to be able to control power alone, but it is a 'curse' in that such cleavages make cohesion difficult, with governments comprising 'impermanent coalitions of various parties, groups and individuals'.¹²⁸

Papua New Guinea's electoral system, first-past-the-post, exacerbates the difficulties arising from the clan and tribal divisions in that it allows candidates to be elected with a very low level of support.¹²⁹ Reilly notes, for example, that 15 Members of Parliament were elected in 1997 with less than 10 per cent of the vote each; three had attracted less than 7 per cent of the vote. Thus, 'for many MPs, their constituency is not the electorate which they supposedly represent, but the much smaller subgroup within their electorate to which they owe their allegiance, and their parliamentary positions'.¹³⁰ With such low levels of support, politicians are vulnerable to losing their seats at the next election if there is even a small shift in vote share. The result is extreme electoral volatility: 'over half the parliament regularly lose their seats at each election'.¹³¹

The Integrity of Political Parties and Candidates Law

Anti-defection legislation was introduced in December 2000 as part of a package of reforms aimed at improving the country's electoral system, parliament and party system. The law, an Organic Law called the Integrity of Political Parties and Candidates Law, came into force for the 2002 election.¹³² Its aim is to ensure politicians cannot 'hop around for reasons of political opportunism'.¹³³

The Integrity Law restricts the freedom of Members of Parliament to change parties, and imposes penalties if they leave the party with which they were aligned when first elected and join another party or become independent. Those who choose to leave their party must face a 'leadership tribunal' (the Ombudsman Commission), which decides whether their grounds for resignation are valid. Under the legislation, valid resignations are possible only when the party has breached its own constitution or when the party has been declared insolvent.¹³⁴ If the tribunal rules against the politician, a by-election must be held.

In addition, MPs elected with party endorsement must vote in accordance with their party's position on key issues including the election of a prime minister, the Budget, votes of no-confidence, and constitutional amendments. Reilly notes that MPs can abstain, 'but if they vote against their party's position, they face a range of possible penalties, up to and including dismissal from the parliament'.¹³⁵ The law also imposes a range of restrictions on politicians who are elected as independents but who then join a party.

Engineering to achieve objectives

Reilly notes that the Integrity Law is an attempt at 'political engineering' or 'crafting the institutional "rules of the game" to achieve certain objectives'—in this case, party stability and therefore government stability:

Inherent in the new party system laws is the expectation that parties can be 'built' to a certain extent, not from the bottom up (as is usually the case), but from the top down, by forcing what are currently shifting coalitions of independents and weak parties into more structured and indeed permanent alliances over the course of each parliament.¹³⁶

Reilly acknowledges that the net effects of the laws are unlikely to be seen for some time as such institutions must be kept constant for several years and through several elections 'before their strategic impacts stabilize and become clear to political actors and voters alike'.¹³⁷ But others are sceptical about whether it is possible to change Papua New Guinea's entrenched political culture 'from above—in effect, by constitutional fiat'.¹³⁸

In addition, there are fears that the Integrity Law will impinge on the rights of individual Members of Parliament to 'represent their constituents as independents' and that it may result in entrenching 'a poor or even dangerous' prime minister in office for five years.¹³⁹ One commentator pointed to the increase in parties—from the usual 20 to 42 in the 2002 elections—to argue that candidates already were attempting to find a way around the laws.¹⁴⁰ That is, candidates preferred to keep their options open, either avoiding party memberships or leading their own minor parties, so that they were not locked in to supporting a particular party for five years.¹⁴¹

It is too early to judge how successful the law has been in achieving its aims. In the 2002 elections, independents won only 17 of parliament's 109 seats, but more parties (24) won seats. Whether or not the law will guarantee stability with such results is not yet clear. However, Reilly argues that, at the very least, the law is an 'innovative institutional response' to the problems that have plagued the country's politics.

India: a Problematic Law

In January 2001, a consultation paper on India's electoral law discussed the problem of party jumping, noting that defections had 'haunted the Indian polity' for more than 30 years.¹⁴² The numbers given for defections were staggering: between 1967 and 1972, nearly 2000 of the roughly 4000 members of the Lok Sabha and Legislative Assemblies in the states and union territories defected and counter-defected.¹⁴³

In a bid to control party jumping, in 1985 India introduced anti-defection law—the Tenth Schedule—which disqualified from parliament any politician who voluntarily quit his or her party or who voted against it without first obtaining permission from the party or without such a vote being a party-sanctioned free (conscience) vote. However, the schedule exempted from disqualification those politicians who left their parties through a

party split or joined another party through a party merger. The question of when a politician could be said to have defected was to be judged by the chairman or the Speaker of the House.

However, the anti-defection law has proved to be problematic. Critics argue that the clauses allowing party jumping through party splits and mergers have made the legislation ineffective. The 2001 consultation paper noted that the law had had little effect on the number of jumpers, serving to decrease individual defections but increase en masse defections. It argued that much of the problem lay with the implementation of the Schedule, with Speakers tending to act in a partisan manner and without due regard to the law's provisions.

India's Chief Election Commissioner, Dr Manohar Singh Gill, reinforced this interpretation of the root of the problem in June 2001 when he blamed the law's failure on the 'enforcing authority, the Speaker of the Legislature', and not on the law itself.¹⁴⁴ He argued that, because the Speaker was dependent on a political party for his position, the 'ineffective' law could work only if responsibility for enforcing it was taken from the Speaker and given to an independent body such as the Election Commission. In the absence of such a move, 'the malaise of defection' would continue to 'eat ... into the political system like a cancer'.

South Africa: an Out-Dated Law

South Africa's post-apartheid Constitution included an anti-defection clause modelled on that contained in India's Tenth Schedule. The clause provides that politicians lose membership of a legislature—national or provincial—if they cease to be a member of the party that nominated them. The aim was to ensure political stability in what was expected to be a volatile transition from apartheid to non-apartheid politics by 1) protecting the proportionality of parliament and 2) protecting multi-party democracy.

- 1) The anti-defection clause was seen as a means of protecting the proportionality of the legislature as decided at the election. That is, it would ensure that an elected member's decision to quit a party after the election would not take away one of the seats to which the party was entitled on the basis of the proportion of the vote it received at the election.

A key argument here is that it is 'the party, and not the members, which is entitled to the seats'.¹⁴⁵ The logic of the argument is based on South Africa's electoral system—list proportional representation—under which the names of parties, not individual candidates, appear on the ballot paper. Thus, voters decide how many seats a party should receive in parliament and politicians gain their seats in the legislature through their position on a party's list. Permitting a member to quit the party but retain the seat would distort the proportionality between parties decided by voters at the election. The anti-defection law ensures that if a politician chooses to leave his or her party, then the party has the right to take back its seat and give it to another person on its list.

- 2) The anti-defection clause was also seen as a means to protect multi-party democracy by reinforcing the position of smaller parties in the proportional system. Smaller parties were seen to be under threat because the African National Congress, which held two-thirds of the seats in the National Assembly, was in a position to offer inducements to members of smaller parties in order to get them to join its ranks. If this were allowed to occur, then the number of parties ultimately would decline and multi-party democracy could fail.¹⁴⁶

In addition, allowing a governing party to entice members to defect to its ranks was seen to potentially 'enable the governing party to obtain a special majority which it might not otherwise be able to muster and which is not a reflection of the view of the electorate'.¹⁴⁷ Such an outcome was seen to be inconsistent with democracy.

