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TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI



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# "THE AYES HAVE IT": THE DEVELOPMENT OF THE ROLES OF THE SPEAKER OF THE HOUSE, 1854–2015

*Pita Roycroft\**

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*This article examines the speakership of the New Zealand House of Representatives and how the roles of the Speaker have developed. It categorises the Speaker's responsibilities, duties and other functions into three broad roles: constitutional, arbitral and political. After explaining the current roles of the Speaker and analysing why the three-role approach has been adopted, the article examines how and why each of the roles have evolved since 1854. It makes reference to particular internal and external factors that have contributed to Office's evolution. It summarises that the development of the roles has followed no clear pattern, but that changes in one inevitably effects and affects changes in the others. Finally, the article offers a normative analysis of the current roles of the Speaker. It argues that the ceremonial aspect to the constitutional role ought to be retained, as it benefits the internal workings of the House; and that tensions between the impartiality convention and the political role of the Speaker can be reconciled, their co-existence posing minimal cause for concern if handled correctly*

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## **I INTRODUCTION**

Your Speaker ought to be a man big and comely, stately and well-spoken, his voice great, his [courage] majestic, his nature haughty, and his purse plentiful.

—Kerry Burke<sup>1</sup>

In 1854, a nascent New Zealand, still devoid of responsible government, was taking small steps in parliamentary democracy. When the first House of Representatives was summoned that year, its inaugural task was to elect a member to preside over its proceedings – that member to take office as

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\* LLB(Hons)/BA candidate. This article is a revised version of a student paper submitted in 2016.

1 Kerry Burke (16 September 1987) 483 NZPD 4.

Speaker of the House.<sup>2</sup> Unsurprisingly, the position was originally steeped in British parliamentary custom, but has now had over 160 years to evolve and settle into its Antipodean context.

This article focuses on the development of the roles of the Speaker. It aims to highlight the importance of an often overlooked position in the contemporary New Zealand political framework. After providing a brief background to the speakership, the article will explain the three broad roles of the Speaker: constitutional, arbitral and political. An analysis of why the position's responsibilities and duties have been categorised into these roles will be canvassed. The major objective of the article is to assess how and why these roles have changed since 1854. This analysis makes reference to "internal" and "external" factors that have impacted on the speakership – "internal" referring to factors within the Office's jurisdiction, such as individual officeholders or committees chaired by the Speaker and "external" referring to those outside, such as statutes or public opinion. Finally, the article will provide a normative analysis of two of these developments. First, it will argue that that parliamentary ceremonies, though posing some risks in their current form, ought to be retained for their beneficial effects. Secondly, it will suggest that tensions between impartiality and the political role can be reconciled if handled properly by the incumbent.

## **II THE SPEAKERSHIP**

### ***A Background***

The office of Speaker is almost as old as the parliamentary system itself. Centuries of tradition, practice, rules and convention moulded the British speakership into what it is today. In 1854 New Zealand, however, there was little guidance on what the position would entail in our House of Representatives. Inaugural members desired a man of "high standing and station" to discharge the duties of the "honourable office", ostensibly on the premise that a respectable member would be "naturally" skilled in leading the House through its first session.<sup>3</sup> Charles Clifford, the Speaker of the Wellington Provincial Council, was duly elected, but not without extensive politicking over technical matters. Clifford would be at the centre of parliamentary turmoil for the next two years, having to make some "invidious decisions" about the House's proceedings and his own roles.<sup>4</sup> Indeed, speakership is a complex and dynamic role. George O'Rorke, considered the "outstanding Speaker of the colonial period",<sup>5</sup> observed that a successful Speaker must be adaptable, prompt, firm, courteous,

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2 New Zealand Constitution Act 1852 (UK), s 48.

3 Thomas Bartley (24 May 1854) NZPD 2.

4 John E Martin *The House: New Zealand's House of Representatives 1854–2004* (Dunmore Press, Palmerston North, 2004) at 15.

5 Frank Rogers "O'Rorke, George Maurice" (30 October 2012) Te Ara – The Encyclopedia of New Zealand <www.teara.govt.nz>.

and "ever on the alert to party tactics".<sup>6</sup> One member remarked that only a person who possessed "strength of character and body, determination, tact, and patience" would be a suitable candidate.<sup>7</sup> Though early members' speeches obsequiously congratulated Speakers-elect on their suddenly "innate" ability to chair the House, there was an underlying reality that the speakership really was an onerous task – especially in the chaos of the colonial period.

## ***B Categorising the Roles***

Many attempts have been made to categorise the responsibilities of the Speaker. McGee's text suggests four duties: chairpersonship, ceremonial, administrative and party political.<sup>8</sup> The parliamentary website lists six: ceremonial, chairing meetings of the House, maintaining order, chairing select committees, acting as landlord and representing the House.<sup>9</sup> Classifying the responsibilities of an office structured by convention and framed by a patchwork of laws is difficult. While isolating individual duties is useful in explaining the current state of the speakership, it is less suitable to an analysis of its evolution.

This article classifies the various responsibilities into three broad roles: constitutional, arbitral and political. This three-dimensional framework is more suitable for assessing the chronological development of the speakership. The framework recognises that the Speaker's responsibilities overlap: they cannot be considered as discrete components to an otherwise complex task that requires careful balancing of competing interests. For example, while the Speaker is expected to maintain "absolute impartiality" at all times, the incumbent is usually a member of a political party and also legally required to be the "minister responsible" for Parliamentary Service, both of which are inherently political positions.<sup>10</sup> What exactly the three roles entail, and how they interact, is the subject of the following discussion.

### ***1 Constitutional***

The speakership is central to the workings of our parliamentary democracy; it is the "linch-pin of the whole chariot".<sup>11</sup> The constitutional role of the Speaker is diverse and the various responsibilities in that role can be placed along a spectrum. They range from purely ceremonial formalities to essential practices that protect the foundations of our constitution: democracy, equality, freedom. At the "more

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6 George O'Rorke (24 September 1879) 32 NZPD 2.

7 William Jordan (25 March 1936) 244 NZPD 2.

8 See David McGee "Speaker of the House of Representatives" in *Parliamentary Practice in New Zealand* (3rd ed, Dunmore Publishing, Wellington, 2005) 77.

9 "Role & election of the Speaker" (17 August 2012) New Zealand Parliament <[www.parliament.nz](http://www.parliament.nz)>.

10 Charles Statham (16 June 1926) 209 NZPD 3.

11 Philip Laundry *The Office of Speaker in the Parliaments of the Commonwealth* (Quiller, London, 1984) at 10.

important" end of the spectrum, the Speaker is first and foremost the embodiment of the House. He or she is responsible for speaking on behalf of Parliament as a national institution. Locally, the Speaker is thus charged with the (perhaps Sisyphean) task of maintaining "sufficient credibility with the electorate to enable a free expression of competing views between various political parties".<sup>12</sup> On the international stage, Speakers throughout the Commonwealth have considered it a "most important representational duty to undertake visits to parliaments overseas" in order to "propagate the importance of fully democratic systems".<sup>13</sup>

Duties that traverse the whole spectrum are most significant because their absence would leave both a cultural vacuum and a major constitutional deficit. One example is the claim to the "undoubted rights and privileges" of the House from the Governor-General. The Speaker lays claim to "the most favourable construction [being] put on all [the House's] proceedings" and "especially to freedom of speech in debate".<sup>14</sup> In this short exchange, the legal concept of parliamentary sovereignty, the constitutional principle of democracy, and the cultural component recognising the dignity of the House are all acknowledged.<sup>15</sup> Perhaps the most important aspect that traverses the constitutional spectrum is the convention of the impartiality of the Speaker. At the critical end, it reflects that the House, not the Speaker, is the master of its own proceedings. English Speaker Lenthal is renowned for his rebuke of Charles I, stating "I have neither eyes to see nor tongue to speak ... but as the House is pleased to direct me, whose servant I am here."<sup>16</sup> At the ceremonial end of the spectrum, impartiality is embodied in the Speaker having special seating in the chamber. The Speaker's chair affords status to its occupant and encourages the incumbent to be impartial above all else. In practice, the impartiality convention governs the whole speakership in all three roles. The pervasiveness of impartiality is discussed in Part III.D.2.

