Are Election Reforms Passed Democratically? Evidence from New Zealand

Joshua Ferrer

Abstract

Do politicians use good legislative practices when altering election rules? Democratic lawmaking procedures are perhaps most important when electoral legislation is involved, providing a key opportunity to constrain the behavior of self-interested politicians. The incidence and effects of election reforms have received growing attention, but little is known about the procedures used to enact changes to the rules of the game. This paper empirically studies the process used to pass election laws in New Zealand between 1957 and 2020. I find that the "normal" legislative process is rarely followed. Rather, legislation is regularly rushed through under urgency, the select committee process skipped, cool-down periods abridged, and opposition complaints ignored. These findings suggest that democratic procedural norms are frequently violated by politicians in one of the most sensitive areas of lawmaking. They also highlight the need for more scholarly attention not just to *which* election reforms are enacted, by *how* they are enacted as well.

Introduction

> "…having a Bill of such importance proceed under urgency is an example of the very reason that the people of New Zealand say that there is a need for a change to the parliamentary system, and to all the aspects of it that provide the members here today with the opportunity to represent their constituents. It is a classic example of that very exercise that a matter of this importance—a matter that concerns people so vitally—should be argued in this institution under urgency." – Bruce Gregory, Electoral Amendment Act 1993 (537 NZPD; 19 Aug 1993)

> "I say to the House… that we, as a Parliament, should be very, very reluctant to make a change to the constitution without having full public participation in it. Can anyone say that putting in a change in the law—a retrospective change—under urgency constitutes public consultation or proper discussion? I say that the process we are following will be a very dangerous precedent" – Richard Prebble, Electoral (Vacancies) Amendment Act 2003 (610 NZPD 7716; 6 August 2003)

Elections are the central legitimating mechanism of modern democracies. How they are run—the democratic "rules of the game" (Massicotte et al. 2004)—affects who participates, who competes, and who wins. Politicians can play an active role in shaping the rules they are elected under, setting up an inherent conflict of interest. The incidence and effects of election reforms have received growing scholarly attention across several countries (Bentele and O'Brien 2013; Ferrer 2021; Jacobs and Leyenaar 2011). However, the procedures by which election rules are legislatively amended has been left unexamined. Do politicians adhere to strong procedural principles of deliberative democracy when considering election reforms? Or do they eschew transparency and accountability, instead rushing through changes to the rules of the game in hopes of maximizing their chances of reelection?

This paper examines the procedures used to pass election reforms in New Zealand from 1958 to the present. Using a combination of debate transcripts, select committee reports, and other legislative documents, I find that the "normal" legislative process is rarely followed in passing changes to the democratic rules of the game. Rather, legislation is often rushed through using urgency motions and Supplementary Order Papers, debates are skipped, mandatory stand-down periods are removed, select committee scrutiny is abridged or eliminated, and process-related concerns raised by MPs are ignored. These findings suggest that democratic procedural norms are frequently violated by politicians even in one of the most sensitive areas of lawmaking. They also highlight the need for more scholarly attention not just to *which* election reforms are enacted, by *how* they are enacted as well.

Legislative procedures

Legislative procedures can be law-based, rule-based, or norm-based. Laws typically specify the size, composition, election method, and powers of legislative bodies. However, legislative chambers themselves are reserved the power for determining their own methods of functioning. Legislative procedural rules are passed by the body as one of its first acts upon convening.[1] Norms of operation are necessary to ensure that these procedural rules are followed and not overruled by ad-hoc parliamentary majorities.

An inherent tension exists within legislative bodies: to be democratic in the sense of majoritarian, and to be democratic in the sense of deliberative and egalitarian. Even if the procedural rules of a body enumerate deliberative steps that ensure the rights of minority members to debate and voice dissent, a "democratic" but impatient majority can violate these rules in the presence of weak norms. In other words, legislative procedures are adhered to through the norms of the legislature itself.

A good deal of scholarship has focused on the procedural rules that must be overcome to enact legislation, especially in presidential systems (Krehbiel 1991, 1998; Mayhew 1974, 2003). Less studied is how often these procedural rules are changed in ways that shorten the legislative process itself or result in less thoroughly scrutinized legislation. Some policy institutes have tracked legislative procedures in this manner. For instance, the Bipartisan Policy Center has tracked the percentage of bills receiving committee reports and the rules process used to enact legislation in the United States (Bipartisan Policy Center 2019).

Geiringer et al.'s (2011) study of the use of urgency in New Zealand's parliament provides a good starting point for defining "democratic" legislative procedures. They enumerate ten principles of good lawmaking. These include the following: elected representatives should provide justification for their actions, the legislature should be open and accessible, citizens should be able to participate in the legislative process, legislation should undergo deliberation and scrutiny to ensure quality, legislation should not jeopardize fundamental constitutional rights and principles, lawmaking

[1] For instance, in the United States this is the second action of the House of Representatives after electing a Speaker by simple majority.

should be conducted to Parliament's regular procedural rules, the government has a right to implement their policy program through legislation, and quick legislative action is possible in (actual) emergency situations.

Legislative procedures and election reform

Adhering to principles of good lawmaking is important to ensuring the well-being of democratic government. These principles enable legislators to be responsive to public demands and can be held accountable for their actions, they protect the rights of minority parties and members, and they can improve the quality of enacted legislation.

Democratic lawmaking procedures are perhaps most important when electoral legislation is involved. Politicians determine the rules they are elected by, setting up an inherent conflict of interest (Geddis 2014). Public awareness of proposed reforms (act-contingent constraints) is therefore vitally important to constrain politician behavior (Reed and Thies 2001; Shugart and Wattenberg 2001).

Election laws are also matters of constitutional importance and therefore warrant careful and deliberate consideration. This is most obvious in countries with written constitutions, where specific electoral rules rights are enshrined. In countries with unwritten constitutions, electoral rules are typically considered to be part of the constitution as well (Geddis 2017; McLeay 2018; Palmer and Butler 2016, 2018). However, they do not necessarily enjoy the supermajoritarian protections that a written constitution provides. Strong norms of legislative procedures, including thorough scrutiny and debate, are therefore vital to constrain politicians from manipulating the rules to further their own self-interest.