The anti-defection clause was tested in the country's constitutional court in 1996 and 1997 and was ruled to be 'consistent with the core policies and principles of democracy, including representative government, freedom of speech and freedom of association'.¹⁴⁸ Again, the court's ruling was based on the primacy of parties in the electoral system. It found that parties, not individuals, were accountable to the electorate. Under an anti-defection clause, individual members were still free to follow the dictates of personal conscience and could resign if they felt the party had abandoned core principles. However, voters held the right to judge whether or not it was true that the party had deviated from its policy platform, and could exercise this judgment at the next election. That is, the court noted: 'A party which abandons its manifesto in a way not accepted by the electorate would probably lose at the next election'.¹⁴⁹

The positive view of the effect of the anti-defection regulation is not universal. Political consultant David Welsh, writing for a South African research institute, notes that the ANC has found the combination of list-system proportional representation and anti-defection legislation highly effective in controlling its politicians. He argues that the law 'gives the leadership a tight grip on the compilation of lists and ensures that, once elected, MPs toe the party line or face expulsion from Parliament'.¹⁵⁰

Changing circumstances

With several years having passed since the transition to a non-apartheid system, the circumstances under which the anti-defection clause was introduced can be argued to have changed. In June 2002, the South African government enacted two constitutional amendments aimed at relaxing the anti-defection controls. The ANC fought for the legislation on the grounds that it strengthened democracy by giving 'elected public representatives the right to make choices within the confines of the Constitution'.¹⁵¹

An opposition party, the United Democratic Movement, immediately launched legal proceedings to have the amendments struck down as unconstitutional. However, in October 2002, the Constitutional Court upheld the legislation, ruling that the anti-defection provision was not 'so fundamental to our constitutional order as to preclude any

amendment of their provisions'.¹⁵² Moreover, defections in a proportional representation system were not inconsistent with democracy, nor was an anti-defection provision 'an essential adjunct to the proportional representation system'.¹⁵³

In an interesting difference to its earlier view, the court appeared to rule in favour of individuals over parties, arguing that:

Between elections ... voters have no control over the conduct of their representatives. They cannot dictate to them how they must vote in Parliament, nor do they have any legal right to insist that they conduct themselves or refrain from conducting themselves in a particular manner. The fact that political representatives may act inconsistently with their mandates is a risk in all electoral systems. ... [If voters are unhappy] their remedy comes at the time of the next election when they decide how to cast their votes.¹⁵⁴

Nonetheless, while the court found that legislation allowing party jumping (called 'floor crossing' in South Africa) was not inconsistent with the constitution, it did not approve of the way the government had introduced the amendments allowing floor-crossing at the national and provincial level. While it allowed the new legislation to apply at local government level, it insisted that the government introduce a further constitutional amendment for national and provincial changes.¹⁵⁵ As a result of this decision, it ruled in November 2002 that five KwaZulu-Natal legislators who defected to the ANC would not be protected and would lose their seats. However, in a further complexity, these legislators may be reinstated this year (2003) if parliament passes the floor-crossing legislation because the proposed law allows for retrospective protection.¹⁵⁶

New Zealand: an Unworkable Law?

New Zealand offers an example of anti-defection law worthy of examination in Australia because it so clearly demonstrates that a law implemented with the best of intentions—preventing self-interested party-hopping—may not work as well as its instigators desire. In fact, the New Zealand case proves that there can be many pitfalls between a law's aims and its outcomes.

Background

In 1996, New Zealand changed its electoral system from first-past-the-post (FPP) to mixed-member proportional (MMP), and divided the 120 seats in parliament into electorate seats and list seats. The latter are apportioned according to the share of the party vote that parties receive in the election.¹⁵⁷ The list system means that some politicians owe their seats in parliament to their position on a party's list, not to a personal vote.¹⁵⁸ Thus, list MPs are in parliament by virtue of their party affiliation and therefore 'have a particular responsibility to represent their party'.¹⁵⁹

Politician(s) Overboard

In July 1997, only a few months after the October 1996 election, in an act seemingly unforeseen in the legislation outlining the intricacies of MMP, an Alliance list MP, Alamein Kopu, decided to quit the party and sit as an independent. (She later claimed to represent the parliamentary wing of a new Maori party, Mana Wahine.) Although she had signed a party pledge to resign from parliament if she left the Alliance, she refused to surrender her seat. The Alliance challenged her decision, but the Privileges Committee ruled against the party because there was nothing in the MMP electoral legislation that said an MP—whether an electorate MP or a list MP—must quit the seat when s/he left the party.¹⁶⁰

Kopu's successful leap prompted several other politicians to quit their parties, with another Alliance member and at least five members of New Zealand First defecting. The latter quit their party when its coalition agreement with the National government collapsed. The support of the defectors kept the National Party in power in a minority government until the next election—in 1999.

Electoral (Integrity) Amendment Act

The Opposition's anger at the defections led to a pledge to introduce legislation to prevent such 'waka-hopping' in the future, and when it was elected to government in 1999 the Labour–Alliance coalition introduced the Electoral (Integrity) Amendment Bill. Initially, the Bill dealt only with those MPs who chose to resign from the parties on whose tickets they were elected. These MPs would be considered to have quit their parties—and thus parliament—when they notified the Speaker in writing of their intention to surrender their party memberships. Requiring formal notice on the part of the politician meant that those who were expelled from their parties, or who chose to oppose their parties in the House, could not be considered to have jumped from the party ship and could thus remain in parliament. However, as journalists noted at the time, the 'loophole' meant that defecting MPs could stay in parliament 'as long as they do not resign the party ticket on which they were elected'.¹⁶¹

The Bill was subsequently strengthened to give a party leader the right to force an MP's resignation from parliament if the leader believed the MP had acted in a way that distorted, or was likely to distort, the proportionality of party representation in the legislature. That is, the revised amendment gave party leaders the power to expel MPs who deviated from the party line; all that was required was that two-thirds of the parliamentary members of the party agree to the expulsion.

Under the amendment, an electorate MP who quit the party was required to face an immediate by-election; a list MP who quit would be replaced by the next person on the party's list.

Debate over the Bill often degenerated into heated rhetoric over the motivations of those introducing and opposing the legislation, but the law was eventually passed and the

Electoral (Integrity) Amendment Act 2001 came into force on 22 December 2001.¹⁶² It is scheduled to expire at the second election held after its introduction; that is, it is to be in place only for two parliamentary terms on the grounds that 'the problem of members leaving their parties in Parliament is expected to be a temporary one' linked to the disturbances of implementing a new electoral system (MMP).¹⁶³

Running Aground: Theory Versus Practice

The anti-defection legislation failed within a few months of it being implemented. In fact, New Zealand's Prime Minister, Helen Clark, effectively used its failure as an excuse to call the 2002 election, scheduled for November, four months early.¹⁶⁴

The Alliance, Labour's coalition partner, fell apart in a row over the group's relationship with Labour.¹⁶⁵ As a result of the wrangling, the Alliance split the party's leadership. Jim Anderton, who had formerly been both the parliamentary and the national leader of the party, remained the parliamentary leader (even though he no longer commanded majority support of the party members at large) because he retained the support of five of the Alliance's 10 MPs. Another Alliance MP, Laila Harre, became leader of the party outside parliament. Anderton made it clear that he would lead another party into the election.