Finally, at the ceremonial end of the constitutional spectrum, the Speaker performs various parliamentary "rituals". The Speaker's regalia has historically symbolised the authority of the House, but its adoption in New Zealand stems from early Speakers' concerns to "elevate the standing of Parliament".<sup>17</sup> The best known ceremony, the Speaker's procession to the chamber preceded by the Serjeant-at-Arms with the mace, is only a formality – its purpose to escort the Speaker to the House.

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12 Margaret Wilson "Reflections on the Roles of the Speaker in New Zealand" (2007) 22 NZULR 545 at 550.

13 Baroness Boothroyd "The Role of the Speaker in the 20th Century" (2010) 29 Parliamentary History 136 at 143.

14 Standing Orders of the House of Representatives 2014, SO 23. See for example David Carter (21 October 2014) 701 NZPD 9.

15 See Wilson, above n 12, at 549.

16 See Hugh Chisholm *Encyclopaedia Britannica: a dictionary of arts, sciences, literature and general information* (11th ed, Cambridge University Press, New York, 1911) vol 16 at 429.

17 Martin, above n 4, at 15.

While the mace is a corporate symbol of Parliament and usually present, its absence would not "prejudice the continued sitting of the House" or "affect the validity of anything" done by the Speaker.<sup>18</sup> Prayers are also a symbolic observance that have no broader impact on the speakership. It became a joke in the colonial period that "the Speaker entered the House, looked to the right, then to the left, and prayed for the country".<sup>19</sup> Overall, the constitutional role of the Speaker is diverse and requires an incumbent to distinguish between duties that are crucial to upholding constitutional principles and those that hold little more than cultural value and providing a sense of dignity and order.

## 2 *Arbitral*

New Zealand has always had a robust debating chamber. During the inaugural session, a member is reported as having "marched in with his hat on, defied the chairman, flung a *Gazette* on the table, and declared the session was over" while flourishing his umbrella and daring anyone to evict him.<sup>20</sup> To prevent such transgressions, the Speaker assumes an arbitral role – the second dimension to the Office. This role is termed "arbitral" because the hearing and determining of disputes is a core function of the Speaker. The primary responsibility in this role is to maintain order and decorum in the House.<sup>21</sup> The incumbent has an arsenal of standing orders and Speakers' Rulings at their disposal to control the "vigorous exchanges" between members.<sup>22</sup> But the Speaker's ability to maintain order and decorum also requires the cooperation of all parties. That cooperation is supported by the impartiality convention, designed to ensure members can exercise partisan opinions through an unbiased Speaker.<sup>23</sup> Other functions performed in the arbitral role include regulating Question Time, calling members to speak, ruling on points of order and declaring votes. New Zealand's Question Time is much more challenging than that of most parliaments, where "tempers fray and verbal abuse is exchanged" by members attempting to "score a political advantage over ... opponent[s]".<sup>24</sup> The Speaker must therefore be polymathic, possessing considerable tact and adaptability to be an effective arbiter.

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18 McGee, above n 8, at 61.

19 Martin, above n 4, at 18.

20 Margaret Wilson, Speaker of the House of Representatives "Keeping order and fostering decorum – a New Zealand perspective" (speech to the Houses of Parliament, London, United Kingdom, 3 January 2008) in "Report on the 19th Conference of Commonwealth Speakers and Presiding Officers held in the United Kingdom" [2008] Parliamentary Papers J.2Q 15 at 15.

21 Standing Orders of the House of Representatives 2014, SO 84(1).

22 Wilson, above n 12, at 554–555.

23 At 550.

24 Wilson, above n 20, at 15.

The Speaker's arbitral role includes chairing the Business Committee, the Standing Orders Committee and the Officers of Parliament Committee.<sup>25</sup> The first two deal with procedural matters that directly affect the speakership, whereas the latter Committee recommends the financial supply for the parliamentary offices.<sup>26</sup> As these committees operate under a procedural rather than policy-based dynamic, there is less political antagonism and thus less pressure on the Speaker to assert their authority and maintain order compared to inside the chamber. For example, the Business Committee operates on a "no surprises" basis providing the "opportunity for all parties to have notice of the forthcoming business in the House" and to sort out any contentious procedural matters in an orderly and polite forum.<sup>27</sup> Aside from the chairpersonships imposed by Standing Orders, the Speaker has a statutory duty to chair the Parliamentary Service Commission,<sup>28</sup> a committee of members which "advises the Speaker on the nature of the services to be provided to Members of Parliament".<sup>29</sup>

### 3 Political

The political role of the speakership is contentious, chiefly because it is in direct conflict with the impartiality convention – the requirement to rule "without fear or favour".<sup>30</sup> There are two aspects to the role: administrative and partisan. In the administrative capacity, the Speaker acts as the responsible minister for the Parliamentary Service, the Office of the Clerk and the various parliamentary offices.<sup>31</sup> With a total budget of \$153,000,000 and over 600 FTE (full-time equivalent) employees for the Parliamentary Service alone, the task is akin to a Minister responsible for a full-scale department.<sup>32</sup> The Speaker acts independently of Cabinet when discharging these responsibilities, but the role requires the "same political accountability required of any government department".<sup>33</sup> The desirability of such accountability is canvassed later, but there is an inherent conflict between the executive's

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25 Standing Orders of the House of Representatives 2014, SOs 77(1) and 201(3). Chairpersonship of the Standing Orders Committee is *ex officio*.

26 Standing Orders of the House of Representatives 2014, SO 395(1).

27 Wilson, above n 20, at 16.

28 Parliamentary Service Act 2000, s 16(1).

29 Lockwood Smith, Speaker of the House of Representatives "The New Zealand Parliament, the Parliamentary process and the Role of the Speaker" (speech to the New Zealand Business and Parliament Trust, Wellington, 6 May 2009).

30 Alfred E Allen (26 April 1967) 350 NZPD 2. The conflict between the impartiality convention and the political role is discussed at Part IV.B.

31 The Office of the Controller and Auditor-General, the Office of the Parliamentary Commissioner for the Environment and the Office of the Ombudsman.

32 Treasury *Summary Tables for the Estimates of Appropriations 2015/16* (21 May 2015) at 10; and Parliamentary Service *Annual Report: 2013–2014* (30 September 2014) at 37.

33 Smith, above n 29.

control of the distribution of resources and the independence of Parliament, for which the Speaker is responsible.<sup>34</sup> Wilson observes that there is little understanding of this duty because of its complexity and lack of transparency.<sup>35</sup> Indeed, issues arose in 2006 when the Auditor-General received complaints of bias regarding the Speaker's approval of funding for communications material.<sup>36</sup> This highlighted the inherent tension between the impartiality convention and the Speaker's responsibility for approving members' entitlements.<sup>37</sup>

The partisan dimension to the speakership exists because Speakers are most often members of political parties. It is not a positive responsibility such that it requires the incumbent to actively discharge particular duties; rather, the dimension reflects the extent to which a Speaker participates in his or her party's affairs. In the United Kingdom, the Speaker "sheds all his party affiliations and dedicates himself exclusively to the impartial discharge of his functions".<sup>38</sup> Speakership in New Zealand knows no such requirement. It is at the discretion of the individual as to whether they engage in party matters such as attending caucus meetings. A particular difficulty many Speakers have faced concerns their ability to uphold the impartiality convention after having immediately left office as a minister and having no previous experience in chairing the House.<sup>39</sup> This issue is analysed in Part IV, but Wilson argues that it has "caused no significant problem in the past".<sup>40</sup> Realistically, a Speaker who "demonstrably favoured" one party or faction over another would have a career "reminiscent of Hobbes' state of nature – nasty, brutish, and short".<sup>41</sup> To guard against potential accusations of bias, it is important for a Speaker to be "thoroughly familiar" with the issues of the day and with the attitudes

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34 Wilson, above n 12, at 559.

