

ALP MODERNISATION, ETHNIC BRANCH STACKING, FACTIONALISM AND THE LAW

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Simon Crean, federal Parliamentary Leader of the Australian Labor Party, achieved the major change that he sought at the October 2002 National Rules Conference. Under that change representation of trade unions and rank and file members of the party will be equal at party conferences, a major reform aimed at modernisation of the party. In the past trade unions elected a majority of conference delegates. Other changes intended to eliminate the practice of ethnic branch stacking are unlikely to stop the practice, and may even encourage it. Increased power in the hands of faction bosses is also a likely consequence. A rule change that is intended to eliminate appeal to a court of law from party decision making bodies is unlikely to succeed. This rule is an attempt to oust the jurisdiction of the courts. It is unlikely to be regarded favourably by the judiciary. In recent years the courts have been increasingly willing to interfere in the operations of registered political parties.

In 1970 Gough Whitlam, then Parliamentary Leader of the Australian Labor Party (ALP), placed his leadership on the line. He successfully advocated intervention by the federal organisation of the ALP in the internal affairs of the party's Victorian State Branch. An authoritarian and ultra-left state organisation that was likely to damage his chances of electoral success at next federal general election was replaced. Whitlam also advocated changes in the party's federal structure, such as a national conference with substantial rank and file involvement, but these were too radical at the time and were not achievable. In 2002 federal Parliamentary Leader Simon Crean, like Whitlam earlier, advocated substantial changes in party operations to modernise the party and make it increasingly attractive to a wider population

The principal change proposed by Crean, reducing the proportion of union delegate representation at party conferences, was controversial and hotly contested, especially by some of the larger unions in several states. It was a more substantial change than any previously advocated by a federal leader with the possible exception of Whitlam. Crean was

successful in achieving this change with the adoption of the so-called 50-50 rule providing for equal representation of trade unions and rank and file party members at party state conferences. It was his major achievement at the ALP National Rules Conference held in October of 2002,¹ and he will certainly be remembered for it.

As well as the union representation change a number of other changes were also implemented, including Rules aimed at stamping out the practice of ethnic branch stacking. Branch stacking is the recruitment of a sufficiently large enough number of new party members to influence the result of an internal party ballot, particularly of preselections for parliamentary candidates. It is normally, but not exclusively, practiced in the ALP among members of ethnic communities. Until recently the term branch stacking was always used in reference to political parties. The term now has a wider usage, even in non-political organisations. Women delegates at a medical conference advocated branch stacking as a way by which female participation could be increased in the forums of the Royal Australian College of General Practitioners.² It has been suggested on

national radio by Diane Anderson, president of the ALP in the Higgins federal electorate, that an ultra-left group has, by branch stacking, colonised the Melbourne Unitarian Church.³ The term has even been adopted in sporting circles. The Carlton Australian Football League club, according to the media, has been the subject of branch stacking by a group supporting a ticket for the club committee led by the disgraced businessman and former-club president John Elliott.⁴

Changes designed to eliminate branch stacking in the ALP received considerable publicity when Crean advocated them. Whether they constitute real reforms (as was stated by the Party leaders) is the subject of this paper.

Crean's major achievement may be regarded as the beginning of the end for party domination by the larger industrial unions, if that end has not already occurred. The ALP is a faction driven party. Factions from both the Right and the Left were not united at the National Rules Conference in October 2002, but this did not prevent the traditional practices of factional horse trading and the usual rounds of closed door negotiations taking place. The Right was badly split over acceptance of reform, but a disciplined vote from the Left saved Crean's major proposals from defeat.

FACTIONS AND THE PARTY

It is the faction bosses who determine the agenda at party conferences, and they are normally able to contain demands by the rank and file membership. Very few party members, possibly less than ten per cent, actually belong to party factions. Factions are often secretive, their membership lists are not publicly revealed, and their finances are not subject to party let alone public scrutiny, yet they have tremendous power and influence. Membership of a

faction, in effect a party within a party, is normally essential if a party member wishes to be elected to party office or successfully contest a preselection ballot. The factions have learnt the art of deviousness combined with responsibility. Despite the not unwarranted feeling by many party members that faction bosses are backroom manipulators, the party accepts that factions have a necessary role in a party with as diverse a membership as the ALP. It is the factions who promote branch stacking, for it benefits factional control over the party. This is particularly the case in the safer Labor electorates with high ethnic populations, among whom most of the branch stacking takes place. It is the factions who can also do deals with each other to limit the practice.