In announcing that he intended to form a new party, Anderton—ironically, one of the main proponents of the anti-party-hopping legislation—should have been hoist with his own petard, invoking the provisions of the Act and resigning from parliament. However, in a demonstration of how one can follow the letter of the law, while defying its spirit, Anderton managed to avoid being caught in the anti-defection law because he retained control of six of the Alliance's MPs. That is, his five supporters plus himself gave him the two-thirds of the party's parliamentary members that the law mandated to have control over whether or not a party member could be expelled.

Such 'outrageous' and 'hypocritical' manipulation of the technicalities of the Act provoked considerable derision from the legislation's opponents, who raised numerous points of order in the House over the 'real' leader of the Alliance.¹⁶⁶ Clark said the time spent on such points meant parliament had become a 'farce' and an election was the only option.

While the waves of discontent over Anderton's evasion of the anti-defection legislation have subsided in the wake of the election, in which he retained his electorate seat, a new ripple may be about to disturb the waters.¹⁶⁷ In February 2003, the Association of Consumers and Taxpayers (ACT New Zealand) party looked likely to at least suspend—and possibly expel—one of its list MPs, Donna Awatere Huata, over her failure to explain claims that she had misspent taxpayers' money. However, it also looked as though it would not be possible for the party to force Awatere Huata to resign because she had made it clear that she was 'firmly committed' to the party's principles and would continue to support its policies in parliament.¹⁶⁸ That is, the Electoral (Integrity) Amendment Act allows a party to submit the resignation of an MP only if it can argue that the MP is distorting, or is likely to distort, the proportionality of party political representation as

determined at the last election. If Awatere Huata votes in favour of ACT party policies, then she is not distorting the party's vote in parliament and the anti-defection law cannot be invoked, even though she is no longer a member of the party on whose platform she was elected.

Both of these examples—Anderton and Awatere Huata—demonstrate that the New Zealand law, introduced with the best intentions, has proved unworkable in practice.

Conclusions

It is likely that the cry 'give back our seat' will continue to echo through the Australian parliament, parties, media and public whenever a Senator or Member decides to quit the party on whose platform s/he was elected while retaining her or his seat in the Senate or House. In the absence of legislation to force the politician to quit, there is little to do but grumble and retire gracefully from the battlefield.

The major problem is that there is no single answer to the question: to whom does the seat rightfully belong? On the one hand, parties can be seen as the modern units of politics, with voters supporting a party, not a politician. On this reasoning, politicians are bound to follow the dictates of the parties—and the voters—who put them in parliament and should surrender their seats if they quit their parties. This argument may be especially valid with regard to the Australian Senate, for which voting is generally 'above-the-line' for the party.

On the other hand, it is equally plausible to argue that politicians are obliged to exercise their judgment on behalf of voters they represent. This means that they must retain the right to quit their parties without sanction if, in their judgment, the party no longer reflects the wishes of voters or if the party's directives are not in the best interests of the voters.

However, putting both arguments to one side, what cannot be overlooked is that parties remain the central, organising focus of today's democracies. As the Papua New Guinea example discussed in this paper demonstrates, a fragmented, unstable party system has severe consequences for the stability of government.

Thus, politicians choose to remain with their parties, not only for the tangible and intangible benefits of doing so—electoral, collective, institutional and distributional advantages—but also because of the role that parties play in the political system. Party jumpers who become independents face considerable difficulties in achieving policy options on their own, and even when their actions attract initial support from voters—as with Rocher and Filing, who were elected as independents after quitting the Liberal Party in 1996—such support is hard to maintain. Both Rocher and Filing lost their re-election bids in 1998. It remains to be seen whether Katter will suffer a similar fate at the next election, scheduled for 2004.

Those defectors who join another party at least have access to the advantages that parties offer, but nonetheless face hostility and suspicion from both their new colleagues and

voters, and may never regain the career goals that may have been within their reach had they remained 'loyal' to their original party. As noted in the paper, Woodward in the United Kingdom was once viewed as a likely future leader of his Tory Party; his defection to Labour makes such heights unlikely.

The role of parties in today's democracies suggests that legislation to prevent potentially destabilising party defections may be of some value in ensuring political stability. This is surely the case in Papua New Guinea, should the legislation prove to be effective.

However, as the New Zealand example demonstrates, the road to stability is paved with good intentions that have fallen by the wayside as politicians exploit loopholes or the law fails to cover adequately all possible circumstances. Of course, any law that tried to cover all contingencies may become so mired in detail as to prove unworkable for a different set of reasons. The South African case suggests that a mature democracy should find itself able to cope with occasional occurrences of party jumping, without the need to resort to regulation.

That said, new circumstances may arise that make anti-defection legislation more appealing. For example, parties may bring order to chaos, thereby making politics possible, but there is an increasing body of literature that suggests that parties themselves are in decline, with falling membership and increasing alienation from disenchanted voters.¹⁶⁹ This is especially so with parties that have moved from traditional positions on the political spectrum to become 'catch-all' parties, thereby leaving themselves open to allegations that they are little different to one another and are therefore failing to offer sufficiently distinctive policy alternatives.

Should party decline become more serious, it may trigger some of the factors discussed in this paper that prompt politicians to jump overboard—leaving before the ship goes down, to extend the metaphor.

From the discussion advanced in this paper, legislation preventing defections has—in most cases—proved to be problematic and even unworkable, which may account for why few countries have such laws. At this time, anti-defection legislation is not a sensible option for Australia; it would not necessarily lead to more democratic outcomes. However, this is not to say that changed circumstances in the future, such as a serious and destabilising splintering of the party system, would not put consideration of such legislation on the agenda.

Endnotes

1. 'It's not that easy to be Green, Mr Hanna', *The Age*, 3 February 2003, and 'Lees should resign from the Senate', *The Courier-Mail*, 27 July 2002.
2. For editorials, see 'Lees should resign from the Senate', *Courier-Mail*, 27 July 2002, and 'It's not that easy', *ibid*.

3. 'It's not that easy', *ibid*.
4. As one journalist observed of British defectors: 'The useful life of the modern political defector makes that of the average mayfly look lengthy'. See Catherine Bennett, 'Why are political turncoats such hot property?', *The Guardian*, 3 May 2001.
5. The concept of a 'politician-in-exile' arises from Senator Andrew Murray's attempt in July 2002 to remain a member of the Australian Democrats while disagreeing with the party. He moved to the back bench, in what was termed a 'half-step to resignation', and withdrew from the party room and his portfolios. His attempt failed, with the party leadership giving him an ultimatum to re-engage or quit the party. Murray agreed in August 2002 to rejoin the party room and resume front bench duties. See Tony Walker, 'Democrats in chaos as senator goes into exile', *Australian Financial Review*, 29 July 2002; Gareth Malpeli and Daniel Clery, 'Rebel senator gets ultimatum', *West Australian*, 31 July 2002; Michelle Grattan and Tom Allard, 'Defiant Murray chooses life on the outside', *Sydney Morning Herald*, 7 August 2002; Steve Lewis and Terry Plane, 'Murray returns to fragile peace', *The Australian*, 13 August 2002.
6. Meg Lees, 'I won't be the fall person', *The Advertiser*, 27 July 2002.
7. On 28 July 2002, Meg Lees was quoted as saying:

I would argue very strongly that I am a lot closer to the original Democrat Party than the party that we see now. ... I will continue to have the same values, the same policies and the same principles now as I step forward as an independent. ... They have pushed me out of party that really does not represent the true Democrat party that I joined.

A report a day later carried a similar comment:

My very strong argument is that I haven't moved anyway as far as my philosophy, my principles are concerned ... It's the party that has shifted.