35 At 561.

36 See KB Brady "Advertising Expenditure Incurred by the Parliamentary Service in the Three Months before the 2005 General Election" [2006] AJHR B29; Margaret Wilson "Report of the Minister Responsible for Vote Parliamentary Service Pursuant to a Direction of the Controller and Auditor-General Issued under Section 65Z of the Public Finance Act 1989" [2006] AJHR A15.

37 See Wilson, above n 12, at 560–562.

38 Dale Lovick "Impartial but not non-partisan: re-examining the mythology of the speakership" (1997) 19 Canadian Parliamentary Review 2 at 3.

39 As the party system stabilised, it was expected that Speakers would have parliamentary rather than ministerial experience. For example, many Speakers followed the "career path" of party whip, Chairman of Committees, Acting Speaker and finally Speaker. This is no longer the expectation.

40 See Wilson, above n 12, at 551.

41 Lovick, above n 38, at 5.

taken by political parties to those issues.<sup>42</sup> Indeed, impartiality and the speakership "[do] not operate in a vacuum".<sup>43</sup>

### ***C Analysing the Framework***

While the tripartite framework illustrates the three roles of the Speaker, it is important to note that these roles cannot, and should not, be considered in isolation. Each role informs the interpretation and performance of the obligations imposed by the other roles. A duty performed in one role may support a duty in another. For example, the Speaker acting to maintain order in the House discharges one of the office's arbitral duties. As a corollary, the Speaker's constitutional responsibility to "uphold the honour and dignity" of Parliament is also fulfilled.<sup>44</sup> Equally, if a Speaker acted in a partisan fashion when discharging the administrative duties, it would produce disorder in a subsequent sitting of the House, affecting their ability to perform the arbitral role.

This part has also argued that the impartiality of the Speaker is the governing convention of the speakership. These roles have changed dramatically since our nation's inaugural Speaker took office. And it is to this discussion which the article now turns.

## ***III THE DEVELOPMENT OF THE ROLES OF THE SPEAKER OF THE HOUSE***

### ***A Overview***

Lieutenant-Colonel Wynyard's summoning of the first Parliament in 1854 heralded the dawn of the New Zealand speakership.<sup>45</sup> It was expected that the Speaker would assume a role similar to his British counterpart, guided by "the rules, forms and usages of the House of Commons".<sup>46</sup> The roles of the Speaker developed neither concurrently nor consistently. Evolution of existing duties within the roles, or the creation of entirely new ones, varied in origin. Some were sporadic responses to practical needs; others were the result of incremental change. For example, the Speaker's administrative duties in the political role grew exponentially in the 1980s through legislative reform.<sup>47</sup> Conversely, it took over 100 years for the impartiality convention to develop to the extent that the Speaker would not take part in debates or in Committee. This lack of uniformity in the development

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42 Baroness Boothroyd, above n 13, at 136–137.

43 At 136–137.

44 Alfred E Allen (7 June 1972) 378 NZPD 3.

45 Wynyard was not New Zealand's Governor, rather the "Officer Administering the Government" until such time as a Governor was officially appointed. His powers included that of summoning Parliament.

46 Standing Rules & Orders of the House of Representatives 1854, SO 1.

47 See Parliamentary Service Act 1985 (repealed); Clerk of the House of Representatives Act 1988; and Public Finance Act 1989, s 7C(3).

of the roles provides a backdrop to this part of the article, where the questions of *how* and *why* the roles developed into what they are today are discussed.

## ***B Constitutional Developments***

The constitutional role has changed the least of the three over the course of the Speakership's history. This may be because the Speaker has certain inherent duties that would be expected of any presiding officer of a democratic legislature in a constitutional monarchy. The following examples represent the more significant developments to the role.

### *1 "Parliament's person"*

Nowadays, it is constitutional convention that the Speaker will always lay claim to the undoubted rights and privileges of the House. However, this was not always explicitly the case. Governor Wynyard only expressed his "pleasure in confirming the choice made by the House" that Charles Clifford be its first Speaker.<sup>48</sup> The absence of any reference in his message to the rights and privileges of the House was constitutionally awkward. While New Zealand's Parliament did not have legislative supremacy, the House still believed it was entitled to some form of rights and privileges as a legislative body.<sup>49</sup> Consequently, in 1861, Speaker Monro adopted the symbolic form of assertion of parliamentary privilege that was used by the House of Commons.<sup>50</sup> The Speaker would now be required to formally lay claim to the House's privileges. In 1865, this was backed up by legislation.<sup>51</sup> The notion that the Speaker was Parliament's person, not the Crown's agent, began to emerge.

In 1868, Monro refused to table a letter from the military which protested against the way the armed forces had been described in the House. Stafford wanted to table the letter by command of the Governor. Signifying that he was the guardian of the House's right to absolute freedom of speech, Monro ruled tabling the letter would be a *prima facie* interference with a fundamental "privilege of Parliament".<sup>52</sup> No one, not even the Governor, could insist on the letter being tabled. Indeed, O'Rorke's inaugural speech echoed this event many years later, indicating that his "highest ambition" was to defend Parliament's interests with "zeal and earnestness".<sup>53</sup> As government assumed greater powers, Speakers became more concerned with the encroachment of the Executive into 'parliamentary territory'. Speaker Algie headed the Algie Committee to address these concerns. The Committee recommended a new Statutes Revision Committee be established to consider all regulations and

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48 Charles Clifford (24 May 1854) NZPD 3.

49 See Charles Clifford (24 May 1854) NZPD 3.

50 Martin, above n 4, at 57.

51 Parliamentary Privileges Act 1865, s 4.

52 Martin, above n 4, at 64.

53 George O'Rorke (11 July 1879) 31 NZPD 4.

safeguard Parliament and the citizenry against abuses of Executive power.<sup>54</sup> In 1987, there was a further development. Whereas "approbation" was traditionally sought,<sup>55</sup> the Speaker would now seek only the Governor-General's "confirmation".<sup>56</sup> This minor rewording had broader consequences because, while "approbation" implied approval that could be withheld, "confirmation" suggests approval in the nature of endorsement. Indeed, Speaker Burke was given "the unanimous approbation of ... the House" upon his election to the chair, illustrating that it was Parliament's right to choose its Speaker, not the Crown's.<sup>57</sup> Overall, the Speaker's responsibility as "defender of the House" has transitioned from one that is Crown-oriented to one that is truly independent of all external factors.<sup>58</sup> As is discussed below, this independence grew in parallel to the increasing impartiality of the Speaker in the arbitral role, which gave it added potency.

## 2 *Representative functions*

As the name suggests, the Speaker speaks for Parliament both locally and internationally. In 1854, however, the Speaker was constrained in his representative functions by a number of factors. First, colonial New Zealand's foreign policy and image was legally the domain of the Governor – he would always assume the role of the nation's representative. Second, the lack of communicative technology and the fact that only male landowners could vote meant the House was very much insulated from the electorate. Members had no expectation that the Speaker would maintain a public image on behalf of Parliament, either in the domestic sphere or abroad. Finally, early parliamentary procedure saw the incumbent "occupy long hours" in the chair, presiding over "arduous" proceedings.<sup>59</sup> This factor, and the lack of an effective deputation, saw much of the Speaker's time devoted to the arbitral role.<sup>60</sup>

As technology advanced, the Speaker gradually became the public face of the House. In 1935, the new Labour Government, acting on pre-election promises, installed radio broadcasting equipment in the chamber. This produced a growing expectation that the Speaker was to "regulate" the House for the public broadcasts in an attempt to maintain some credibility with the nation.<sup>61</sup> As public access to live parliamentary debates increased, correspondence addressed to the Speaker grew rapidly. Citizens complained about members' behaviour in the House, sought to correct *Hansard* references about them

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54 See "Report of the Delegated Legislation Committee" [1962] AJHR I18.