New Zealand as a case study

New Zealand provides an ideal case study to study the legislative procedures used to enact election reforms. It is widely considered to have one of the most stable and transparent governing systems (Freedom House 2020). Finding frequent instances of procedurally problematic election reforms could indicate the ubiquitous nature of such lawmaking. Additionally, New Zealand has a highly concentrated executive (Lijphart 2012), a unitary form of government, a unicameral legislature, and an unwritten constitution (Palmer and Butler 2016, 2018). Outside of triennial elections, there are few constitutional constraints standing in the way of executive dominance (Geddis 2016; Palmer and Butler 2016). This means that elections, the rules governing their conduct, and deliberative procedural norms all take on increased importance in ensuring accountable governance. Finally, New Zealand has undergone substantial institutional shifts over the past 50 years, including the switch from first-past-the-past (FPTP) to a mixed member proportional (MMP) electoral system in 1996 (Malone 2008) and the implementation of a robust select committee system (Martin 2004). These changes provide an opportunity to analyze the link between institutional features and the procedures used to enact election reforms.

Previous research into New Zealand's history of election reform has uncovered several instances where governments have truncated the debate process, skipped select committee consideration, passed urgency measures, eliminated stand-down periods, held middle-of-the-night floor votes, employed Supplementary Order Papers, and utilized other means to prevent election reforms from receiving full and open legislative deliberation (Ferrer 2021). These techniques may coincide with the passage of highly partisan reforms and with voting restrictions, indicating a pattern of problematic election reforms passed using potentially undemocratic legislative procedures. Also of worry is that reforms that adversely affect Māori voters have been passed in ways that shut out Māori voice.

Legislative procedures in New Zealand

The core elements of the legislative process in New Zealand have remained constant over the past half century. Cabinet, made up of members of a governing coalition in parliament, develops government legislation and shepherds it through three "readings" (debates) before passage. Significant institutional changes have occurred, including to select committees, the order of legislative steps, the length of debates and speeches, and voting procedures. Some of these changes are endogenous to the 1996 electoral system change, but many are exogenous (Martin 2004; McGee 2017). Parliamentary Standing Orders (SOs) are reviewed every three years and new rules adopted at the start of each parliament. This section details the evolution of parliamentary procedure in New Zealand and the effects of the 1996 electoral system reform. Normal legislative procedure and possible deviations from the normal process are also illustrated.

Evolution of standing orders and parliamentary procedure changes

New Zealand has a robust select committee system, perhaps the most distinctive aspect of its legislative process. This system has been built on gradual changes since 1960s in response to the enlarged powers of the government (Martin 2004). Starting from a more or less ad hoc system, a series of reforms to the parliamentary Standing Orders have made select committees a routine and formative part of legislative deliberation (Martin 2004; McLeay 2018). In 1979, automatic referral of legislation to select committees began. This established the principle that bills would go to select committees before being passed, effectively embedding the role of select committees in the normal legislative process (Malone 2008). Thirteen permanent select committees were established in 1985 and divided into distinct subject areas, including one for electoral law. Select committees' terms of reference were also expanded, including their ability to initiate inquiries and scrutinize policies. All were made open to the public and media during the hearing of evidence. The shift to MMP would further transform the composition and functioning of select committees.

A host of other changes to the parliamentary process have taken place (see Martin 2004). Parliamentary sessions have grown longer and moved from one-year to three-year terms in 1987. This means that bills no longer must pass in a single year and are now routinely considered across multiple years. Parliamentary sittings become fully broadcast starting in 1985. Sitting hours have

become more routine and middle-of-the-night debates less common. A recent change along this line was the addition of an "extended sittings" provision in 2011 as an alternative to urgency. This allows for evening parliamentary sessions devoted to progressing legislation. The rules governing length of debates and number of speeches have both grown stricter over time, with the largest shift occurring in 1985.

The normal order of legislative stages and debates has also undergone some alterations. Prior to 1969, the motion to commit a bill for consideration by the Committee of the whole House ("committal") effectively acted as a second reading debate. Since then, committal has been equivalent to the Committee of the whole House debate and the main debate on the principles of the bill takes place during the second reading. Between 1993 and 1999, a temporary change to the order of stages eliminated the first reading debate and delayed select committee review until after the second reading. The practice of debating the select committee report separate from the second reading debate began in the 1980s, but the practice ended in 1999. Finally, there have been changes in the introduction and first reading debates.[2]

Effects of switching from FPTP to MMP

The advent of mixed-member proportional has fundamentally altered the composition of governments and parliaments. Whereas under FPTP single-party majority governments ruled, under MMP minority coalition governments are the norm. The effective number of parties in parliament has increased from 1.96 (1969–93 average) to 3.16 (1996–2017 average), indicating a switch from a two-party to a multiparty system. This has rebalanced the focus of power in government, curtailing executive dominance (Palmer and Palmer 2004) and increasing the power of parliament to check the executive (Malone 2008). Bills generally require the support of multiple parties to pass. The size of parliament has also increased under MMP (from 99 to 120) to accommodate the inclusion of both list and electorate seats.

Select committee membership is now roughly proportional to each party's membership in parliament. This means that not all select committees have government majorities, granting minorities more power to delay bills and wield leverage in negotiations. In short, select committees had become quite important toward the end of the FPTP era and they have grown more so under MMP (Malone 2008). Other consequential changes to electoral reform include changes to speaking opportunities and question time to make them proportional to party membership. Voting has become quicker, with bloc party votes now cast rather than individual or pair/proxy voting. Consequently, roll call votes are called more often now.

Despite these reforms, governments can still generally have their way with legislation over the objections of minority parties. In other words, the executive continues to dominate the legislative branch (Geddis 2016; Malone 2008). Furthermore, McGee (2007) argues that legislative procedures have changed to counterbalance increased political constraints under MMP.

[2] Prior to 1997 a debate occurred upon introduction of a bill, after which a first (and, sometimes second) reading was conducted pro forma. Thereafter, the introduction became an administrative step and the debate occurred in the first reading.

Parliamentary rules now facilitate a quicker legislative process, preventing minority parties from stonewalling the government's agenda. These changes include limits to the number of speakers and the length of speeches at each reading, the shift to non-debatable procedural motions, and new obligations on select committees to scrutinize bills within a specified time frame. McGee also argues that the use of urgency has increased to counterbalance increased political constraints, though Geiringer et al. (2011) observe an overall decrease in urgency motions.

"Good" democratic procedure in practice

What does an ideal legislative process look like for electoral legislation? Here I outline the current normal procedure for bills in New Zealand (McGee 2017). The introduction of a bill is an administrative step. At least three sitting days after the introduction, the first reading debate takes place. This is the first opportunity for the minster or sponsoring member to explain and justify the bill, and for other parties to state their initial positions. After a successful vote, the bill is referred to a select committee and may be given a specific report back date. The select committee will solicit public submissions, hear evidence from the public, and produce a report on the bill with suggested amendments. At least three sitting days after the select committee report is received by the House, the second reading takes place. This is the most important debate and concerns the principles of the bill itself. At least one day after a successful second reading vote, Committee of the whole House (committal) takes place. Parliament forms itself into a committee and considers the bill section-by-section. A series of votes and amendments may take place. Finally, at least one day after a successful committal the bill receives its third reading debate. This is the final substantive debate on the bill before passage. After a successful third reading vote, the bill then formally becomes law by Royal Assent.