See Brendan Nicholson, Penelope DeBelle and Andrew Webster, 'Give back our seat, Dems chief demands', *Sunday Age*, 28 July 2002, and Kerry Taylor, 'I may have signed: Lees', *The Age*, 29 July 2002.

8. Michelle Grattan, 'Malice in Wonderland', *Sydney Morning Herald*, 27 July 2002.
9. Since 1901, there have been 324 instances of party jumping. The breakdown is given in the following tables:

Table 1: Number of defections and defectors

	Defections	Number of defectors
House	97	79
Senate	35	35
Total	132	114

Table 2: Number of defections per person

Defected	House	Senate	Number of defectors	Number of defections
X 1	79	35	114	114
X 2	9	0	9	9
X 3	3	0	3	6
X 4	1	0	1	3
Total				132

10. Norman Rose, *Churchill: An Unruly Life*, Simon & Schuster, London, 1994, pp. 49, 54.
11. Rick Wallace, 'Government glee over power shift', *Herald Sun*, 27 July 2002. While the Democrats held the balance of power only from 1981 to 1993, if they voted with Labor and the Greens, they could defeat a voting alliance of the Coalition and independent/One Nation senators in seven of the 10 years since then. These figures assume that all senators vote. For the purposes of this calculation, a party is said to hold the balance of power when its vote alone determines the result of any division in the Senate on which the ALP and the Coalition vote differently, irrespective of which way other parties or independents vote.
12. While the impact of Jeffords's switch was diminished in the November 2002 congressional mid-term elections, which left the Republicans with 51 of the Senate's 100 seats, it nonetheless remains. The narrow margin of the Republicans combined with the weak party discipline of the United States's political system means that every vote can count.
13. 'Waka' is the Maori word for 'canoe'. The origin of the term relates to the racial identity of the defectors: almost all of the party jumpers were Maori.
14. Note that the term 'crossing the floor' in Australia means voting against the party line. In some other countries, the term is used to describe party switching (defecting). In India, voting against the party can bring the anti-defection regulations into play, unless the party has given its prior approval for the dissenting vote or it condones the action within 15 days of the vote being cast. In Australia, although free votes generally mean there is no party line—and therefore a politician cannot be said in the strictest sense to have 'crossed the floor'—the party can still make its preference known on a 'free' vote issue. For example, with regard to the 1999 discussion of Australia becoming a republic, the National Party was officially monarchist but allowed its MPs a conscience vote. See John Warhurst and Malcolm Mackerras, 'Constitutional Politics: the 1990s and beyond', in John Warhurst and Malcolm Mackerras (eds), *Constitutional Politics: the Republic Referendum and the Future*, University of Queensland Press in association with the API Network and Curtin University of Technology, St Lucia, Queensland, 2002, pp. 14–15. See also John Warhurst, 'There is no such thing as a free vote', *Canberra Times*, 12 April 2002.
15. One of the most recent (2002) public examples occurred in the lead-up to the Cunningham by-election when several Labor Party members furious at the party leadership's choice of candidate to contest the seat cut up their tickets. See Tory Maguire, 'Wollongong turns on an "ALP that's lost it's way"', *Daily Telegraph*, 3 October 2002.
16. Scott. W. Desposato, 'Parties for Rent? Ambition, Ideology, and Party Switching in Brazil's Chamber of Deputies', University of Arizona, Working Paper, 15 May 2002, www.u.arizona.edu/~swd/ps1.pdf
17. John Fitzpatrick, 'Switch as you wish', *Brazzil*, November 2001, www.brazzil.com/p29nov01.htm. Fitzpatrick notes that the latter figure (42 per cent) means that 'almost half the elected politicians no longer represent the parties on whose ticket they were elected and the electors who voted for them have been hoodwinked'. He goes on to observe that it is common for politicians to move backwards and forwards:

One member of the House of Representatives has switched loyalties seven times over three separate parties. He has rejoined the evangelical PL party four times in the last two years.

18. *ibid.*
19. Andres Mejia-Acosta, 'Explaining "camisetazos": the logic of party switching in the Ecuadorian Congress (1979–1996)', Paper prepared for the 57th Annual Meeting of the Midwest Political Science Association, Chicago, 15–17 April 1999, p. 2.
20. *ibid.*
21. In this period, there were 25 'changes of allegiance', including the eight party jumpers. Of the remaining 17 listed as changing allegiance, two were expelled from their parties, one was suspended, one chose to give up the party whip and 13 had the party whip withdrawn. Of the latter, 10 were later reinstated. See David Butler and Gareth Butler, *Twentieth Century British Political Facts 1900–2000*, eighth edition, Macmillan Press Ltd, Hampshire, 2000, p. 249.
22. For these quotes, see 'No party-hopping', Aliran Executive Committee, 27 November 1999, www.malaysia.net/aliran/ms991127b.html (Aliran is a Malaysian multi-ethnic reform movement and human rights group); the discussion in the New Zealand House of Representatives Justice and Electoral Committee Report on the Electoral (Integrity) Amendment Act, New Zealand, AJHR I. 22A, April 2000; and 'Democrats pause their self-destruction', *The Age*, 1 August 2002.
23. For these quotes, see the New Zealand parliamentary debate on the Electoral (Integrity) Amendment Bill, New Zealand, House of Representatives, *Hansard*, 9 November 2000, the New Zealand Justice and Electoral Committee report, *ibid.*, and Senator John Faulkner, 'Suspension of standing orders, Australia, Senate 1997', *Debates*, vol. S182, p. 1200.
24. For these quotes, see Paul Rodan, 'We can't force MPs not to resign', *The Age*, 22 January 2002, Democrat Senator Brian Grieg quoted in Phillip Hudson, 'Hand over seat, Labor tells Lees', *The Age*, 27 July 2002, and then-Labor leader Kim Beazley, interview with Neil Mitchell, Radio 3AW, 6 July 1998.
25. Edmund Burke, 'Speech to the electors of Bristol [3 November 1774]', in B. W. Hill (ed.), *Edmund Burke on Government, Politics and Society*, International Publications Service, New York, 1975, p. 157.
26. Opponents of the anti-defection law in New Zealand based many of their arguments on this interpretation. See the discussion and references in Section 2 of this paper.
27. Senator Robert Ray, 'Suspension of standing orders', Australia, Senate 1997, *Debates*, vol. S182, p. 1203. For a more detailed look at Labor's 'rats', see John Iremonger's chapter in John Faulkner and Stuart Macintyre's history of the federal parliamentary Labor Party, *True Believers* (John Iremonger, 'Rats', in John Faulkner and Stuart Macintyre (eds), *True Believers*, Allen & Unwin, Crows Nest, NSW, 2001). Iremonger gives an overview of 'ratting' in the party, noting that a 'rat' is one who breaks the 'unequivocal commitment to solidarity on the floor of Parliament' (p. 267). He goes on: 'The lineage is clear: in breaking that solidarity the rat is the first cousin of the scab and the blackleg'. In a similar vein, journalist Ian Henderson describes a 'rat' as 'the most despised form of life in the ALP', with rat the 'ultimate term of abuse for someone who has betrayed the party'. See Ian Henderson, 'The ALP rat pack', *The Australian*, 1 December 2000.
28. The question, of course, is whether Labor would have refused to accept Kernot into its ranks had she kept her seat when defecting. Ray's comment on Colston suggests not:

The fact is, if it is a matter of principle, there is nothing wrong with a Senator resigning from a political party in this place. The crime is staying here. If you are principled and if you do believe ... you no longer share the philosophy and views of your party ... you resign from this chamber and you go. You do not stay here for grubby venal reasons. You do not sell your services to the other side.