55 Laundy, above n 11, at 165.

56 See for example Lockwood Smith (9 December 2008) 651 NZPD 7.

57 David Lange (16 September 1987) 483 NZPD 4.

58 Martin, above n 4, at 63.

59 William Jordan (25 March 1936) 244 NZPD 2.

60 Until 1992 the Speaker had no permanent full-time Deputy Speaker: see McGee, above n 8, at 55.

61 See for example Minhinnick's cartoon depiction in Martin, above n 4, at 207.

and generally sought information about Parliament.<sup>62</sup> Wilson observes that the public's expectations of the Speaker may again be changing in the 21st century, but that it is difficult to judge the nature of these expectations.<sup>63</sup> As public access to Parliament increases, both physically and through social media, the public face of the Speaker and the associated responsibilities are likely to increase.

New Zealand's internationalisation in the 20th century meant the speakership gained an inter-parliamentary responsibility. In 1911, New Zealand became one of the inaugural members of the Empire Parliamentary Association, an organisation promoting good governance and democracy in the British Empire.<sup>64</sup> The Speaker was the head of the New Zealand branch and assumed the task of maintaining links with other member states and heading national delegations. In 1948, the name changed to the Commonwealth Parliamentary Association and allowed states other than the UK to take part in administering the organisation. In 1965, Speaker Algie took the lead role in organising the conference in New Zealand, chiefly promoting the importance of human rights and the rule of law.<sup>65</sup> Over time, the Speaker would assume a "greater role in the organisation and management of these relationships", enabling a better "understanding of New Zealand's interests ... [and] global issues".<sup>66</sup> Foreign policy is normally a function of the Executive, so it is a notable development in the constitutional role for the Speaker to bear some responsibility for it on the world stage.<sup>67</sup>

### 3 *Ceremonial changes*

In 1854, the Parliament building was a "great wooden barn shaped affair", nicknamed the "Shedifice", and members' etiquette in the chamber reflected this.<sup>68</sup> Early Speakers, concerned at the lack of dignity, embraced ceremonies reminiscent of the Motherland. Speaker Clifford presented the House with its first mace.<sup>69</sup> The "dignified Monro" (as Alfred Saunders called him) "prescribed the mace's use in the standing orders of 1865" and "was also keen to adopt ceremonial robes for the Speaker and officials."<sup>70</sup> Whilst the practical effects of adopting parliamentary rituals were minor, it came to symbolise the functional transition the Speaker makes: the incumbent will "cease to be

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62 See Wilson, above n 12, at 559.

63 At 564.

64 "History of the Commonwealth Parliamentary Association" Commonwealth Parliamentary Association <[www.cpahq.org](http://www.cpahq.org)>.

65 Rod Alley "Multilateral organisations - New Zealand and multilateralism" (13 July 2012) Te Ara - The Encyclopedia of New Zealand <[www.teara.govt.nz](http://www.teara.govt.nz)>.

66 Wilson, above n 12, at 559.

67 At 559.

68 Martin, above n 4, at 14–15.

69 At 15.

70 At 59. On Saunders's appellation for Speaker Monro, see (21 June 1894) 83 NZPD 2.

partisan and become judicial".<sup>71</sup> This was most evident when Speaker Guinness first adopted the full-bottomed judge's wig in 1903, stating he "must try sedulously to preserve the dignity of the House".<sup>72</sup> It was not until 1999 under Speaker Hunt that the wig was done away with and only worn on formal occasions. Speaker Algie was a strong advocate of parliamentary reform. He observed that some ceremonies were "obscure, dilatory, cumbersome, and very frustrating",<sup>73</sup> and refused to feign unwillingness to take the Chair.<sup>74</sup> His attempt at reform illustrates that the Speaker's ceremonial responsibilities should not be "out of touch with modern conditions" but aimed at strengthening the collective identity of members.<sup>75</sup> Most ceremonies remained devoid of Māori influence until Speaker Carter's adoption of the albatross feather garland in 2013, symbolising "goodwill, honour and peace to the House".<sup>76</sup> Arguably, the ceremonial aspect to the speakership has evolved considerably. From an 1854 purpose to engender a sense of dignity, in 2015 its function is to promote internal decorum, reduce political competition in the chamber, and provide a sense of collective parliamentary identity.<sup>77</sup>

### ***C Arbitral Developments***

The arbitral role originates from two sources. First, the inaugural House had to "prepare and adopt such standing rules and orders" that would allow the House to conduct its business in an orderly fashion.<sup>78</sup> This required a framework of what the Speaker's roles would be as Chair. Members agreed to standing orders allowing the Speaker to "name" any member for highly disorderly conduct, requiring the Speaker to cause letters to be circulated requiring members' attendance for particular items of business, and making the Speaker responsible for presenting Bills to the Governor for the Royal Assent.<sup>79</sup> The second origin of the arbitral role stems from the nature of the House itself. The Speaker does not simply preside, he or she regulates disputes and acts in a quasi-judicial manner to determine the outcome. With a government promoting policy, and an opposition striving to damage its credibility, disorder is inevitable.<sup>80</sup> And so the Speaker is there to arbitrate.

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71 Jack Marshall (14 February 1973) 382 NZPD 4.

72 Arthur Guinness (29 June 1903) 123 NZPD 2.

73 Ronald Algie (20 June 1961) 326 NZPD 3.

74 Martin, above n 4, at 257.

75 At 257.

76 Audrey Young "New Speaker tones down pomp but keeps ministers on their toes" (13 February 2013) *The New Zealand Herald* (online ed, New Zealand, 13 February 2013).

77 See Part IV.A for a normative analysis of the Speaker's ceremonial duties.

78 New Zealand Constitution Act 1852 (UK), s 52.

79 Standing Rules & Orders of the House of Representatives 1854, SOs 23, 26 and 55.

80 Doug Kidd "Parliament Under MMP: Reflections of the Speaker of the House of Representatives" (2000) 7 *Canterbury L Rev* 507 at 512.

## 1 *Punitive powers*

The Speaker's punitive powers have developed regressively. Factors affecting their evolution have transitioned from primarily external factors (such as statutes) to internal factors, including the influence of particular Speakers and the House's own rules. In 1856, the Speaker could commit a member to the custody of the Serjeant-at-Arms for up to 14 days.<sup>81</sup> A new Privileges Act developed this power, allowing the Speaker to impose fines of £20 or imprison offending members for up to one month.<sup>82</sup> Other avenues were also available to encourage discipline: if the Speaker "named" a member, the House would pass judgment on his conduct to determine if he had been so disorderly as to warrant censure. Naming was a form of punishment by dishonour,<sup>83</sup> simply because it was dishonourable to refer to members by their name, and was considered "the most severe penalty a Speaker can apply".<sup>84</sup> The Speaker could also order a member to leave the chamber and, by resolution of the House, pass a motion condemning the member's actions. While initially considered serious, Speakers became progressively lenient, and motions ordering members to leave became a more humorous practice by the 1890s.<sup>85</sup>

As the legal mechanisms eroded, political forms of punishment developed. In 1967, revised Standing Orders covered the process for breaches of privilege.<sup>86</sup> The Speaker would now decide on the *prima facie* merits of each case before referring a member to the Privileges Committee.<sup>87</sup> Although the Committee would investigate and recommend a punishment, the Speaker assumed a "filtering" role by deciding when to refer a member, which gave some weight to his authority. In 1978, Speaker Harrison indicated he would endeavour to "reduce [some of the] tensions" between members in a more practical way.<sup>88</sup> A "sin bin" approach was adopted where disorderly members would be removed from the chamber for the rest of the day or Question Time, without the stigma and process of a full motion.<sup>89</sup> These powers were formally laid down in the Standing Orders of 1985, strengthening the Speaker's authority. Today, members can be warned (but are not required to be) before they may be ordered to withdraw. If a member is grossly disorderly, the power of naming, and therefore

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81 Standing Orders of the House of Representatives 1856, SO 145.