This process achieves many of the principles outlined by Geiringer et al. (2011), including ensuring that representatives provide justification for their actions, that the legislative process is open and accessible, that citizens feedback is incorporated, and that deliberation and scrutiny take place to ensure quality. As will be shown, however, it is a process that has been rarely followed for electoral reforms.

Deviations from the normal legislative process

Deviations can broadly be placed into two groups: those that require unanimity, and those require a simple majority. The simplest type of deviation is to shorten this process "by leave of the House". If no member objects, debates can be skipped, the mandated "stand-down" periods between steps eliminated, and the select committee process abridged or omitted. This mechanism sometimes has legitimate uses, for instance in the case of emergencies (achieving Geiringer et al.'s (2011) principle that quick legislative action is possible in emergency situations), but it can also be used irresponsibly when there is no legitimate reason to abridge the process.

Urgency is the most frequent technique used to abridge the normal process. It requires only a bare majority. Urgency can be used relatively innocuously, to extend the House's sitting hours and

prioritize the consideration of legislation over other business. Other uses are more problematic. If urgency motions contain more than one step of the legislative process, they reduce or eliminate stand-down periods between stages of progression. The most worrisome use of urgency is when they cover both the first and second reading or all stages of deliberation. This has the effect of omitting select committee consideration entirely from the legislative process (Geiringer et al. 2011). Two other mechanisms are worth mention. A simple majority can amend the bill through a Supplementary Order Paper (SOP). These can be used rather innocuously to correct mistakes or make uncontroversial changes. However, entire election reforms or major amendments can be dropped into the bill late in the process via SOPs, allowing the government to evade most parliamentary scrutiny altogether. Finally, the select committee report back period can be changed by simple majority to be shorter than normal. This can leave select committees with insufficient time to solicit public feedback and properly scrutinize the legislation.

Methods

This project combines two elements: an identification of election reforms passed by New Zealand's parliament between 1957 and 2020 with an evaluation of the democratic procedures used to enact them. Following James (2012) and Ferrer (2021), I use an expansive definition of election laws that includes changes to the electoral system, registration and voting administration, franchise rules, electoral boundaries, campaign finance and electioneering provisions, electoral governance, MP qualifications, and ballot initiatives. This inclusive definition reflects the fact that so-called "minor" election reforms (Leyenaar and Hazan 2011) have been found to affect voter turnout (Neiheisel and Burden 2012), electoral outcomes (Barreto et al. 2009), election integrity (Norris 2004), and public confidence in the legitimacy of the system (Elklit and Reynolds 2001).

Legislation concerning local elections is excluded, as are reforms that fail to pass. Due to New Zealand's parliamentary system and strong party unity, virtually every introduced government election reform has passed. Only two enacted election reforms over this period originated as members bills. Extremely technical reforms or those packaged in omnibus bills are also not included in the main analysis (see Ferrer 2021). Very technical noncontroversial reforms should not waste valuable parliamentary time, and therefore have a highly credible reason for abridging the normal legislative process. Fourteen laws are excluded; seven originate from statute amendment bills, three originate from law reform (miscellaneous provisions) bills, three originate from omnibus finance bills, and one standalone bill (the Electoral Amendment Act 1996) corrected a printing error in a previous enactment. This leaves a total of 68 election reforms studied in the main analysis.

The period of analysis is chosen to include a large span of time before and after New Zealand's 1996 electoral system reform. This period beings after a complete rewrite of New Zealand election laws in 1956, including the introduction of entrenched electoral provisions that require a supermajority to alter. It also follows the elimination of the Legislative Council, New Zealand parliaments' upper chamber, in 1951.

Information collected on the legislative process itself includes length of consideration, the select committee process followed, use of urgency, use of SOPs, the abridgement of stand-down periods, skipped stages of legislative deliberation, circumstances surrounding any breaks from normal legislative procedures, credibility of reasons for departure, and the degree and type of process-related concerns from members raised. I also examine the amount of contemporaneous media coverage of each bill as a proxy for public awareness. Finally, a series of good governance practices are tracked, including the production of a departmental disclosure statement, a regulatory impact statement, and a bill digest, as well as each bill's consistency with the New Zealand Bill of Rights Act (BORA).

Primary parliamentary documents, including debate transcripts, select committee reports, legislative texts, SOPs, dates of legislative progression, bill digests, and BORA reports are obtained from the New Zealand Legal Information Institute (NZLII), New Zealand's Parliamentary website, New Zealand Legislation (maintained by the Parliamentary Counsel Office), New Zealand Parliamentary Debates (NZPD, also known as "Hansards"), the Appendices to the New Zealand House of Representatives, and the Parliamentary Bulletin. Some documents are obtained from the New Zealand Parliamentary Library, the Alexander Turnbull Library, and the New Zealand Electoral Commission (all in Wellington). Justice Disclosure statements are obtained from the Justice Ministry's website, and Regulatory Impact Assessments are obtained from the Treasury Ministry's website.

Urgency motions are identified from the Hansard reports. Data on urgency motions for bills enacted between 1987 and 2010 was also checked with a database of New Zealand urgency motions created by Claudia Geiringer, Polly Higbee, and Elizabeth McLeay, which was graciously shared with the author (see Geiringer et al. 2011).[3]

Due to time and data limitations, the analysis of public awareness excludes election reforms enacted before 1970 or 1994–1997. For reforms enacted 1970–1993, I used the dates of legislative progression to locate microfilm articles from three newspapers: the Dominion Post, the New Zealand Herald, and the Otago Daily Times. The first two were obtained from the National Newspaper Collection in Wellington, the last one from the Hocken Collections in Dunedin. News articles for bills enacted 1997–2020 are obtained from an online keyword search using Factiva and the Australia & New Zealand Newsstream (ProQuest).

Analysis

The data is analyzed descriptively across the population of substantive election reforms and broken down by governing party (Labour or National), electoral system "era" (FPTP or MMP), and with a linear time trend. Legislative procedures are analyzed first, followed by an analysis of public awareness and the use of good governance practices.