See Ray, *op. cit.*, p. 1203.

29. John Stubbs, 'That man Katter', *The Bulletin*, 31 July 2001, p. 26.
30. Journalist Simon Hattenstone writes that the response to Woodward's defection was 'astonishing', with the Tory party going 'all out to destroy him and his family'. See Simon Hattenstone, 'The turncoat', *The Guardian*, 13 May 2002. Allegations were made that Woodward was gay, while his sibling, who had had a sex-change operation, was 'outed' in the media. See Kevin Maguire, 'Defector hopes Labour will find him a seat', *The Guardian*, 9 January 2001.
31. Susan Crabtree, 'GOP hoping for party switchers', *Roll Call*, 4 November 2002, www.rollcall.com/pages/news/00/2002/11/news1104e.html
32. For example, when Jim Jeffords quit the Republicans to sit as an Independent, Republican Leader Trent Lott, described the action as a 'coup of one that subverted the will of the American voters'. See Editors, 'Coup of None', *The New Republic Online*, 7 June 2001, www.tnr.com/061801/editorial061801.html
Earlier, a *Washington Post* report on the defection of Republican Michael Forbes to the Democrats in 1999 noted:
Democrats were gleeful, claiming the GOP leaders' extremism pushed Forbes into their arms. Furious Republicans impugned Forbes's motives and called in news cameras to record his aides turning in their resignations ...
Juliet Eilperin, 'The charm campaign to win Forbes over', *Washington Post*, 21 July 1999, www.washingtonpost.com/wp-srv/politics/campaigns/keyraces2000/stories/forbes072199.htm
33. Fiona Barker and Stephen Levine, 'The Individual Parliamentary Member and Institutional Change: the Changing Role of the New Zealand Member of Parliament', *Journal of Legislative Studies*, vol. 5, nos 3 and 4, Autumn/Winter 1999, p. 126. Barker and Levine go on to note that, paradoxically, while voters do not want politicians to slavishly follow the party, they also want a high degree of party cohesion in parliament.
34. For a discussion of this argument, see Damien Murphy, 'The Wars of Independents', *The Bulletin*, 14 March 1995. Murphy reports that disillusionment with the major parties is changing the way that Australians vote, with more choosing to vote for minor parties or independents. (This is not to conflate party defectors with independents; rather, it highlights that voters are more prepared to support those outside the two major parties.)
35. James Bryce cited in Russell Dalton and Martin Wattenberg, 'Unthinkable democracy: political change in advanced industrial democracies', in Russel Dalton and Martin Wattenberg, *Parties Without Partisans: Political Change in Advanced Industrial Democracies*, Oxford University Press, Oxford, 2000, p. 3. Dalton and Wattenberg, like many others who write about parties, also note political scientist E. E. Schattschneider's view: 'modern democracy is unthinkable save in terms of parties'.

36. France's Fifth Republic, founded in 1958, included explicit reference in its constitution to the role of parties: 'Political parties and groupings contribute to the expression of universal suffrage. Their formation and activities are freely undertaken. They are required to respect national sovereignty and democracy'. See Andrew Knapp, France: Never a Golden Age', in Paul Webb, David Farrell and Ian Holliday (eds), *Political Parties in Advanced Industrial Democracies*, Oxford University Press, Oxford, 2002, p. 107. For a discussion of parties in Australia, see Scott Bennett, 'Australia's Political Parties: More Regulation?', *Research Paper no. 21*, Department of the Parliamentary Library, 2001–02.
37. Larry Diamond and Richard Gunther, 'Introduction', in Larry Diamond and Richard Gunther (eds), *Political Parties and Democracy*, The Johns Hopkins University Press, Baltimore, 2001, p. xiv, and Dalton and Wattenberg, *op. cit.*, pp. 5–10. On the integrative function of parties, parties can be seen as the conduit through which citizens reach their government and vice versa. See Kay Lawson, 'Political parties and party competition', in Joel Krieger (editor-in chief), *The Oxford Companion to Politics of the World*, second edition, Oxford University Press, New York, 2001, pp. 670–3.
38. Desposato, *op. cit.*, p. 9.
39. Writing on party-switching in the United States, Christian Grose and Antoine Yoshinaka observe that, 'In order to maximize the chances of getting elected, almost every candidate for Congress affiliates with either the Democratic party or the Republican party'. See Christian Grose and Antoine Yoshinaka, 'The consequences of party switching in Congress', Paper prepared for presentation at the 2001 meeting of the American Political Science Association, San Francisco, 31 August 2001, p. 2.
40. An observation: some of the recent academic literature suggests that a decline in voter identification with parties—and increasing voter disenchantment with parties—makes it more likely that independents will be elected in the future. This discussion is outside the scope of this paper.
41. Desposato, *op. cit.*, pp. 7–8.
42. *ibid.*, p. 8.
43. Michel Rossignol, 'Crossing the Floor and the Party System', *Backgrounders*, Library of Parliament, Canada, February 1987, p. 7.
44. Desposato, *op. cit.*, p. 8.
45. Rossignol, *op. cit.*, p. 8.
46. Desposato, *op. cit.*, p. 10.
47. Shaun Bowler, David Farrell and Richard Katz, 'Party Cohesion, Party Discipline, and Parliaments', in Shaun Bowler, David Farrell and Richard Katz (eds), *Party Discipline and Parliamentary Government*, Ohio State University Press, Columbus, 1999, p. 6.
48. See explanation in endnote 14. For a discussion of free votes, see Deirdre McKeown and Rob Lundie, 'Free Votes in Australian and some Overseas Parliaments', Department of the Parliamentary Library, *Current Issues Brief no. 1*, 2002–03.
49. Desposato, *op. cit.*, footnote 4, p. 9; Rossignol, *op. cit.*, p. 1.

50. Timothy Nokken, 'Dynamics of congressional loyalty: party defection and roll-call behaviour, 1947–97', *Legislative Studies Quarterly*, vol. 25, no. 3, August 2000, p. 420. 'Defect' here is used in the general sense of voting against the party line rather than quitting the party.
51. Bowler et. al., op. cit., p. 3.
52. Michael Laver and Kenneth Shepsle, 'How political parties emerged from the primeval slime: party cohesion, party discipline, and the formation of governments', in *ibid.*, p. 24.
53. Subhas Kashyap, *Party Whips, Parliamentary Privilege and Anti-Defection Law*, Government of India Press, New Delhi, 1988, p. 5.
54. Rossignol, op. cit., p. 9.
55. Asbjørn Skjæveland, 'Party cohesion in the Danish Parliament', *Journal of Legislative Studies*, vol. 7, no. 2, Summer 2001, p. 38.
56. Note here that such actions only *potentially* end a politician's career because s/he may stand successfully as an independent at the next election. Australian examples include two West Australian Liberal Party sitting politicians, Alan Rocher and Paul Filing, who lost party pre-selection in 1996 but stood successfully as independents in that year's election. Of course, those who are re-elected as independents then have the difficulty of trying to influence policy and achieve goals for their constituents while sitting alone, without the support of the party machinery, and may lose voter support—and thus their seats—when they are unsuccessful. Both Rocher and Filing were defeated in their bids to be re-elected as independents in 1998.
57. Nokken, op. cit., p. 417.
58. *ibid.*, p. 420.
59. Laver and Shepsle, op. cit., p. 29.
60. Though not in all cases. See the discussion on New Zealand later in the paper.
61. Burke in Hill, op. cit., p. 157. 'Any set of men living' can, of course, be interpreted to mean a party.
62. Rossignol, op. cit., p. 17.
63. Timothy Nokken and Keith Poole, 'Congressional Party Defection in American History', Paper prepared for delivery at the annual meeting of the American Political Science Association, San Francisco, 29 August 2001–2 September 2001, p. 4.
64. The significant number of defections in the early years of federation reflects that parties had not settled into the modern style. Looking at the House, the early period was particularly volatile with 120 defections occurring before 1921.
65. Bowler, Farrell and Katz, op. cit., p. 6.
66. Taylor, op. cit.
67. Shayne Murphy, 'Murphy: why I won't resign my seat', *The Mercury*, 9 October 2001.
68. Jill Zuckman, 'The maverick', *The Advertiser*, 26 May 2001.
69. Hattenstone, op. cit.; Shaun Woodward, 'The statement', *The Guardian*, 19 December 1999; Bob Roberts, 'Defector Woodward rejects by-election call', *The Independent*, 19 December 1999; and Shaun Woodward, 'Don't call me a careerist, William', *The Guardian*, 20 December 1999.