82 Privileges Act 1856, s 1.

83 Martin, above n 4, at 50.

84 Ronald Algie (19 July 1963) 335 NZPD 676.

85 See Martin, above n 4, at 50.

86 This is now incorporated in Standing Orders of the House of Representatives 2014, SO 404.

87 See Martin, above n 4, at 263.

88 John Harrison (10 May 1978) 422 NZPD 3.

89 See Martin, above n 4, at 306.

suspension, remains.<sup>90</sup> Refusal to follow the Speaker's order to withdraw may result in severe punishment: suspension for the rest of the calendar year.<sup>91</sup>

## 2 *The influence of MMP*

The nation "expect[ed] something different" when it adopted the Mixed Member Proportional voting system (MMP).<sup>92</sup> Its influence on the arbitral role, particularly the chairpersonship responsibility, was profound. Pre-MMP, the Speaker had a casting vote in the event of a tie. In the 1860s, a precarious situation led Monro to use his casting vote to save the government from collapse. The convention that the Speaker would support the government on matters of confidence and supply, on the grounds that as chairperson "he should always vote for further discussion and to maintain the status quo", was emerging.<sup>93</sup> Post-MMP, the casting vote was abolished and the Speaker's vote cast on their behalf by the party whips. In an MMP environment, a casting vote would disturb proportionalities, whereas the incorporated vote retains it. In the event of a tie the motion is now lost and the Speaker has no power to intervene. Therefore, the Speaker's arbitral role was diluted somewhat after the adoption of MMP.

Transitioning from a two-party dominated system to a multi-party system required the Speaker to be more adaptable. Kidd, the first "MMP Speaker", compared the new House to a "Baghdad bazaar with a plethora of stallholders all shouting their wares".<sup>94</sup> However, the multifaceted competitive environment was not without precedent. Statham's speakership was made difficult in the complex three-party system of his time, a significant challenge when governments were less stable than they are today.<sup>95</sup> Under MMP, oral questions are allocated proportionate to party membership.<sup>96</sup> The Speaker is also required to take party proportionality into account when giving the call in debates,<sup>97</sup> a significant development from the "binary calling system" previously used.<sup>98</sup> Further, when chairing the Business Committee, the Speaker oversees the process that requires overall membership of select

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90 Standing Orders of the House of Representatives 2014, SO 90.

91 At SO 94.

92 Doug Kidd (12 December 1996) 558 NZPD 3.

93 Martin, above n 4, at 62.

94 Kidd, above n 80, at 509.

95 See Martin, above n 4, at 187.

96 Standing Orders 2014, SO 381(2).

97 Standing Orders 2014, SO 106(a) and (b).

98 See Speakers' Rulings of the House of Representatives 1867–1996 inclusive, r 22/2 which required that "If two members rise from opposite sides simultaneously, the Speaker calls on the member from that side of the House opposite to that from which the last speaker rose".

committees to be proportional to party membership in the House.<sup>99</sup> Arguably, the introduction of MMP, and the precedent set by the early three-party system, has led to two major developments in the arbitral role. First, the Speaker is required to actively "protect the rights of minorities" while maintaining order and decorum.<sup>100</sup> Secondly, a 120-seat Parliament and the list system means asserting authority is more difficult than ever before. MMP calls for a Speaker who is sensitive to a wider range of political stances and cultural backgrounds. Without this skill, rigorous political theatre and power plays would see the House descend into chaos.

### 3 *Interpretation and application of Standing Orders*

Standing Orders provide a framework of rules upon which Parliament operates. But they alone are inadequate tools with which to govern a robust and occasionally chaotic debating chamber. The Speaker's discretionary powers as chairman fill the void, with Speakers' Rulings first officially compiled in 1867.<sup>101</sup> Developments in this responsibility were influenced mostly by internal factors including particular Speakers and the Standing Orders Committee.

New Zealand's colonial Parliaments were tumultuous, so it was understandable that Speakers of the time were renowned for firmness. O'Rorke possessed an approach described as "that rare combination, the *suaviter in modo* and the *fortiter in re*".<sup>102</sup> His cardinal ruling, that it is "the Speaker's duty to so interpret the Standing Orders and rules of the House that they may facilitate business, and not lead to a deadlock", continues to be followed.<sup>103</sup> His firm yet impartial approach was well received by members, especially considering he was "deeply learned in parliamentary law".<sup>104</sup> Speaker Statham produced a "compendium" of "unparliamentary" words after a rise in disorderly and insulting remarks from members, relying on the Standing Order that authorised him to maintain order and decorum.<sup>105</sup> During the Second World War, Speakers interpreted and applied the Standing Orders very strictly to ensure the "War Parliaments" were protected and members were focussed on relevant issues. In close consultation with the Director of Publicity, Speaker Barnard was required to thoroughly police questions to Ministers, revise *Hansard* proofs and monitor members' speeches as

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99 Standing Orders of the House of Representatives 2014, SO 185(1).

100 Kidd, above n 80, at 509.

101 "Rules of the House: Speakers' Rulings" (1 April 2015) New Zealand Parliament <[www.parliament.nz](http://www.parliament.nz)>.

102 "Gentle in manner, firm in action": see James Macandrew (18 May 1882) 41 NZPD 2.

103 Rulings of the Speakers of the House of Representatives 1867–1899 inclusive, at r 168/2.

104 George Grey (11 July 1879) 31 NZPD 3.

105 Martin, above n 4, at 151.

they were broadcast.<sup>106</sup> Acting as the House's censor was an onerous task, even more so because the Speaker had to maintain strict fidelity to the Standing Orders.

Speaker Oram was a strong advocate of parliamentary reform. His speakership widely developed the interpretation and application of Standing Orders, especially those relating to the separation of powers, urgency, members' speeches and criticising the Speaker. In relation to the separation of powers, comity between the courts and Parliament was paramount. One Standing Order prohibited "offensive references" to the judiciary.<sup>107</sup> Oram created a convention that gave some latitude to this rule, conscious about its potential effects on members' freedom of speech. Members could criticise the effects of a judgment, but not the relevant judge, court or finding.<sup>108</sup> To promote a higher quality of debate, Oram ruled that members could not "direct a continuous series of questions during a speech to members [opposite]".<sup>109</sup> This ruling was supported by his requirement that members could not change seats simply to facilitate interjection.<sup>110</sup> He is perhaps best known for developing the responsibility to protect the integrity of the speakership itself. While Standing Orders had so far provided some special protection for the Speaker, mostly to preserve impartiality, Oram took a hard line. He ruled that it was plainly out of order to suggest that the Speaker was being intimidated by the Prime Minister,<sup>111</sup> and "a grave reflection on the Chair" to claim the Speaker made no attempt to stop a "barrage of interjections from [the] Government".<sup>112</sup>

Not all of Oram's attempts to reform procedure were successful. Urgency was increasingly abused by the government and he insisted that its use should be adequately justified in terms of the public interest.<sup>113</sup> Ultimately, he failed in this attempt, as previous Speakers had set strong precedent that the Prime Minister was the best judge of the public interest and was "inherently" justified in moving urgency.<sup>114</sup> However, Oram's legacy lives on in part as the Speaker now has sole discretion to allow "extraordinary urgency" to be taken.<sup>115</sup> Arguably, Oram's speakership was the most influential on the

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106 At 213.