[3] Some urgency motions do not mention the bills they cover by name, making it difficult to definitively capture all relevant urgency motions. Because of Geiringer et al.'s (2011) database, there is greater certainty that all urgency motions affecting election reforms passed between 1987 and 2010 are captured.

Legislative procedures

Overall

A six-point ordinal scale is developed summarizing the legislative process used to enact each election reform. The scale ranges from 0, indicating the least ("very poor") democratic procedures were followed, to 5, indicating the normal (a "very good") legislative process was followed. Table 1 provides example reforms for each score.

Of the 68 substantive election reforms studied, only 9 followed a completely normal legislative process, equating to 13 percent of enacted reforms. An additional 9 followed almost normal procedures, 12 adhered to a somewhat good process, 19 followed somewhat poor democratic processes, 5 followed mostly undemocratic processes, and 14 completely failed to follow normal legislative procedure. Collapsing the scale into a binary, 30 reforms followed at least mostly normal procedures ("somewhat good" or above), whereas 38 reforms were enacted in undesirable ways.

The National party has done a better job of following democratic procedures when enacting election reforms. Eight of the 9 reforms following normal legislative procedure were passed under National governments, while 9 of the 14 reforms receiving a score of 0 were enacted by Labour governments. On the 0–6 scale, the average election reform passed by National governments received a process score of 2.7, compared with 1.9 for Labour governments. A t-test reveals this to approach statistical significance ($t(66) = -1.98$, $p = .052$). There is also a strong divergence in era. Reforms have averaged a score of 3.04 under MMP, compared with 1.94 under FPTP—a statistically significant difference ($p = .012$). A linear time trend is positive and statistically significant ($p < .01$), suggesting that the procedures used to pass election reforms have improved over time.

Has the process been rushed or abbreviated?

A related summary binary measure captures whether there was any abridgement of the normal legislative process. According to this metric, only 14 of 68 substantive election reforms were not rushed or abbreviated in any way, whereas 54 reforms were rushed in some way. In other words, 80 percent of all election reforms were passed in an abridged fashion. There is an even stronger divergence by era with this measure; 33 or 35 election reforms enacted in FPTP underwent a rushed or abridged process, compared with 16 of 28 reforms enacted in MMP (X^2 (1, N = 68) = 12.4, $p = .0004$). A linear time trend is negative and highly significant ($p < .001$), indicating that election reforms have become less likely to undergo a rushed or abbreviated process over time.

Scale	Descriptor	Example Law	Summary	Procedures used
0	Very Poor	Electoral Amendment Act 2019	Restricted the foreign donation limit to $50.	Passed in one day under urgency without select committee scrutiny and intense criticism from the Opposition.
1	Poor	Electoral Amendment Act 1976	Fixed the number of Māori electorates at 4 rather than variable based on the Māori electoral option.	No select committee scrutiny; committal and third reading debates under urgency.
2	Somewhat Poor	Electoral (Integrity) Amendment Act 2001	Prevented party switching by MPs.	Multiple uses of urgency, latter readings all rushed, and intense criticism from the Opposition.
3	Somewhat Good	Electoral Finance Act 2007	Regulated electioneering and electoral finance and placed extensive limits on election campaigning.	Controversial use of SOPs and criticism from the Opposition.
4	Good	Electoral Poll Act 1967	Allowed for a referendum on the length of the parliamentary term.	No third reading debate.
5	Very Good	Electoral (Finance Reform and Advance Voting) Amendment Act 2010	Established various regulations and restrictions on election advertisement, election spending, and campaign fundraising.	Normal.

Table 1. Legislative Procedure Scale

Were there credible reasons for abbreviating/rushing the process?

Were the reasons stated for abbreviating the normal legislative procedure credible? As the main analysis excluded the most technical and noncontroversial bills, the remaining legislation could not credibly be rushed because there was no disagreement on a technical change. Credibility was measured on a four-point scale, with levels no, low, moderate, and high credible.

The most credible reasons for departure from a normal process directly respond to Geiringer et al.'s (2011) principle that governments should be able to quickly pass legislation in actual emergencies. Such reasons in the sample include a time-sensitive response to harmful electioneering practices, a legislative response to an administrative failure with the registration list, a bill consequential on the success of a popular referendum, and a bill correcting a mistake discovered from a previous enactment. Rushing legislation due to a reduction in sitting time caused by an emergency, such as a pandemic, were also considered highly credible.

The next tier (moderate) consists of matters of reasonable convenience. For instance, wanting to pass a bill before the end of a parliamentary session or to take effect before the next election are included. However, the need for deviating from normal procedures could have been avoided if parliament had simply considered the legislation sooner. Low levels of credibility are similar in that the reasons given are matters of convenience. But they are exceptionally weak in this tier; for instance, a desire to want the legislation passed before a certain year, to hurry up parliamentary business so members can avoid travel disruptions due to bad weather, a desire to complete business before a mid-session holiday, or a desire that a bill be passed into law "as soon as possible". Finally, bills receiving the lowest score for credibility lack any discernable reason for their abridged process.

Following this scheme, only 10 of the 54 reforms that had abbreviated processes were rushed for highly credible reasons. An additional 14 were rushed for reasons of moderate credibility, 5 were rushed without much justification, and 25 election reforms were rushed without any reason given whatsoever. In short, less than half of substantive election reforms that were rushed had at least somewhat credible reasons for their departure from normal legislative procedure.