Unlike in the Liberal Party, where ideological differences inside the party seem to be transient and factions are largely based on personalities, factions in the ALP represent historical divisions from past eras and even reflect differences in the trade union movement. Ideological differences between the right and left are present, even if they are becoming blurred. Factions contain arguments within the party. If differences can be resolved at a factional level the appearance of a united party is achieved. Perception is greater than the reality. Without factions the ALP could not maintain itself as an effective political force. It is the factions that are able to exercise some control over the way candidates are selected. It is the factions that can either place some limits on the operation of branch stacking or, if they choose not to, must accept the necessary public rejection that comes from a party seemingly disunited and out of control.

An appeal by a strong leader to the factional bosses will normally work,

subject to some element of compromise, particularly when it is a proposal that might allow the party to retain or be elected to government. Crean's appeal against branch stacking is such a proposal. Labor is now in government in every state, and had before 1996 held federal office for just over twelve years. Even the faction of the Left, which in the 1960s preferred to take a principled stand over policy and organisation to ensure, in a phrase commonly used, that the party adhered to its 'socialist objectives', has become pragmatic and will not support extreme positions to the detriment of party benefit in the electorate. There is much to be gained by all factions from the party holding office. Many faction apparatchiks hold positions such as advisors to Ministers and parliamentarians, which are well paid and command power and respect. To sabotage these positions is not in their own best interests.

The larger factions are frequently representative of the bigger affiliated unions, but except in Queensland where the Australian Workers Union faction under Bill Ludwig is the dominant player of the two Right factions in that state, no one union is generally able to control faction votes without considerable support from other faction members. Bill Shorten, Right faction boss in Victoria and prominent union official must regularly negotiate with other faction members to determine faction policy on any issue. These members include officials from other unions, as well as key faction members without a union connection, including parliamentarians.

Union bosses in the ALP operate at their best when their authority comes from leadership within a faction. It is now the case that many union bosses are educated, whatever rhetoric they use within their own unions. They are able to

earn respect from educated members inside the party, and from that respect comes authority. Such union bosses can frequently exert their authority over the selection of candidates, as well as in negotiating with other factions. They must be aware, however, that the character of the party rank and file is changing. Union bosses cannot exercise dictatorial power over a faction. They need to negotiate and compromise

The ALP is increasingly a party of the upwardly mobile middle class, with strong support from professionals in teaching, health and the public sector, many without a union background. Middle class individuals also exercise great control over each of the factions. There is occasionally friction between unionised party members and those they whom see as academics and intellectuals, but this is declining. Factions help reduce tensions, as faction members like to see themselves as part of a faction rather than as part of a particular social class. Non-faction members generally lack the ability to compete with organised factions, without forming a faction of their own.

The party needs to be seen as relevant to the Australian electorate as a whole rather than to a minority of unionised workers. Unions may represent half of the party. They do not represent half of the Australian population.⁵ The ALP, nevertheless, must look to its history but at the same time change, but not in the extreme. A labor party is a party with trade union affiliates. To remove the unions would make for a social democratic party like the New Democrats in Canada or the Social Democrats in Germany rather than a labor party like British New Labour or the ALP. Apart from former Senator John Button the proposal to remove union affiliation has few advocates, and it is unreasonable to

expect the party to adopt it.

Crean advocated partnership with unions rather than either union domination or union elimination. In this he again achieved success with the election of certain national office bearers such as the president by a rank and file ballot. In party terms, however, it is a populist gesture that achieves little, for the national president is, like the Doge of Venice, in substance a mere titular position of prestige without power. In any case the dominant Right and Left factions are likely to determine the outcome of a party presidential ballot. Only a popular personality like Barry Jones, former National President and Minister during the Hawke government, without a background of activity in any of the larger factions, would stand a chance of election to a presidential position under the new rule.⁶

SIMON CREAN, REFORM AND THE HAWKE-WRAN REVIEW

Since his election as Parliamentary Leader, Crean has been a consistent campaigner against the practice of branch stacking. He has also sought reforms that, while preserving the right of party members in most states to vote in the preselection of parliamentary candidates, would generally restrict that right to Australian citizens. His aim, like that of Whitlam before him, is to make the party more attractive to a mass electorate. Crean's leadership would have been untenable if the principal rule change he advocated had not been approved. Like Whitlam before him he could argue with some justification that he was leading a party which was out of office and likely to remain so unless changes in party operations could bring increased electoral favour.