107 Now incorporated in Standing Orders of the House of Representatives 2014, SO 117.

108 See Speakers' Rulings of the House of Representatives 1867–2014 inclusive, rr 38/1 and 38/3.

109 At r 53/2.

110 At r 68/1.

111 At r 19/5.

112 At r 20/2.

113 Martin, above n 4, at 242.

114 At 242.

115 Standing Orders of the House of Representatives 2014, SO 60(3).

development of the interpretation and application of the Standing Orders. It is a testament to his tenure that most of the rulings he gave have crystallised into conventions that guide Speakers even today.

Speakers who took an increasingly rigid approach to the application of Standing Orders were, however, sorely tested. Algie's "tendency to revert to a schoolmasterish style" when dealing with errant members and applying Standing Orders was not well received. One of his decisions prompted a "Heil Hitler" from one member.<sup>116</sup> Algie would lose patience with constant interjections and even threatened to name offenders. His pedantic approach resulted in countless notices of motion regarding his rulings.<sup>117</sup> Consequently, out of a "common interest simply to get through the proceedings" Speakers post-Algie developed a "selective deafness".<sup>118</sup>

#### 4 *Recent developments relating to Question Time*

The development of the arbitral role during oral questions has been so sporadic since the early 2000s that it deserves mention in its own right. Ministers are required to give "an answer that seeks to address the question" if it can be given consistently with the public interest.<sup>119</sup> What exactly that entails has been the subject of reinterpretation by recent Speakers, signifying evolution of the responsibility. In the early 2000s, Speaker Hunt ruled that the Speaker could not judge the adequacy of an answer, merely whether a Minister's reply addressed the question. Speaker Wilson followed this trend by holding "answer" was a neutral word. She argued the "quality of the answer required ... comes from the use of the word "address" ... That is the test of adequacy".<sup>120</sup> This progression led to question time being more of an exercise in avoiding questions than answering them.<sup>121</sup> It was observed that "if a Minister got to their feet and in answer to a question farted loudly, the Speaker would say that they had addressed the question".<sup>122</sup> In 2009, Speaker Smith was determined to prevent "that kind of disdain" which made a mockery of the accountability function of the House and reduced question time to a farce.<sup>123</sup> By requiring Ministers to provide straight questions with straight answers, Smith changed the arbitral role, stating "question time now requires the Speaker to bring a high level of concentration and focus to the process".<sup>124</sup> Under Speaker Carter, it appeared that the role was

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116 Martin, above n 4, at 261.

117 At 261.

118 David Lange (16 September 1987) 483 NZPD 5.

119 Standing Orders of the House of Representatives 2014, SO 386(1).

120 Wilson, above n 12, at 554.

121 Lockwood Smith "The Speakership: A New Zealand Perspective" (2011) 34 Canadian Parliamentary Review 17 at 18.

122 At 18.

123 At 18.

124 Smith, above n 29.

reverting back to its state under Hunt and Wilson, where the Speaker's function is only to determine whether a question is "adequately addressed".<sup>125</sup>

## ***D Political Developments***

Developments in the Speaker's political role relate mostly to the impartiality convention and the administrative duties of the position. Whilst the former has developed progressively since 1854, the latter responsibility grew exponentially in the late 20th century.

### ***1 The impartiality convention***

The impartiality of the Speaker, and its impact on the partisan aspect of the political role, has been present in some form throughout New Zealand's parliamentary history. Since 1854, every Speaker-elect has been ushered in by members reciting some form of the word *impartial*. But the convention's shape has evolved from a mere expectation to a full constitutional convention, taking more than a century to perforate the parliamentary fabric.

Speakers of the early decades were more political than those who came after O'Rorke. An apolitical speakership "was difficult to achieve in a small and intimate House", especially when the concept of a non-partisan Speaker was still emerging in Britain.<sup>126</sup> Clifford was open about his political biases: devotion to responsible government and provincialism.<sup>127</sup> It was generally acknowledged that these political biases were acceptable given the Speaker was so embedded in the constitutional matrix. But impartiality was neither clearly defined nor an enforceable requirement. More likely there existed an "implicit contract between Members and the Speaker" that he would show no favouritism to any faction, and that the considerable powers vested in him by the House would not be abused.<sup>128</sup> Speakers that were reckless enough to cross the Rubicon were rightly assailed by members. Monro was heavily criticised for promoting a private member's Picton Railway Bill.<sup>129</sup> But because Speakers did not enjoy the protection of their British counterparts of an uncontested electorate, there was some incentive for them to speak in debates on matters affecting their constituents. Today, MMP curtails this issue as the Speaker usually moves to a list placing.

In the 1860s, Monro sowed the seeds of the impartiality convention and the administrative duties of the Speaker at the same time.<sup>130</sup> He argued annual votes on his salary placed the speakership "in a false position [because it] became the subject of a party discussion" and contended that he "should be

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125 See for example David Carter (12 March 2015) 703 NZPD 2213.

126 Martin, above n 4, at 63.

127 At 63.

128 Lovick, above n 38, at 2.

129 See Martin, above n 4, at 63.

130 The development of the administrative duties of the Speaker is discussed below at III.D.2.

in a position of the most perfect independence and impartiality".<sup>131</sup> In the 1880s, O'Rorke adopted this standard. He was elected three times to the speakership and each time his speeches were increasingly strewn with references to his "duty to hold the scales equally and impartially".<sup>132</sup> His impartiality was tested in an 1880 motion reducing the Speaker's salary – which O'Rorke refrained from objecting to – prompting one member to note that it was a "pretty good test of a Speaker's impartiality" in the face of that member's "audacity" to move the motion.<sup>133</sup>

Post-O'Rorke, Speakers were well aware of the requirement for impartiality, yet many believed this could be achieved even if they continued to participate in Committee. Speaker Lang, known for his desire to relax the formality of Parliament and the speakership, spoke often. Statham reversed the trend and proved a firmer and more traditional Speaker than most others of the 1900s. He set a strong precedent by refusing to take part in Committee proceedings and strengthened the culture around the Speaker's impartiality by donning the wig and having a special chair manufactured from which to preside.<sup>134</sup> Though Speaker Schramm participated in Committee, it was to some extent understandable because he was Chairman of the Statutes Revision Committee, making it useful for him to explain amendments to bills.<sup>135</sup> Speakers McKeen and McFarlane voted in divisions because of their respective government's small majorities, but dutifully respected the impartiality convention in all other respects.<sup>136</sup>

Thus, by the 1950s, the impartiality convention was well-embedded. Oram was determined to uphold a neutral speakership, again setting a firm standard for not participating in substantive proceedings. While he failed in his attempt to absolve the Speaker of the "vagaries" of elections, he suggested that the Speaker should at least be accorded higher status so that the Executive did not outrank Parliament.<sup>137</sup> Oram's wish is currently reflected in the Speaker being ranked third in the New Zealand Order of Precedence. Speaker Jack gained a reputation for impartiality too, seeing it as a "clear affront ... to have the Speaker traipse along the Lobbies in his ceremonial attire and join a party voting line".<sup>138</sup> He was careful to distance himself from party politics in other ways, never frequenting Bellamys dining room or bars, or the billiard room.<sup>139</sup> By the late 1980s, "after a long period of

131 David Monro (1 October 1867) 1 NZPD 1996.

132 George O'Rorke (11 July 1879) 31 NZPD 4.

133 Alfred Saunders (21 June 1894) 83 NZPD 2.

134 Martin, above n 4, at 187.

135 At 205.

136 At 205.

137 Matthew Oram (25 October 1957) 314 NZPD 3334.

138 Roy Jack "A Speaker looks at Parliament" *NZ Listener* (Auckland, 14 June 1986) at 86.

139 Martin, above n 4, at 262.

evolution, the impartiality of the Speaker [became] almost mathematical – certainly beyond doubt or question".<sup>140</sup> The partisan aspect to the speakership is inextricably affected by the pervasiveness of the impartiality convention. Though members still recognise the Speaker's right to attend party caucus meetings, Speaker Wilson set a trend that has seen her successors discontinue this practice. Overall, the impartiality convention has gradually evolved to the extent that it is omnipresent, applying to all three of the Speaker's roles and every responsibility therein.