Urgency

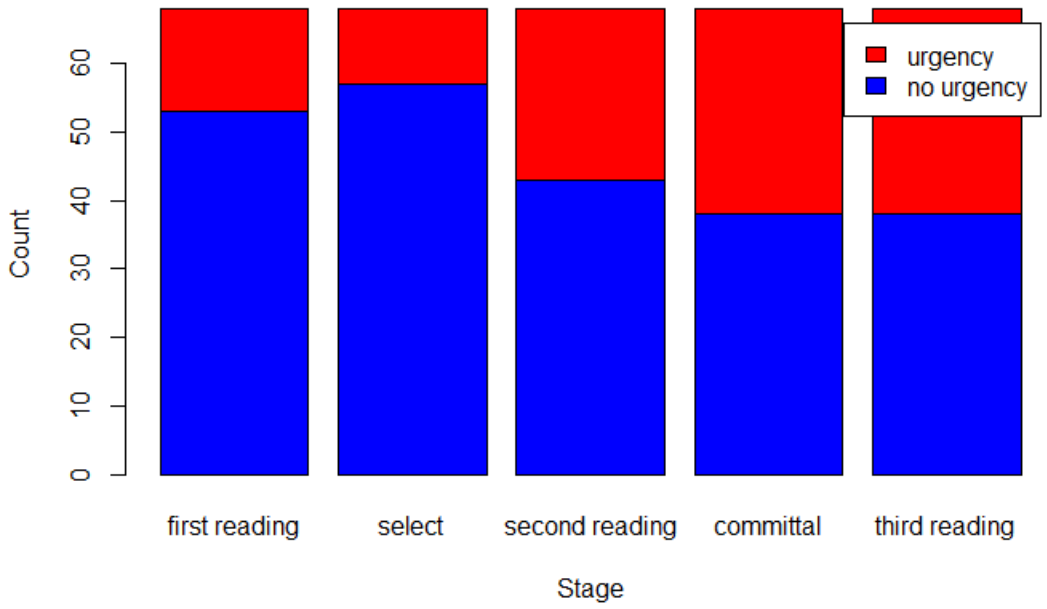
Urgency has been used to pass 39 substantive election reforms, whereas only 29 reforms have passed without the use of urgency. In other words, urgency is a commonplace practice for electoral legislation. It has been used roughly equally by both parties, though was much more common under the FPTP electoral system (26 bills enacted with urgency and 9 bills without) than under MMP (10 bills enacted with urgency and 18 without). This is a statistically significant difference ($p < .01$). A negative time trend is weakly statistically significant ($p = .065$), indicating that the use of urgency in election enactments has become less common over time.

Some election reforms have involved the use of multiple urgency motions. One reform was passed with four separate urgency motions. Five bills were passed with the use of three separate urgency motions, and 11 bills had two separate motions applied. There is a significant divergence by era,

with multiple urgency motions much more common under FPTP than under MMP. In fact, the average number of urgency motions per substantive election reform has decreased by nearly a full motion a bill ($p < .001$). These findings comport with Geiringer et al. (2011), who found that urgency was taken much more often in single-party FPTP governments than under minority/coalition governments in MMP.

Urgency motions are more common in the latter stages of legislative progression. As shown in Figure 1, 44 percent of all election reforms proceeded under urgency in their committal and third reading stages, compared with 22 percent of bills in their first reading.

Figure 1. Use of Urgency in Electoral Reform by Stage.



Urgency can be used in two particularly harmful ways: to reduce stand-down periods and to skip select committee consideration. Among bills in which urgency was used, 27 had urgency motions that reduced stand-down periods and 12 did not. Labour has been more likely to use urgency in ways that reduce or eliminate stand-down periods. Sixteen of Labour's 19 electoral reforms that used urgency reduced stand-down periods, compared with 11 of National's 20 electoral reforms passed using urgency ($p < .05$).

The most problematic use of urgency, according to Geiringer et al. (2011), is when it is used to skip select committee scrutiny. Fortunately, this is relatively infrequent. Urgency was used to skip select committee consideration in six of its 39 uses. However, five of these six instances are in the MMP era. This means that urgency has been used both less frequently and in more harmful ways under MMP compared with under FPTP. This is counter to the findings of Geiringer et al. (2011), who observed that more serious forms of urgency were taken in FPTP.

Was the process rushed besides urgency?

Urgency is not the only technique available to rush the legislative process. Bills can undergo shortened or no select committee consideration, be debated in late night sessions, pass through readings without any debate, have reduced stand-down periods, and be rushed through with SOPs. Thirty election reforms have been rushed using these mechanisms.

Reduced stand downs

Through either urgency motions or other means, 33 election reforms have had their stand-down periods abridged, compared with 35 reforms that went through all their required stand-down time. Abbreviated stand-downs are more common with Labour governments, but this is not a statistically significant difference. It has been much more common in FPTP (20 reduced, 15 not) then in MMP (8 reduced, 20 not) ($p < .05$).

Skipped debates

Bills can have skipped debates in any of their three readings, in committal, or through a skipped select committee process. Pooling urgency and other practices, 23 election reforms have been passed with at least one skipped debate, whereas 45 have been passed without any skipped debates. A linear time trend is negative and statistically significant ($p < .01$), indicating that skipped debates have become less common over time.

Use of Supplementary Order Papers

Twelve election reforms have involved the problematic use of SOPs. Labour enacted 8 of those 12, though this is not a statistically significant difference. More worrisome, three bills have completely abridged the normal legislative process through SOPs.[4] All three were passed before the arrival of MMP. This is a very undesirable practice, as it effectively skips most stages of deliberation and scrutiny.

Select Committee Scrutiny

Of the 68 reforms analyzed, 50 received select committee reports and 18 did not. Labour-passed election laws are slightly more likely to not receive select committee scrutiny than National-passed reforms. Encouragingly, election reforms have become more likely to receive select committee

[4] Defined here as a SOP compromising the entirety of the electoral reform and that is introduced after select committee review. Three such bills meet these criteria: the Electoral Amendment Act 1989, the Broadcasting Amendment Act 1990, and the Electoral Amendment Act 1995.

reports over time ($p < .05$). This is consistent with the growing importance of the select committee process in New Zealand.

In the earlier years of analysis, it was common for a select committee examining electoral reform to replace the bill-specific process. This was not a true substitute, as the final bill could differ in significant ways and contain additional provisions beyond those studied by the select committee. Nevertheless, this process was better than no select committee scrutiny. Including these pre-introduction reports improves the figures slightly. Fifty-four election reforms received either pre- or post-introduction select committee scrutiny, whereas 14 received no select committee scrutiny whatsoever.

It is important that select committees have sufficient time to solicit and consider public feedback, receive expert opinion and ministerial information, deliberate, and produce high-quality amendments. These steps cannot be adequately undertaken in just a few weeks. The average select committee review process took 126 days, with three-quarters of select committee reviews taking over 48 days. A handful of select committee reviews were truly deficient, with five taking place over less than a month and one taking place over just a single day. However, the overall picture is one of robustness. In most cases, select committees that scrutinized election reforms were given enough time to carefully consider the proposed changes. The average length of select committee consideration has increased significantly from FPTP (averaged 97 days of consideration) to MMP (averaged 144 days of consideration) and over time ($p < .05$).[5]

Overall length of consideration

How many days was each election reform considered, from introduction to third reading? Bills spent an average of 152 days (roughly five months) under parliamentary scrutiny, from introduction to third reading. A quarter of reforms were passed in 46 days or less. Labour has considered election reforms slightly longer than National, on average, though it is not a statistically significant difference. Reforms have received nearly double the average length of consideration under MMP (200 days) than under FPTP (100 days) ($p = .01$). There is also a strong positive linear trend ($p < .01$), indicating that length of consideration is increasing. This is consistent with scholarship finding that MMP has strengthened the legislative branch to some extent and "bridled" executive dominance (Malone 2008; Palmer and Palmer 2004).