70. William Ross, 'Should senators who switch parties be removed from office or compelled to resign?', *Jurist*, <http://jurist.law.pitt.edu/forum/forumnew24.htm>.
Commenting on the defection, one journalist wrote that Jeffords was not taking a political risk in quitting the Republicans to sit as an independent because 'Vermont is an increasingly liberal state and the majority of its voters are registered as independents'. Julian Borger, 'Defector threatens turmoil for Bush', *The Guardian*, 24 May 2001, www.guardian.co.uk/bush/story/0,7369,495778,00.html. Other correspondents emphasised that Vermont was the nation's most liberal state, noting that it was the first to legally give committed gay relationships the same legal rights as heterosexual marriages. See 'Restless liberal in a conservative world', *The Australian*, 25 May 2001.
71. Julie Lightfoot, 'Maverick MP goes it alone', *The Innisfail Advocate*, 10 July 2001.
72. Cathy Pryor, 'Heartland won't bypass rebel', *The Australian*, 9 July 2001.
73. Ted Barrett, 'California congressman leaves Democrats to join GOP', CNN, 26 July 2000, www.cnn.com/2000/ALLPOLITICS/stories/07/26/martinez.switch/. Martinez, who had switched from the Democrats to the Republicans in 1960 and from the Republicans to the Democrats in 1972, denied that his defection was related to his losing his bid for re-election to a challenger in the primary.
74. Audrey Hudson, 'Democrats fete anniversary of Jeffords' party defection', *Washington Times*, 23 May 2002, www.washtimes.com/national/20020523-216400.htm
75. BBC News, 'Defecting MP's statement in full', 10 December 2001, http://news.bbc.co.uk/2/hi/uk_news/politics/1702421.stm
76. Woodward, 'Don't call me a careerist', op. cit. He went on to argue that the Conservative Party had 'taken leave of its senses' with a policy stance that 'could jeopardise the future stability of the European continent'.
77. Michelle Gilchrist and Stephen Lunn, 'Labor MP quits, claiming betrayal', *The Australian*, 19 April 2000.
78. Desposato, op. cit., p. 8.
79. See Raymond Miller, 'Preparing for MMP: 1993–1996', in Raymond Miller (ed.), *New Zealand Politics in Transition*, Oxford University Press, Auckland, 1997.
80. See Christine Hall, 'Time is ripe for Dems to join GOP, analysts say', 26 November 2002, www.cnsnews.com/ViewPolitics.asp?Page=\Politics\archive\200211\POL20021126a.html
81. Antony Green, 'Independents in Australian politics: lessons from the last thirty years', Paper delivered to the National Independents Conference, Canberra, 11 August 2001.
82. Desposato, op. cit., p. 9.
83. Susan Crabtree, for example, reporting on the possibility of Kentucky Democrat Ken Lucas switching to the Republicans, observes that Lucas was only one of many whom the Republicans had tried to 'coax across the aisle'. She adds:
Unlike past efforts to convince lawmakers to swap sides, Republican leaders did not dangle a plum committee assignment or chairmanship and Lucas did not ask for any tangible incentive, according to the GOP sources.
See Crabtree, op. cit.

84. Roberts, op. cit.
85. Labour decided not to apply to Woodward its ban on 'chicken runs'; the ban aims to prevent Labour MPs leaving their constituencies for a safer seat.
86. Advisory Panel on Electoral Reforms; Standards in Political Life, Review of Election Law, Processes and Reform Options, consultation paper prepared for the National Commission to Review the Working of the Constitution, New Delhi, 8 January 2001, paragraph 19.2, p. 24, <http://lawmin.nic.in/ncrwc/finalreport/v2b1-9.htm>.
87. Alan Ramsey, 'Mal is still mal, just as a rat will always be a rat', *Sydney Morning Herald*, 21 August 2002.
88. Helen Bain, 'Party-hopping bill will proceed despite impasse', *The Dominion*, 18 April 2000.
89. New South Wales MP Kristina Keneally made this clear in her victory speech after the NSW election on 22 March 2003 when she noted that a Labor MP held a seat only as a 'custodian' on behalf of the Australian Labor Party. See Damien Murphy, 'Home turf, but no sign of siblings', *Sydney Morning Herald*, 24 March 2003.
90. Of course, the latter argument is easier for politicians to make when they represent an electorate (as opposed to those who owe their seats to their position on the party's list), but that does not stop list MPs making the claim. For example, New Zealand list MP Alamein Kopu told the Speaker that she had resigned her party membership, but she would continue to 'serve the Maori people' as an Independent Maori MP, effectively claiming that it was Maori voters who had elected her to her seat. See the Privileges Committee chairman's ruling on Kopu's resignation, www.crownlaw.govt.nz/pdf/Kopu.pdf.
91. Phillip Hudson, 'Hand over seat, Labor tells Lees', *The Age*, 27 July 2002.
92. Taylor, op. cit.; for the party's constitution, see the Australian Democrats web site: www.democrats.org.au/about/index.htm?request=national+constitution+and+regulations#11
Clause 11.2a of the constitution contains another candidate obligation:
Anyone applying to be a candidate for the Party will be required to give a signed undertaking regarding the following: not to speak publicly against official Party policy unless there is a genuinely strong conscientious objection, in which case Party policy must be stated first and then any qualification/s can be given.
93. Philip Joseph, 'Mrs Kopu's challenge to MMP', *New Zealand Law Journal*, December 1997, p. 413.
94. See the comments by South Australian Democrat Party chief Mike Elliott and Democrat Senator Andrew Bartlett in Brad Norington, 'Pressure on Lees to pack up and go', *Sydney Morning Herald*, 27 July 2002.
95. For a discussion of parties in Australia, see Bennett, op. cit.
96. Dean Jaensch, 'Voters will decide whether Meg Lees stays or goes', *The Advertiser*, 15 August 2002, and Dean Jaensch, 'Defection rekindles person or party debate', *The Advertiser*, 6 February 2003.
97. New Zealand Justice and Electoral Committee report, op. cit., p. 580.
98. Jaensch, 'Voters will decide', op. cit.
99. *ibid.*