## 2 *Administrative responsibilities*

Campaigns for the independence of Parliament and the speakership from executive control, both financially and administratively, began in the colonial period. Early Speakers saw value in assuming responsibility for the legislative Vote, members' services, and the parliamentary precincts.

The desires of successive Speakers' to assert jurisdiction over Parliament's precincts were the driving force behind nearly 150 years of reform to these duties. In the 1860s, Monro launched a crusade to keep administration of Parliament separate from the government. Tensions were first raised over the Government Printing Office and the lack of priority given to parliamentary printing compared to Executive business. Monro endorsed a motion giving the Speaker control over the printing establishment while Parliament was in session.<sup>141</sup> To his dismay, Stafford's government defeated the motion. In 1867, Monro attempted to wrest control over Parliament's Buildings and Bellamys, writing that he saw no reason why the Government "should have imposed upon them a duty which properly ... belongs to the Speaker".<sup>142</sup> With the House Committee favouring independent control, and Ministers fearing their supply of liquor would be withheld, the Government relinquished some administrative rights to the speakership, including those relating to the "comfort and convenience of members".<sup>143</sup> In 1902, O'Rorke ruled that the Speaker controlled the accommodation in Parliament, but accepted that it ceased with prorogation.<sup>144</sup> By 1929, Standing Orders specified that the Speaker had full jurisdiction over the grounds, buildings and staff.<sup>145</sup> Decades of power plays ensued, and it was not until 2000 that the Speaker's rights as landlord were finally incorporated into legislation.<sup>146</sup>

The issue of the legislative estimates gained little traction until 1872. Speaker Bell picked up the issue and relied on British precedent to argue that he should have charge over financial

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140 Lovick, above n 38, at 3.

141 Henry Tancred (30 July 1868) 2 NZPD 181–182.

142 Correspondence between the Colonial Secretary and the Speaker of the House of Representatives as to Preparation of Apartments for Meeting of Legislature [1867] I AJHR D13 at 3.

143 At 3.

144 Rulings of the Speakers of the House of Representatives 1900–1905 inclusive, "Speaker" at r 113/15.

145 Martin, above n 4, at 161.

146 Parliamentary Service Act 2000, s 26.

appropriations. Stafford and Fox "disingenuously disclaimed any practical responsibility for the executive while still asserting a responsibility in principle".<sup>147</sup> Though the matter remained unresolved, and the Executive retained ultimate control, Bell secured the speakership a duty to draft and submit the estimates for approval. Until 1985, finances remained under the control of the Minister in charge of the Legislative Department. Speakers would have to seek approval from the Minister for even the smallest funding requests, and any notion of the separation of powers between the Executive and the Legislature was difficult to discern.<sup>148</sup> Laundy observed that the position was "somewhat unusual" in 1984, given the Speaker had control over staff but was not empowered to authorise expenditure against the Legislative Vote.<sup>149</sup> The Lange Government came to power intent on abolishing the Department as its functions had no legal definition, operated on the basis of custom and tradition, and was constitutionally inapposite.<sup>150</sup> The Parliamentary Service Act 1985 fundamentally altered the political role and, as the Speaker became the responsible minister for the parliamentary Votes, the administrative duties grew exponentially. Today, the Speaker remains "totally independent of Executive government" when carrying out the relevant estimates and appropriations.<sup>151</sup>

## ***E Summary***

The speakership in New Zealand has changed dramatically since 1854. Each of the three roles, and the associated responsibilities and duties therein, have developed differently. Some erratically, some gradually, others exponentially. Though no overall discernible pattern of evolution emerges, change in one role is prone to effecting and affecting change in another. Amongst a myriad of other factors, the impartiality convention and individual Speakers have influenced the most developments. Whilst evolution to the Office has brought about greater constitutional stability and innovative techniques to manage the challenges of the position, the aptness of some developments is contested. Part IV discusses these issues.

## ***IV PERENNIAL ISSUES OF THE SPEAKERSHIP***

This part of the article provides a normative analysis of two current issues that face the speakership. The first concerns the ceremonial responsibilities of the Speaker. Though some contend parliamentary ceremonies risk isolating the speakership from the nation, it will be argued that they provide two tangible benefits that outweigh this concern. The second relates to the tension between the impartiality convention and the political role of the Speaker. It will be argued that impartiality and

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147 Martin, above n 4, at 64.

148 Kidd, above n 80, at 507.

149 Laundy, above n 11, at 172.

150 See Geoffrey Palmer (21 August 1985) 465 NZPD 6505–6508.

151 Smith, above n 29.

the political role can co-exist without damaging either concept, but some reform might be necessary to ensure the speakership is not brought into disrepute.

## *A Ceremonial Issues*

Most parliamentary ceremonies and customs are observed by dint of tradition—their original purposes having faded many centuries ago. But performing these ceremonies may have two practical benefits: reducing the innate adversarialism of chamber politics and providing a collective identity to MPs that transcends party allegiance. While these benefits are of tangible value, complex and antiquated practices may risk eroding the fragile connection between Parliament and the electorate. That is, the Speaker, in performing ceremonial duties to achieve the above benefits, may risk straining the representative functions of the Office if they appear "out of touch" with the nation. This article argues that any isolation of the speakership is not due to parliamentary ceremonies and, even if it were, the benefits such ceremonies yield outweigh any such risks.

There are two benefits of the Speaker's ceremonial duties. First, parliamentary ceremonies can have a "potentially civilising effect" on the House.<sup>152</sup> Speaker Wilson questioned why "Parliament conducts its political debates in such an adversarial manner".<sup>153</sup> As the contesting of ideas and policies is usually conducted "with little regard or respect for others",<sup>154</sup> and physical altercations are not unknown,<sup>155</sup> neutral and dignified ceremonies promote amity and respect. Formalities expecting members be upstanding in silence while the Speaker's procession enters the chamber, requiring them to address the House through the Speaker, obliging them to acknowledge the Chair when they leave and proscribing offensive or disorderly words, provide a dignified framework that helps reduce political animosity.<sup>156</sup> Though a Speaker ought to be cautious not to unduly restrict members' freedom to promote policies, it is unconvincing to argue that observation of these customs would leave the House devoid of political competition. Indeed, "any reduction in the formality [of Parliament] could unleash even more 'bad' behaviour amongst MPs".<sup>157</sup> It is likely that members would feel "less constrained to behave decorously to 'enemies' from other parties" if parliamentary customs and ceremonies were not observed and enforced.<sup>158</sup>

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152 Faith Armitage "The Speaker, Parliamentary Ceremonies and Power" (2010) 16 *Journal of Legislative Studies* 325 at 333.

153 Wilson, above n 12, at 555.

154 Wilson, above n 20, at 15.

155 See for example Audrey Young "Mallard and Henare in punch-up" *The New Zealand Herald* (online ed, New Zealand, 25 October 2007).