Opposition process concerns

Was there consensus over the abbreviated process? If not, what specific concerns about the legislative process were raised by MPs in debate? Of bills with an abbreviated process, there was consensus to abbreviate 19 of them, whereas 35 election reforms were abbreviated without

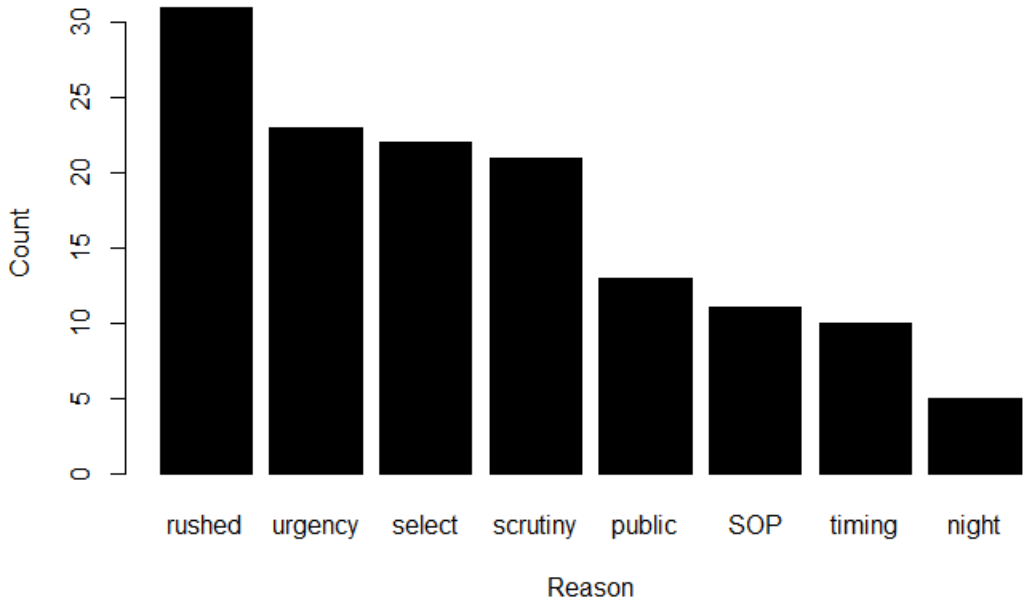
[5] Measurement difference from FPTP to MMP too, likely overstating the length of consideration in FPTP. Select_committee_days: end of first reading debate to select committee report/earliest start of select committee report debate (laid on the table). For bills before 1970 : latest date of first reading to beginning of second reading debate (except for Electoral Poll Act 1967, date Select Committee report laid on table).

consensus. Labour was less likely to pass abbreviated bills without consensus than National, was but this is not a statistically significant difference. A linear time trend is negative and significant ($p < .05$), indicating that election reforms that pass with an abbreviated process are becoming less likely to do so with consensus. This is not necessarily undesirable. It could indicate that Opposition members are becoming more resistant to rushing the legislative process when electoral reform is concerned.

There were process-related concerns from MPs in 48 of the 68 substantive election enactments. Measuring degree of process concerns on a four-point scale (levels none, low, moderate, and high), 26 reforms had a high degree of process-related concerns, 13 had moderate levels, 9 had low levels, and in 20 bills no process concerns were raised. Labour-passed reforms generally had more process concerns raised than in National-passed reforms (on a 0–3 numeric scale, Labour average 1.96 and National 1.41). The severity of process concerns has increased under MMP and over time ($p < .05$). This comports with the idea that the Opposition harps more on the process itself now and is more readily willing to use sharp rhetoric when poor procedures are followed.

Figure 2 displays the reasons for disagreement. These are, in descending order of frequency: generally rushed process, use of urgency, problems with select committee scrutiny, insufficient public awareness or not in the public's interest, use of SOPs, poor timing (especially near the end of parliamentary term/near Christmas holiday), and too late in the night (i.e., 3 am debate). Also common were remarks that the electoral legislation under debate was of constitutional importance (mentioned in at least 20 bills) and that the legislation is important in and of itself (mentioned in at least 10 bills).

Figure 2. Reasons for procedural disagreements in Electoral Reform



Public Awareness of the reforms

Public awareness is vitally important to constraint politician behavior. An aware public can impose harsh penalties on politicians for passing undesirable election laws, enforcing so-called "act-contingent constraints" (Reed and Thies 2001; Shugart and Wattenberg 2001; see also Leyenaar and Hazan 2011).

Because of the different collection methods for news articles covering election reforms passed before 1994 and those passed after 1996, I descriptively analyze these periods separately. The summary data reveals that substantive election reforms generally received a substantial amount of attention. Reforms passed under FPTP received mention from an average of 17 articles from the New Zealand Herald, the Dominion Post, and the Otago Daily Times. Every reform received at least three mentions, with the lowest-covered quarter of reforms receiving six or fewer mentions. These numbers are only slightly reduced when considering only substantive coverage (i.e., excluding daily roundups of legislative activity that fail to describe the content of the bills). Using this measure, reforms received mention from an average of 14.5 articles. Every reform received at least one substantive mention, and the 25 percent least-covered reforms received five or fewer substantive articles of coverage. Furthermore, 15 of the 28 substantive election reforms enacted between 1957 and 1993 received front page coverage from at least one of these three major newspapers, another sign that the public would be generally aware of election reforms while they were being considered.

Election reforms passed under MMP have enjoyed similar levels of newspaper coverage. The average substantive reform received mentions from 29 articles and substantive coverage from 19 articles. Every reform received at least some coverage, with the bottom quarter receiving seven or fewer mentions (and 5.5 substantive mentions). In summary, all substantive election reforms enjoyed at least some degree of contemporaneous news coverage, and most had significant media coverage. This is a positive sign that the first requirement of act-contingent constraints is met: the public is aware when politicians meddle with electoral reform.

One concern is that rushed legislation may enjoy less media coverage and, consequently, less public awareness about the reforms. A regression analysis reveals this to not be the case, however; reforms passed with better democratic procedures tend to have less media coverage, though the relationship is not statistically significant (Table 2). A regression including a bundle of process-related explanatory variables reveals only one factor that explains variation in the amount of news media coverage: the degree of process concerns from MPs. In other words, it is the concerns raised by opposition members, rather than the techniques themselves, that may determine how aware the public is of a reform. This underlines how important the protection of minority legislative rights is for creating act-contingent constraints on political behavior and curtailing self-interested and deleterious manipulations of election reforms.