The Rules Conference was the culmination of a decision by National

Executive in December 2001 to commission a review of the party to be conducted by former Prime Minister Bob Hawke and former New South Wales Premier Neville Wran (the Hawke-Wran Review).⁷ The review sought input from party members as well as the party organisation. It received over 700 written submissions from party members, and after examining these submissions made 38 argued recommendations. These formed the basis of proposals put to the National Rules Conference. Its thorough processes gave added weight to the Crean propositions, yet the majority of its proposals were neither particularly new nor radical. One proposal, for party branches in universities, had been tried and failed in the 1950s. Increasing the number of delegates to the National Conference at the federal level is also an old recommendation. Whitlam and former national secretary Cyril Wyndham had proposed an enlarged party national conference in the late 1960s. The Victorian Rules aimed at reducing branch stacking were considered by the Hawke-Wran Review at great length. Recommendation 11, which is specifically aimed at branch stacking, broadly followed previous suggestions made in Victoria.

Three proposals in Recommendation 11 were aimed at individuals associated with branch stacking practices. Firstly, it advocated an end to bulk membership renewals, where one member renewed en masse the memberships of a number of other persons. Secondly, it advocated that members personally sign their renewal of membership forms. Thirdly, it advocated that members who pay at the concessional rate (a reduced membership fee for pensioners, students and the unemployed) sign a declaration that they are eligible to do so. As well

Recommendation 11 proposed steps that would involve the party organisation in seeking to restrict the practice of branch stacking by monitoring membership manipulation practices, whatever these are, and limiting the number of people who can join a local branch at any one time.

NATIONAL RULES CONFERENCE AND BRANCH STACKING

The National Rules Conference produced some major changes and a number of superficial ones that are intended to hit persons whom Simon Crean refers to as the 'branch stackers'. The new rules are broadly similar to the Hawke-Wran recommendations. Certain previously common practices used within the party by branch stackers have been proscribed under the new ALP National Rule 15, and will be binding on all state branches.⁸ These activities are;

- (a) payment of membership fees of persons or groups of persons who would be unwilling to pay their own membership fees;
- (b) to encourage reduced rate membership for persons who would not be eligible to pay a membership fee at that reduced rate; and
- (c) to have an enrolment to vote in federal and state elections on the Australian Electoral Commission electoral roll at an incorrect address.

As well the new Rules require applicants for renewal of their party membership to personally sign their renewal forms. This is a barrier to bulk renewal of memberships by warlords producing multiple unsigned renewal forms and either cash or a single cheque as payment to party head office. But it is probably the restriction on the number new members who may be admitted at any one branch meeting that will have the greatest impact

on branch stacking. All other rule changes, while having some impact, are not in themselves insurmountable for a stacker with determination, energy and unlimited financial resources.

The effect of these changes may not be as great as their proponents may have liked. Factions will continue to 'recruit' party members to vote in their interest in party ballots. The axiom of Bill Kardamitsis, ALP candidate for the federal electorate of Wills in 1992, that my faction 'actively recruits' while other factions 'branch stack' is as true as ever, but party rules can reduce the practice. The federal reforms have already been trialled in one form or another in Victoria, where two articles by Ernest Healy on branch stacking in *People and Place* contributed to the first rule changes aimed at limiting branch stacking.⁹ There have also been limitations on new member admissions at party branches in New South Wales and Queensland.

A common complaint by those within the party opposing any change is that to deny new members the right to join the party is racist. This is because branch stacking is, at least in the safer ALP electorates in the eastern seaboard capital cities, almost universally ethnic branch stacking. There are nevertheless examples of stacking that does not have an ethnic base, but these are very much either exceptional or historical.