156 See Standing Orders of the House of Representatives 2014, SOs 85, 87, 119 and 107.

157 Armitage, above n 152, at 334.

158 At 334.

The second benefit, which is a corollary of the first, is that a ceremonial aspect to the speakership provides a sense of collective identity between MPs that transcends party politics. Given the party dominance of Parliament, it is important for members to have some collective purpose to improve proceedings. A shared desire to submit to the authority of the Chair, represented by the Speaker's revered status and unique formal attire, not only reduces antipathy, but gives members a sense of belonging to an institution that is integral to democratic government. Ultimately, parliamentary ceremonies, which ostensibly have little purpose, are likely to produce the above benefits in practice.

It is unpersuasive to conclude that observance of parliamentary ceremonies causes isolation of the speakership and Parliament from the electorate.<sup>159</sup> Though "Parliament and the political system need to adapt and evolve if they are to remain responsive to the people they serve", this does not require abolition of "harmless" ceremonies.<sup>160</sup> The absence of any formal civics education is, arguably, the primary cause of growing voter apathy, or at least means citizens take less interest in government. This was noted in the 2005 and 2013 reviews of New Zealand's constitutional arrangements.<sup>161</sup> Though a deeper analysis, outside the scope of this article, is required, it would be interesting to see the effects of a "modernisation" of parliamentary ceremonies – perhaps a trading of British traditions for a uniquely "Kiwi" approach – whatever that may be. Whether this would increase the relevance of the speakership to the electorate, or mitigate the negative effects of a lack of civics knowledge, is unknown. But, aside from Speakers such as Algie, who were intent on reforming parliamentary procedure, there is no strong evidence or scholarship to prove that the ceremonial role poses significant risks for the speakership today. In any case, the benefits outlined above are more than enough reason to retain them, in some form or another. Concerns about the isolation of the speakership probably hinge on broader issues of resourcing and support for the Speaker in his or her role in promoting the accessibility and relevance of the Office and Parliament.<sup>162</sup>

### ***B Impartiality, Non-partisanship and Independence***

The impartiality convention collides with two aspects of the political role. First, it has been questioned how the Speaker can maintain impartiality as a member of a political party, or having come to the position from ministerial office. Secondly, the "ministerial" duties of the Speaker were created to support *independence* from the Executive, but such duties require policy decisions that may conflict with *impartiality*.

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159 See the arguments of Ronald Algie (20 June 1961) 326 NZPD 3.

160 Kidd, above n 80, at 507.

161 See Constitutional Arrangements Committee *Inquiry to review New Zealand's existing constitutional arrangements* (August 2005) at 5; and Constitutional Advisory Panel *New Zealand's Constitution: A Report on a Conversation* (New Zealand Government, November 2013) at 8.

162 See Wilson, above n 12, at 559.

The question posed by the first issue is whether the Speaker's impartiality in the Chair extends to non-partisanship out of the Chair. Impartiality refers to neutrality whereas non-partisanship refers to lack of political affiliation; they are closely related but subtly distinct ideas. The essential argument for non-partisanship is based on the premise that a Speaker must not only be impartial, but must be *perceived* to be impartial, and that "any kind of partisan connection will make this unlikely if not impossible".<sup>163</sup> Though literature on the speakership champions the position's impartiality, most proceed on implicit assumptions that this requires non-partisanship.<sup>164</sup> However, this logic erroneously assumes that, as a member of a political party, or having been a minister, one "cannot have *any* regard for impartiality and fair play."<sup>165</sup> Lovick argues the case for non-partisanship is really about perception, with proper standards of neutrality, in and out of the Chair, sufficient to combat questions of partiality.<sup>166</sup> This is a sound conclusion. The mythology of non-partisanship ought to be challenged because the New Zealand Speaker is so different to the traditional Westminster Speaker. Factors such as MMP and party proportionality, the intimacy of our small Chamber and the absence of a right to an uncontested election, make it institutionally difficult for our Speaker to totally sever all ties with a political party. Other scholarship emphasises the reality that the Speaker is also an MP. It is not an external position; and losing sight of this fact may cost the Speaker dearly if he or she wishes to continue with a political career.<sup>167</sup> That a Speaker may have political affiliations is not in itself important, "provided he is able to distinguish between a party allegiance and his duty to Parliament".<sup>168</sup> Ultimately, arguments suggesting that membership of a political party renders a Speaker incapable of impartiality are non sequitur. Indeed, the Standing Orders committee reviewed this issue in 1995 and concluded that political qualification of the Speaker had caused no significant problem in the past.<sup>169</sup>

The second issue concerns the tension between two core elements of the speakership: independence and impartiality. The question is, when they collide, how much of one or the other do members want their Speaker to be? The conflict between the two elements comes from the development of the Speaker's administrative role. As illustrated in Part III.D, 1980s legislation required the Speaker to be the responsible minister for the relevant parliamentary Votes. While this

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<sup>163</sup> Lovick, above n 38, at 2.

<sup>164</sup> See for example Erskine May *Treaties on the Law, Privileges, Proceedings and Usage of Parliament* (20th ed, Butterworth, London, 1983) at 235.

<sup>165</sup> Lovick, above n 38, at 3 (emphasis added).

<sup>166</sup> At 3.

<sup>167</sup> Tomasi Vakatora "The Political Position of the Presiding Officer Outside Parliament with Special Reference to General Election" (1986) 32 *Journal of Parliamentary Information* 10 at 11.

<sup>168</sup> Laundry, above n 11, at 10.

<sup>169</sup> Wilson, above n 12, at 551.

increased the Office's independence from the executive, it also meant the Speaker gained a discretionary power to exercise policy decisions as to where particular resources would be invested.<sup>170</sup> *Prima facie*, fiscal policy decisions made by the Speaker have the potential to favour the ideology of one party or another. The same situation may apply where the Speaker has discretionary powers to allocate resources to members in their parliamentary capacity. Decisions in this area are complex, and Speaker Wilson faced such issues with the Auditor-General in 2006, as mentioned above. However, the heart of this problem lies in the reality that the Speaker requires enhanced access to independent advice when making these decisions.<sup>171</sup> The balance between an independent Speaker and a Speaker who remains part of the political process is "worked out on a case-by-case basis in much the same way as our constitutional arrangements".<sup>172</sup> And even though problems such as Wilson's may arise, this does not mean that the Speaker cannot reconcile the competing interests of impartiality and "ministerial" responsibility. Robust processes that support transparency in policy decisions will guard against potential conflicts. Whether an altogether new procedure of delegating decisions to a multi-party committee or to a Deputy or Assistant Speaker from another party would protect against accusations of bias deserves further research.

## V CONCLUSION

At the heart of the New Zealand parliamentary system lies the speakership.<sup>173</sup> Forged in the colonial period, the once Anglo-centric office has matured and settled into the New Zealand milieu. Using a broad analytical framework, this article has tracked the development of the three roles of the Speaker from 1854 to 2015. It has examined how and why the position has evolved, analysing the reasons for this and assessing the rates at which each role or responsibility therein has developed. Perennial issues that face the speakership have been canvassed from a normative perspective, providing the reader with an insight into the complex problems that face the incumbent. Building on this analysis, the article makes recommendations to strengthen the speakership going forward.

While the longevity of the Office is a testament to its resilience, it is faced with a rapidly changing electorate; so change there must be. Let us be hopeful that, in the future, the roles of the Speaker evolve proactively to meet the needs of a diverse nation. As one of the trustees of a nation's liberties, the futurity and durability of the Speakership is a must. But, if the last 160 years have taught us anything, its form will never be static. That is the challenge for Speakers in the 21st century.

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<sup>170</sup> See for example Public Finance Act 1989, s 7C(3).

<sup>171</sup> Wilson, above n 12, at 564.

<sup>172</sup> At 563.

<sup>173</sup> Laundry, above n 11, at 10.