Table 2: Does an abbreviated process reduce newspaper coverage?

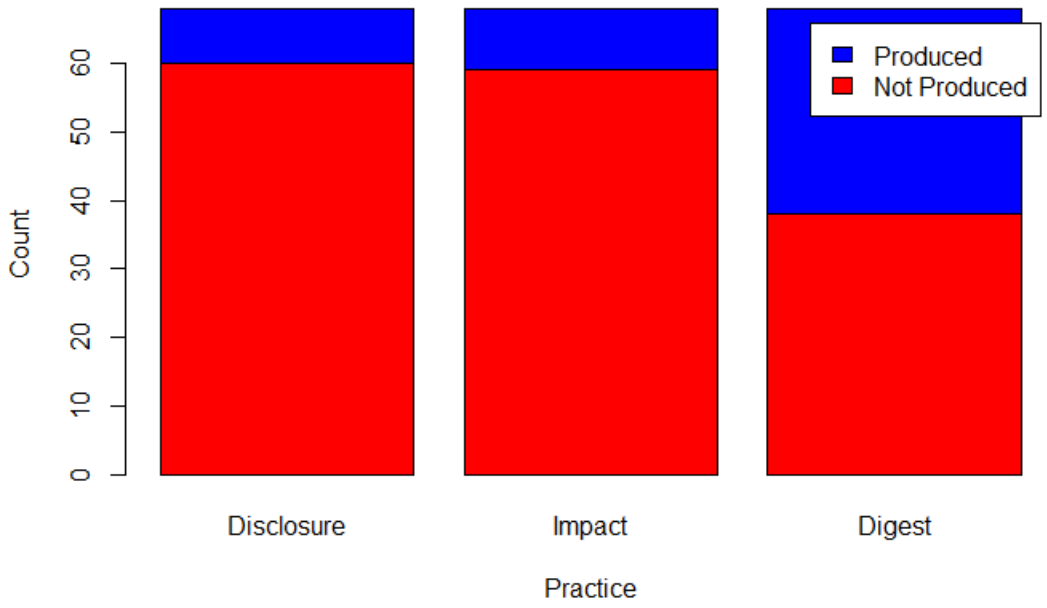
	Dependent variable:	
	Newspaper Coverage	
	(1)	(2)
Democratic Procedures	−1.76	
	(2.57)	
Era (MMP)	13.72	1.28
	(8.52)	(10.59)
Urgency		−16.53
		(13.15)
Reduced Stand Downs		7.94
		(13.45)
Skipped Debates		−12.53
		(19.27)
SOP bill		−26.33
		(31.18)
Process concerns		8.35**
		(3.68)
Committee Report		−14.05
		(20.69)
Days Considered		0.01
		(0.03)
Constant	20.73**	27.20
	(7.77)	(22.05)
Observations	56	56
Adjusted R^2	0.01	0.03
Note:		*p<0.1; **p<0.05; ***p<0.01
	Dependent variable is a count of newspaper article mentions for each election reform.	
	Standard errors in parentheses.	

Good governance

This section details several "good governance" practices that, while not directly related to legislative procedure, do improve the quality and scrutiny of bills. Most practices have developed over the past few decades and have become standard features of the legislative process. Departmental disclosure statements are reports from the relevant ministry (typically the Ministry of Justice for electoral legislation) that summarize the general policy intent of the bill, answer key quality assurance processes used to test the Bill's content, and highlight features that are of particular interest to parliament and the public. These reports first became common practice in 2014 and have been produced for every government electoral bill since. Regulatory Impact Statements are ministerial reports that analyze specific components of a proposed bill (i.e., advance voting "buffer zones", mitigating foreign interference through donation limits, and handling polling place disruptions). These reports became common practice in 2009 and have been produced for nine of the 17 substantive election reforms passed through 2020. Bill digests are prepared by the Parliamentary Service and summarize the provisions of a bill in easily understood text. Bill digests were written starting in 1994 and have been produced for 30 of the 33 substantive

election reforms enacted since. Figure 3 shows the proportion of election reforms that received disclosure statements, impact reports, and bill digests.

Figure 3. Good Governance Practices.



The New Zealand Bill of Rights Act (BORA) was passed in 1990. It mandates that legislation is reviewed by the Attorney-General and determined to be consistent or inconsistent with BORA. However, parliament is not obligated to adhere to the Attorney-General's decision, and on numerous occasions have passed bills that were determined to be inconsistent with the Bill of Rights Act. Since 1990, 41 substantive election laws have been enacted. Of these, 24 acts received BORA reports from the Attorney-General. Twenty-one were found to be consistent with the Bill of Rights Act, while three were found to be inconsistent. In short, most election reforms have not infringed on BORA protections, but parliament has occasionally enacted bills that violate basic constitutional rights.

Discussion and Conclusion

I have empirically analyzed the process used to pass all substantive election reforms in New Zealand from 1957 through 2020. This study has uncovered evidence that democratic procedural norms are routinely infringed to enact election reforms in New Zealand. While previous scholarship has studied the effects of legislative rules on the legislation passed (Krehbiel 1998) and the process by which electoral *system* reforms has been enacted (Renwick 2010), this marks the first procedural analysis of all a country's election reforms. These findings inform the extent to which politicians in established democracies violate legislative norms in order to alter election rules.

While the analysis is primarily positive, it speaks to normative concerns about the health of advanced democratic systems. Procedural principles of deliberative democracy are vital to ensure democratic responsiveness and accountability. This is particularly so when it comes to election reforms. Observing frequent infringements of deliberative norms in one of the world's strongest democracies signals a need for scholars and policymakers to take seriously not only *which* election reforms are passed, but *how* they are enacted as well.

This study marks another course correction to the common understanding that electoral reform is "treated differently" from other matters in New Zealand since the creation of entrenched provisions in 1956. Recent scholarship has found that legislative changes to the rules of the game have routinely been highly partisan affairs (Ferrer 2021). This study sheds new light on the extent to which bills that alter constitutional law are regularly rushed through the legislative process.

One direction to extend this line of inquiry is to examine how election reforms have been enacted in other countries, such as Australia, the Untied States, and the United Kingdom. Whereas the principles of democratic lawmaking and the importance of electoral law is universal, electoral rules vary significantly from country to country (Massicotte et al. 2004). It follows that the mechanisms by which they are abridged are likely to vary as well. This extension would provide further evidence on the extent to which democratic reforms are passed undemocratically.