In North Queensland the use of false enrolment on the Australian Electoral Commission roll for branch stacking purposes did not have an ethnic base, and generally involved unskilled workers in support of the Australian Workers Union Labor Unity faction.¹⁰ Historically branch stacking was common among Catholics in both Victoria and New South Wales in the period before 1955, if not later, and this generally had a religious base,

although the majority of stacks were certainly Irish-descended Catholics. But branch stacking now is generally an ethnic phenomenon. It is particular ethnic groups whose members are stacked by members of their own communities with connivance and support from an ALP faction.

ALP National Rule 15 is aimed at ‘ethnic warlords’, as stackers among ethnic communities are frequently called. Warlords are universally members of a particular faction, for non-factional stacking can rarely produce a desired outcome, normally the selection of a parliamentary candidate. It is the warlords who stand to gain from branch stacking and, as the Victorian state election of 30 November 2002 well illustrates, several warlords are members of state parliament and they owe their election to their activities on the ground, in making themselves indispensable to their respective factions. Branch work combined with factional activity has paid dividends. Two exceptional recruiters elected to the upper house of the Victorian Parliament are Turkish. Others are Greek and Vietnamese. Present and past recruiters in the lower house are Latin American, Croatian, Sri Lankan, Cambodian and, to a lesser extent, Italian. Many of the recruiters owe their election to the massive anti-Liberal swing in the 2002 state election which saw the Bracks government returned with a massive majority for the first time in both legislative chambers. It is doubtful that a number of the well-known recruiters would have been elected had the ALP vote not increased from that of the previous Victorian state election of 1999.

VICTORIAN REFORMS AND BRANCH STACKING

The new federal rules have yet to

be tested in practice, but the Victorian experience could be a guide to party behaviour in other states. Initially, in October 1994, restrictions were placed by the Victorian Branch of the ALP on the number of members who could be admitted at a single branch meeting.¹¹ This meant that stacking had to be planned. No longer could a big branch stack of up to 200 ethnic members be admitted to the party at one meeting. They must be introduced gradually over a period. There is probably no way the party could ever eliminate this practice, but changes in Victoria suggest that the practice can be reduced. Changes proposed by the Dreyfus Report¹² and subsequently adopted in Victoria placed demands on members that they produce evidence of residential status and personally sign their membership renewals.

The success of the Dreyfus reforms in Victoria in reducing electoral rorting by ethnic warlords has been considerable. In the period before the original reform limiting the number of members admitted at any one branch meeting in 1994 it was not uncommon for over 100 members to join at a single branch meeting. Table 1 details the branches where over 90 new members were admitted (not necessarily at the same meeting) in the approximately six months prior to the Victorian ALP Conferences held in May 1993 and March

Table 1: Admission of new members to selected Victorian ALP Branches in the six months prior to the first Conference held in 1993 and 1994

Branch	Federal Electorate	Number of	
		Year	New Members
Endeavour Hills	Holt	1994	225
Dandenong North	Holt	1994	180
Caulfield	Melbourne Ports	1994	126
Coolaroo	Calwell	1993	117
Sandown	Holt	1994	114
Dandenong East	Holt	1994	96
Endeavour Hills	Holt	1993	95

1994.

The figures for this period suggest a massive branch stack in the electorate of Holt, reputedly from Latin Americans, Turks, Sri Lankans and Cambodians. The new member figures for the six month period prior to the May 2002 Conference show no individual branch with admissions anything like that of nine years earlier, when no rule was in place to restrict member stacking. The figures are revealing (see Table 2). In sixteen branches over thirteen new members were admitted in the six month period. Theoretically thirteen could have been admitted at one meeting, the most allowed under the post 1994 Rules, but this is unlikely except in a small number of branches. Stacking clearly exists, and cannot be stopped, but it is under control. The party needs to recruit new members, and has to make a compromise between making branch membership easy enough to attract genuine recruits, and placing obstacles in the way of mass recruitment

Table 2: Admission of new members to selected Victorian ALP Branches in the six months prior to the first Conference held in 2002

Branch	Federal Electorate	New Members
Preston	Batman	72
Lalor	Scullin	43
Mill Park	Scullin	23
Clarinda	Hotham	23
Coolaroo	Scullin	21
Lalor South	Scullin	21
Clayton South	Hotham	21
High Street	Batman	21
Caulfield	Melbourne Ports	19
Niddrie	Maribyrnong	19
Geelong North	Corio	19
Keilor Downs	Calwell	19
Preston West	Batman	18
Harrisfield	Bruce	17
Thomastown	Scullin	15
Mulgrave	Bruce	15

with ulterior motives by the warlords.