100. Jaensch, 'Defection rekindles person or party debate', op. cit. That said, Jaensch notes that some democracies allow for voters to 'recall' their elected representative between elections if a petition suggests there is widespread lack of satisfaction with the quality of the representation being offered. Political scientist David Robertson observes that 'severe restrictions' are placed on recalls where they are used (for example in some American states) because they can be abused by parties, factions and single-issue groups. See David Robertson, *A Dictionary of Modern Politics*, third edition, Europe Publications, London, 2002, pp. 420–1.
101. On the loss of party resources: Senator Shayne Murphy, who quit the Australian Labor Party to sit as an independent, said he carried a much heavier workload once he didn't have colleagues to share it: '... the workload increases dramatically because you don't have the party support'. See Phillip Hudson, 'Lees: the latest powerbroker', *The Age*, 19 August 2002. On the loss of one's colleagues: Defecting US Senator Jim Jeffords reportedly had tears in his eyes when he announced his decision to leave the Republican Party, saying that he was sad to hurt and perhaps lose many of his Republican friends in the Senate. In an emotional speech, Jeffords said: 'Having made my decision, the weight that has been lifted from my shoulders now hangs on my heart'. See Erin Kelly, 'Republican takes independent path', *Burlington Free Press*, 25 May 2001, www.burlingtonfreepress.com/specialnews/Jeffords/jeff1.htm
102. Peter Preston, 'Tories show themselves, in adversity, to be a nasty lot', *The Guardian*, 20 December 1999. A friend of British defector Woodward commented that all Woodward would get from jumping to Labour was 'two days of glory on TV': 'The Labour party digest you, then they spit you out because they can never quite trust you'. See Michael White, 'All Shaun will get is two days of glory', *The Guardian*, 20 December 1999.
103. For example, Woodward (United Kingdom) had held a seat on the Tory front bench before his switch to Labour and had been cited as a potential party leader. While he was re-elected in a safe Labour seat after his defection, he observed that he had had to 'rebuild his political career from scratch'. See Hattenstone, op. cit.
104. Steve Richards, 'Crossing the floor is a chancy affair', *New Statesman*, 18 October 1996, p. 8.
105. Nokken and Poole, op. cit., p. 5. Elsewhere, Nokken expands on this theme, saying:

If defectors hope to survive and prosper in their new parties, they must prove to their former adversaries in Congress and in the electorate that they are indeed 'real' Republicans (or Democrats) and they will toe the party line to prove their loyalty. Indeed, in every instance MCs [members of Congress] who switched parties adopted a roll-call [voting] strategy that accurately reflected their new party affiliations.

See Nokken, op. cit., p. 441.
106. Michelle Grattan, 'Murray stews as a liberated Lees stirs the pot', *Sydney Morning Herald*, 2 August 2002.
107. Maguire, op. cit.
108. Richards, op. cit., pp. 9, 8. As one journalist observes: 'It [defecting] rarely, Winston Churchill aside, does their careers much eventual good'. See Preston, op. cit.
109. Party-hoppers who were subsequently re-elected and remain in the New Zealand Parliament today (2003) include Jim Anderton, who left the Labour Party in 1988, Winston Peters, who left the National Party in 1992, and Peter Dunne, who left the Labour Party in 1994. Both Anderton and Peters were expelled from their party caucuses for criticising the parties and

both subsequently set up new parties. Opponents of the anti-defection legislation in New Zealand argued in 2001 that the law was not needed because voters could re-elect or oust the defectors at the next election, thereby indicating whether or not they believed the defection was justified. See the discussion on New Zealand in Section 2 of this paper.

110. Cameron Forbes, 'Declaration of independents', *The Weekend Australian*, 4 August 2001. He quoted one farmer saying:

My attitude to independents is more favourably disposed now than ever. Providing they stand on broad platforms and represent their electorates, they would just as likely gain my vote as a candidate that toes the party line.

Forbes quoted other rural residents saying they would vote for independents because they helped to 'keep the bastards honest', something they believed the Democrats had promised but failed to deliver.

111. Grose and Yoshinaka, *op. cit.*, p. 1.

112. For example, Labor is continuing to target 1997 defector Mal Colston, who was spared from prosecution over alleged travel rorts in 1999 on the basis of the cancer-ridden former Senator having only months to live. Several years later, Labor is urging a new medical assessment of Colston's health with a view to reactivating the case against him. See Ross Peake, 'Colston to face new checks on state of health', *Canberra Times*, 13 November 2002.

113. Desposato, *op. cit.*, p. 3. Desposato lists France and Italy among those countries that 'suffer, or have suffered bouts of frequent [party] switching'. However, while the literature offers many discussions of the fluidity of party politics in these countries, these do not focus on party jumping per se. This illustrates the earlier point in this paper about the need for further study into party defections within and across countries.

114. In Spain, for example, the socialist party (Partido Socialista Obrero Español) statutes state that politicians who quit the party should resign as members of Parliament. However, this is only a moral requirement because Spain does not have legislation that forces an MP to resign. See Manuel Sanchez de Dios, 'Parliamentary party discipline in Spain', in Bowler, Farrell and Katz, *op. cit.*, pp. 156–7.

115. Rod Donald, New Zealand *Hansard*, *op. cit.*, 18 December 2001. Donald, a Green MP, argued vehemently against the introduction of anti-defection legislation in New Zealand. He claimed that no fully established democracy had such laws; rather:

When we obtained advice from the Ministry of Justice we were told that this sort of provision exists in the legislation of countries like Bolivia, Fiji, India, Namibia, Papua New Guinea, South Africa, Trinidad and Tobago, Vanuatu, Zambia, and Zimbabwe. We asked about the legislation of countries that have a Westminster tradition. The ministry officials' report was that there were certainly no anti-defection provisions in the legislation of Australia, the United Kingdom, Canada, or the US, or in the legislation of countries with systems of proportional representation, such as Denmark, Germany, Israel, or Sweden. Indeed, we have not been able to find any evidence of such a provision in any of the European democracies. People in this House are concerned about New Zealand being seen as a banana republic. This is the very first step in that direction.