Another extension is to examine what sorts of institutional features might control electoral change so that the public interest is safeguarded. In other words, when are the norms broken or followed, and how might procedural norms be strengthened? Supermajoritarian features such as entrenchment likely play a role, as well as solutions such as citizen assemblies which take power out of politicians' hands (Bennett 2013; Hayward 2014). This line of inquiry could also test whether consensus-based processes increase the likelihood of consensual outcomes, as has been suggested by Elizabeth McLeay.

Electoral law is in a period of flux in New Zealand. The current Labour government is considering a wide range of reforms, including changes to the term of parliament, Māori boards, and the Māori electoral option, as well as considering the recommendations from Electoral Commission's 2011 report on its review of MMP. It remains to be seen not only what legislation will eventually be passed, but how strong a process will be followed to enact these changes as well.

Works Cited

Barreto, Matt A., Stephen A. Nuño, and Gabriel R. Sanchez. 2009. "The Disproportionate Impact of Voter-ID Requirements on the Electorate—New Evidence from Indiana." *PS: Political Science & Politics* 42(1): 111–16.

Bennett, Ashleigh. 2013. "Rethinking Electoral Reform Processes After the Report of the Electoral Commission on the Review of the MMP Voting System." LLB (Hons). Victoria University of Wellington.

Bentele, Keith G., and Erin E. O'Brien. 2013. "Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies." *Perspectives on Politics* 11(4): 1088–1116.

Bipartisan Policy Center. 2019. *How Congress Governed in a Polarized Era: 2007-2018*. Washington, D.C.: Bipartisan Policy Center.

Elklit, Jørgen, and Andrew Reynolds. 2001. "Analysing the Impact of Election Administration on Democratic Politics." *Representation* 38(1): 3–10.

Ferrer, Joshua. 2020. "Re-Evaluating Consensus in New Zealand Election Reform." *Political Science* 72(2): 118–44.

Freedom House. 2020. *Freedom in the World 2020: A Leaderless Struggle for Democracy*. Freedom House. https://freedomhouse.org/report/freedom-world/2020/leaderless-struggle-democracy.

Geddis, Andrew. 2014. *Electoral Law in New Zealand: Practice and Policy*. 2nd ed. Wellington, NZ: LexisNexis NZ.

———. 2016. "Parliamentary Government in New Zealand: Lines of Continuity and Moments of Change." *International Journal of Constitutional Law* 14(1): 99–118.

———. 2017. "From People's Revolution to Partisan Reform: Recent Electoral Change in New Zealand." *Election Law Journal: Rules, Politics, and Policy* 16(2): 222–29.

Geiringer, Claudia, Polly Higbee, Elizabeth McLeay, and New Zealand Law Foundation. 2011. *What's the Hurry? Urgency in the New Zealand Legislative Process, 1987-2010*. Wellington, NZ: Victoria University Press.

Hayward, Janine. 2014. "Rethinking Electoral Reform in New Zealand: The Benefits of Citizens' Assemblies." *Kōtuitui: New Zealand Journal of Social Sciences Online* 9(1): 11–19.

Jacobs, Kristof, and Monique Leyenaar. 2011. "A Conceptual Framework for Major, Minor, and Technical Electoral Reform." *West European Politics* 34(3): 495–513.

James, Toby S. 2012. *Elite Statecraft and Electoral Administration: Bending the Rules of the Game?* Basingstoke, UK: Palgrave Macmillan.

Krehbiel, Keith. 1991. *Information and Legislative Organization*. Ann Arbor: University of Michigan Press.

———. 1998. *Pivotal Politics: A Theory of U.S. Lawmaking*. Chicago: University of Chicago Press.

Leyenaar, Monique, and Reuven Y. Hazan. 2011. "Reconceptualising Electoral Reform." *West European Politics* 34(3): 437–55.

Lijphart, Arend. 2012. *Patterns of Democracy. Government Forms and Performances in Thirty-Six Countries*. 2nd ed. New Haven, CT: Yale University Press.

Malone, Ryan. 2008. *Rebalancing the Constitution: The Challenge of Government Law-Making Under MMP*. Wellington, NZ: Institute of Policy Studies.

Martin, John E. 2004. *The House: New Zealand's House of Representatives, 1854-2004*. Palmerston North, NZ: Dunmore Press.

Massicotte, Louis, André Blais, and Antoine Yoshinaka. 2004. *Establishing the Rules of the Game: Election Laws in Democracies*. 2nd ed. Toronto: University of Toronto Press.

Mayhew, David R. 1974. *Congress: The Electoral Connection*. Second edition. New Haven: Yale University Press.

———. 2003. "Supermajority Rule in the U.S. Senate." *Political Science and Politics* 36(01): 31–36.

McGee, David G. 2007. "Concerning Legislative Process." *Otago Law Review* 11(6): 417.

———. 2017. *Parliamentary Practice in New Zealand*. Fourth. eds. Mary Harris, David Wilson, David Bagnall, and Pavan Sharma. Auckland, NZ: Oratia Books.

McLeay, Elizabeth. 2018. *In Search of Consensus: New Zealand's Electoral Act 1956 and Its Constitutional Legacy*. Wellington, NZ: Victoria University Press.

Neiheisel, Jacob R., and Barry C. Burden. 2012. "The Impact of Election Day Registration on Voter Turnout and Election Outcomes." *American Politics Research* 40(4): 636–64.

Norris, Pippa. 2004. *Electoral Engineering: Voting Rules and Political Behavior*. Cambridge: Cambridge University Press.

Palmer, Geoffrey, and Andrew S. Butler. 2016. *A Constitution for Aotearoa New Zealand*. Wellington, NZ: Victoria University Press.

———. 2018. *Towards Democratic Renewal: Ideas for Constitutional Change in New Zealand*. Wellington, NZ: Victoria University Press.

Palmer, Geoffrey, and Matthew Palmer. 2004. *Bridled Power: New Zealand's Constitution and Government*. Auckland: OUP.

Reed, Steven R., and Michael F. Thies. 2001. "The Causes of Electoral Reform in Japan." In *Mixed-Member Electoral Systems: The Best of Both Worlds?*, eds. Matthew Soberg Shugart and Martin P. Wattenberg. Oxford: OUP, 152–72.

Renwick, Alan. 2010. *The Politics of Electoral Reform: Changing the Rules of Democracy*. Cambridge: Cambridge University Press.

Shugart, Matthew Soberg, and Martin P Wattenberg. 2001. "Conclusion: Are Mixed-Member Electoral Systems the Best of Both Worlds?" In *Mixed-Member Electoral Systems: The Best of Both Worlds*, Oxford: Oxford University Press, 571–96.