Heavy recruitment is frequently associated with a forthcoming vacancy in a safe parliamentary seat. Recruitment in Holt in the early 1990s did not benefit any ethnic group, with the possible exception of Cambodian-Chinese Hong Lim, who won preselection and was subsequently elected for the state lower house seat of Clayton in 1996. ALP Senate Leader Gareth Evans won preselection in the Federal seat of Holt in 1996 with Right faction backing, at the expense of local warlords, but his subsequent behaviour in securing the defection of Australian Democrat Leader Senator Cheryl Kernot probably angered many who stood aside to enable his transition from the Senate to the House of Representatives. The latest new member figures suggest small-scale recruitment, compared with the position before 1994. The figures suggest that there is active recruitment in the Federal electorates of Batman (reputedly amongst Christian Lebanese, Greeks, Chinese and Macedonians), Scullin (reputedly amongst Christian Lebanese and Macedonians) and Simon Crean's own seat of Hotham (amongst Greeks, Vietnamese and Cambodians).

THE ALP AND THE LAW

A feature of the new Rule changes that has largely been ignored is an attempt to remove the enforcement of ALP Rules from the jurisdiction of the courts. Litigation may result from this feature of the new Rules. This is a likely consequence of branch stacking, particularly where party rules are not followed.

Litigation is not new, and the party has had many experiences in being the subject of court action. The earlier cases suggested that the courts would not interfere in the internal affairs of a political

party. In 1934 it was held by the High Court of Australia in *Cameron v Hogan*¹³ that a political party, like a church cricket club, was a non-profit voluntary organisation and its internal affairs were non-justiciable. Political parties at that time were unincorporated and were not subject to any legal regulation. An attempt in February 1955 was made in the Supreme Court of Victoria to prevent the holding of a special State Conference, but while this litigation proved unsuccessful the judgement appeared to support the view that in some circumstances the courts might intervene to prevent a gross abuse of party rules.¹⁴

The following month, in March 1955, the ALP Federal Conference resolved that the party 'as a general principle cannot concede the right of any member of the party to initiate legal proceedings'.¹⁵ This resolution must be examined in the light of the circumstances at the time, the intense bitterness as the party split, with a substantial number of members leaving the ALP to form the Democratic Labor Party (DLP). The resolution was clearly a reaction to the use of the courts in the previous month by supporters of a particular faction inside the Victorian ALP. The National Rules Conference in 2002 was clearly influenced by the Federal Conference of 1955, as well as by more recent litigation in which the courts have acted to enforce political party rules.

A new Rule 18 now seeks to delay and possibly avoid interpretation of the party Rules by the courts in setting up a National Appeals Tribunal. A party member can presently seek redress for a grievance from the party Disputes Tribunals in each state. The tribunals are not courts. They do not operate under strictly legal procedures, do not always give reasons for decisions, and occasionally do not operate under the principles of natural justice. Branch

stacking cases before the tribunals are a tiresome affair, and even an appeal to state conferences does not always bring redress.

The courts could reasonably be expected to require an applicant in most cases to exhaust first all appeal avenues provided by a party for the resolution of internal grievances. Creation of a National Appeals Tribunal is sensible. It fulfils a role similar at the federal level to the Disputes Tribunals of the party in the states, as an arbiter for grievances, and the new rules suggest it should act in an impartial manner free from the factional considerations that often apply in the states.

Then there is Rule 19. This is proscriptory in nature rather than regulatory. It reformulates the resolution of 1955 using the language of a legal wordsmith. It tells party members they should not seek redress in the courts at all, but does not impose any sanction on party members who do. Rule 19 is unlikely to be treated favourably by the courts, which may view it as an attempt to oust their jurisdiction, a breach of what is known as public policy.¹⁶

Political parties are now subject to government registration, and receive public funding. This has been a crucial factor in several recent court decisions which now suggest that political party rules are subject to judicial review. The first of these was the Queensland case of *Baldwin v Everingham* in 1993¹⁷ where it was held that there was now a significant public interest in the enforcement of the rules of registered political parties. In the Clarke cases in South Australia the Supreme Court of South Australia held that a stack of 2,000 persons was an improper use of party procedures, and that the party was required to abide by its own rules in preselecting parliamentary candidates.¹⁸ The courts clearly will now

intervene in the internal affairs of political parties.