116. New Zealand Justice and Electoral Committee report, *op. cit.*, p. 584.

117. *ibid.*, p. 590. In a dissenting view to the committee's report, members of the opposition parties noted that there were creditable and discreditable reasons for quitting one's party and highlighted that, in the past, some defectors had been subjected to 'solid criticism' and others had not. They argued that legislation could not distinguish between the two: 'an MP who believes that his or her party has abandoned its core platform may feel a duty to stay in Parliament to help protect the values and the platform on which the member was elected.'
118. Gerard Henderson, "'Rats' maligned in Labor's view of history', *The Courier-Mail*, 17 May 2001.
119. Beazley, Radio 3AW interview, *op. cit.*
120. These arguments are drawn from *United Democratic Movement v. the President of the Republic of South Africa et. al.* (1) 2002 (11) BCLR 1164 (CC) www.concourt.gov.za/judgments/2002/udmmain.pdf and Mejia-Acosta, *op. cit.*, p. 3. The phrase 'genuine democracy' comes from Pakistan's National Reconstruction Bureau, which claimed when introducing anti-defection law in June 2002 that such legislation would 'establish genuine and sustainable democracy'. See 'Pak govt effects law barring defection among MPs', *IndiaInfo.com*, 15 July 2002, <http://news.indiainfo.com/spotlight/pakistanpolls/15pakban.html>.
121. On this last point, see Maddox, *op. cit.*, p. 24.
122. Pakistan, for example, introduced such legislation in July 2002. See 'Pak govt effects law barring defection among MPs', *op. cit.*
123. See, for example, James Robertson, *Changing Parties and Mandatory Elections*, Library of Parliament, Canada, February 1994, and the *United Democratic Party v. President of South Africa et. al.* (1), *op. cit.*, pp. 33–4.
124. Advisory Panel on Electoral Reforms; Standards in Political Life, Review of Election Law, Processes and Reform Options, consultation paper prepared for the National Commission to Review the Working of the Constitution, New Delhi, 8 January 2001, p. 24. <http://lawmin.nic.in/ncrwc/finalreport/v2b1-9.htm> (*Review, op. cit.*, p. 24)
125. Benjamin Reilly, 'Political engineering and party politics in Papua New Guinea', in *Party Politics*, vol. 8, no. 6, 2002, p. 703.
126. James Chin, 'road to political reform in PNG lined with potholes', *Canberra Times*, 3 November 2000.
127. Reilly, *op. cit.*, pp. 706–7.
128. Papua New Guinea is home to 852 of the world's languages that are 'spoken by several thousand small and often mutually hostile clan and tribal groups'. See *ibid.*, p. 704.
129. *ibid.* p. 705.
130. *ibid.*, p. 705.
131. *ibid.*, p. 705.
132. Academic Bill Standish explains that an Organic Law in Papua New Guinea 'is one which is regarded as an "organic" part of the constitution, and carries the same degree of entrenchment as the constitution itself'. See Bill Standish, 'Constitutional engineering in Papua New Guinea's problematic democracy', Paper presented at the Foundation for Development Co-

- Operation Development Research Symposium: South Pacific Futures, Brisbane, 22–24 July 2002, p. 10.
133. *ibid.*, p. 10.
134. Reilly, *op. cit.*, p. 710.
135. *ibid.*, p. 710.
136. *ibid.*, p. 711.
137. *ibid.*, p. 715.
138. Standish, *op. cit.*, p. 11.
139. *ibid.*, p. 12.
140. Frank Kolma, 'Building blocks: 42 political parties and the K500 000 question', *The National Online*, 24 July 2002, www.thenational.com.pg/0726/opinion8.htm. Kolma claims that many candidates reserved the right to negotiate freely by heading parties themselves or by going into the election as independent candidates.
141. *ibid.*, and Standish, *op. cit.*, p. 12.
142. Advisory Panel on Electoral Reforms, *op. cit.*, *ibid.*, p. 23.
143. *ibid.*, pp. 23–4. The report noted:
- By the end of March, 1971 approximately 50% of the legislators had changed their party affiliations and several of them did it more than once – some of them as many as five times. One MLA was found to have defected five times to be a minister for only five days.
144. 'Anti-defection law ineffective, says Gill', *The Hindu*, 10 June 2001, www.hinduonnet.com/thehindu/2001/06/11/stories/0211000e.htm; see also, V. Venkatesan, 'A move against defections', *Frontline*, vol. 18, no. 18, 1–14 September 2001, www.flonnet.com/fl1818/18180360.htm.
145. South Africa's constitutional court made this ruling when the anti-defection law was challenged in 1996 and 1997. See the summary in *United Democratic Party v. President of South Africa et. al. (1)*, *op. cit.*, p. 17–19.
146. *ibid.*, p. 26.
147. *ibid.*, p. 19.
148. New Zealand Justice and Electoral Committee report, *op. cit.*, p. 586.
149. *United Democratic Party v. President of South Africa et. al. (1)*, *op. cit.*, p. 18.
150. David Welsh, 'Government shifts on voting reform', *Focus*, Helen Suzman Foundation, 23 September 2001, www.hsf.org.za/focus23/focus23welsh.html.
151. 'Court says yes to floor-crossing', *SouthAfrica.info*, 4 October 2002, www.safrafrica.info/ess_info/sa_glance/constitution/floorcrossing1.htm.
152. *United Democratic Party v. President of South Africa et. al. (1)*, *op. cit.*, p. 11.
153. *ibid.*, p. 30.
154. *ibid.*, pp. 28–9
155. *ibid.*, pp. 40–58.

156. Court 'no' to ANC floor-crossers', SouthAfrica.info, 21 November 2002, www.safrika.info/ess_info/sa_glance/constitution/courtdefection.htm.
157. Voters have two votes in an election: one for a local (electorate) candidate and one for a party. The percentage of the party vote that a party obtains in an election determines how many seats it will gain in parliament, with list seats being allocated to a party to 'top up' the number of electorate seats it has won until the correct proportion is reached. Thus, in the July 2002 election, New Zealand First won 10.4 per cent of the party vote, which meant it was entitled to 13 of parliament's 120 seats. However, because it won only one electorate seat, it could claim 12 of the 51 list seats in order to reach its designated number of seats.
158. Parties have considerable power with regard to their lists. They assign their allocated list seats according to their individual 'lists' of candidates, which are filed with the Electoral Commission before the election. However, a party's list is 'closed', which means that the order in which candidates appear on the list is decided by the party, not by the voters. That is, voters do not get to number a party's candidates in order of preference; rather, the party retains control over a candidate's placement on the list. The 'closed' list allows parties to place high on their list candidates who might otherwise not attract votes in an electorate seat for a number of reasons, including gender, race and ethnicity
159. New Zealand Justice and Electoral Committee report, op. cit., p. 585.
160. The Electoral Act 1993 said that a member was considered to have resigned when he or she wrote to the Speaker, telling the Speaker of the intention to resign. Kopu wrote to the Speaker advising of her decision to leave the Alliance but remain in Parliament. Hence, the ruling that her seat could not be considered vacant. See Joseph, op. cit., pp. 413–4.
161. John Armstrong, 'Party-hopping MPs safe under bill escape clause', *New Zealand Herald*, 18 April 2000.
162. For the full debate, see New Zealand Hansard, 18 December 2001, op. cit.. This can be seen online at: http://rangi.knowledge-basket.co.nz/hansard/han/text/2001/12/18_chron.html.
163. New Zealand Justice and Electoral Committee report, op. cit., p. 582. Government members of the committee noted that there were more party defections between 1993 (after the decision to implement MMP) and 1999 (the second election held under MMP) 'than in the entire previous history of our Parliament'. See p. 583.
164. Early elections are rare in New Zealand, where governments traditionally run their full three-year terms. For a discussion of the July 2002 election, see Sarah Miskin, 'New Zealand Election: 27 July 2002', *Research Note no. 9*, Department of the Parliamentary Library, Australia, 17 September 2002.
165. The Alliance was a coalition of several minor parties, including the NewLabour Party, Manu Motuhake, the Democratic Party, and the Liberal Party. The core of the internal dispute was that some in the Alliance felt the group was making too many compromises to Labour.
166. New Zealand Press Association, 'Anderton "power mad", says Donald', *New Zealand Herald*, 4 April 2002, and Audrey Young, 'Anderton's integrity under fire', *New Zealand Herald*, 24 April 2002.
167. Anderton retained his constituency seat in the July 2002 election, with a margin of more than 3000 votes. His own success combined with his new party's 1.8 per cent of the overall party vote allowed him to take a second member into parliament with him under the Jim Anderton's

Progressive Coalition banner. The Alliance won no electorate seats and received only 1.2 per cent of the party vote, leaving it without seats in the new parliament.

168. New Zealand Press Association, 'Future of Act MP still unclear', *New Zealand Herald*, 3 February 2003.

169. See, for example, Webb et al, op. cit. and Dalton and Wattenberg, op. cit.