Political parties, including the Australian Labor Party, need to ensure that they are ethical in their internal operations and apply principles of natural justice. Rule 19, if allowed to apply without the possibility of judicial review, can only benefit factional bosses. Branch stacking is

a feature of party life that needs to be placed under some degree of control, if necessary by the courts if the party is unable to regulate the practice itself. Can a party be trusted to govern if it allows unethical and dishonest conduct on a grand scale without allowing any effective avenue of appeal to its members?

References

- ¹ *National Constitution of the ALP, as adopted at the Special National Rules Conference*, October 2002, Australian Labor Party, Canberra, ACT.
- ² L. Jorgensen, *Inaugural Women in General Practice Conference and Workshops: Framing a National Strategy*, Royal Australian College of General Practitioners, www.racgp.org.au/events/women/resolutions.htm (accessed 30 December 2000)
- ³ S. Crittenden, *Unitarians Divided*, The Religion Report, Radio National, 2002 [cited 1 May 2002]. Available from www.abc.net.au/rn
- ⁴ C. LeGrand, 'Carlton hit by claim of vote fixing,' *The Weekend Australian*, 5 October 2002, p.50
- ⁵ J. Claven, *The Centre is Mine*, Pluto, Annandale, 2000, p.138, argues a contrary view that in modernising the ALP is likely to face stresses among its traditional working class supporters, with a consequent decline in its vote. Claven is currently President of the Victorian Branch of the ALP and is a member of the Socialist Left faction. Ironically his election results from a split in the Victorian Right, with votes from the so-called Modernisation Alliance faction responsible for his election.
- ⁶ *National Constitution of the ALP*, op. cit., Rule 9 (a).
- ⁷ R. J. Hawke and N. Wran, *National Committee of Review Report*, August 2002, Australian Labor Party, Canberra, ACT
- ⁸ The capitalised Branch refers to the party organisation in each state. At the local level the lower case branch (and in some states the term sub-branch) is correct usage.
- ⁹ E. Healy, 'Ethnic ALP Branches — the Balkanisation of Labor', *People and Place*, vol. 1, no. 4, 1993, pp. 37-43 and 'Ethnic ALP Branches — The Balkanisation of Labor Revisited', *People and Place*, vol. 3, no. 3, 1995, pp. 48-54.
- ¹⁰ Karen Ehrmann, a local councillor and factional operative in North Queensland, was convicted and imprisoned in August 2000 after falsely enrolling ALP members on the Australian Electoral Commission electoral roll during a branchstacking operation that she conducted. A listing on the electoral roll was a requirement to vote in Queensland ALP preselection ballots.
- ¹¹ *ALP Victorian Branch Rules*, October 2000, Rule 5.3.6 c
- ¹² M. Dreyfus, *Panel of Review 1998*, Australian Labor Party (Victorian Branch).
- ¹³ *Cameron v Hogan* (1934). 51 CLR 358
- ¹⁴ *Woodhouse v Schmella*, Supreme Court of Victoria, 1955, unreported.
- ¹⁵ *National Constitution of the Australian Labor Party*, Part C, National Principles of Organisation, Australian Labor Party, Canberra, ACT, p.36
- ¹⁶ The legal regulation of political parties is discussed by G. Johns, 'Clarke v Australian Labor Party,' *Australian Journal of Political Science*, Vol. 35, No. 1, pp. 137-142 and D. Anderson, 'The Victorian ALP and the Rule of Law,' *Democracy*, Vol.4, No.2, September 2002, p.3.
- ¹⁷ *Baldwin v Everingham* (1993) 1QLDR 10
- ¹⁸ *Clarke v ALP (SA Branch)*, (2 September 1999), SASC 365. *Clarke v ALP (SA Branch)*, (24 September 1999), SASC 415.