

The Constitution Unit

**Checks and Balances in Single Chamber
Parliaments: a Comparative Study**

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Constitution Unit publications can be ordered from the following address:

The Constitution Unit
School of Public Policy
Brook House, 2-16 Torrington Place
London WC1E 7HN
Tel: 0171 209 6669 Fax: 0171 209 6594
Email: constitution@ucl.ac.uk



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EXECUTIVE SUMMARY

Introduction

- Whether a parliament should have a second chamber is just one aspect of parliamentary design. The presence or absence of a second chamber cannot determine whether a parliament will be an effective democratic institution. Unicameral parliaments can be effective if well designed, ineffective if badly designed.
- A Parliament's procedural arrangements can themselves obviate the need for a second chamber. A comprehensive committee system can take care of the second chamber review function, while the electoral system and a bill of rights can cater for the constitutional watchdog role.
- The issue of checks and balances in respect of a unicameral parliament also involves the parliament's relationship to the executive. The relationship is a dynamic one, partly governed by the legal structure of the system and partly by the political culture.

Constitutional Design

- The electoral system plays a role in the effectiveness of a unicameral parliament. Proportional representation is likely to enhance the ^{Scottish} Parliament's democratic legitimacy, and its authority in relation to the Scottish Executive.
- The quasi-federal relationship between Westminster and the Scottish parliament will provide a check on the power of ^{the} Scottish Parliament, as each government will be alert to the jurisdictional limits of the other.
- Westminster will remain the ultimate guardian of the Scottish Constitution, power to amend the Scotland Act not being within the Scottish Parliament's competence. This is a significant check on the Parliament because it means, *inter alia*, that the Parliament cannot amend such constitutional provisions as its term or the electoral process.
- A bill of rights provides a check on the power of a unicameral parliament. The Scottish Parliament will be governed by the European Convention on Human Rights.
- The number of members in a unicameral parliament has an important bearing on its ability to function well as a legislature. The Scottish Parliament's 129 members should allow for an appropriate range of permanent committees.

Parliament Design and Procedure

- The Scottish Parliament should have a comprehensive committee system, following broadly the subject areas of the Scottish Executive. Committees should review all bills and have the power to initiate investigations within their subject area and report to the Parliament.
- There should be a special committee or set of committees to scrutinise budget and financial matters.
- Pre-assent scrutiny of bills to check they are within the Parliament's competence will be carried out by a number of bodies and will assist in ensuring the Parliament passes well considered legislation.
- A system allowing for parliamentary questions to Ministers should be included in the Standing Orders.
- The Presiding Officer will have an important role in assessing bills to check they are within the Parliament's competence.
- Some jurisdictions give a minority in their parliaments special procedural rights to halt bills or refer them to referendum. This practice could be kept in mind as an additional check on the powers of the Scottish Parliament, if in the future further checks were considered desirable.

External Checks

- Administrative accountability mechanisms are important. Scotland will have in this respect:
 - an Ombudsman on the United Kingdom model
 - a strong audit requirement.

Conclusions

- The Scotland Bill provides a wide range of checks and balances found in other unicameral parliaments, or, in relation to parliamentary committees, the expectation that they will be developed. In addition the Bill contains a number of novel checks, such as the Secretary of State's powers and the Law Officers' powers to refer legislation to the Privy Council for a ruling on *vires*.
- The comprehensive range of checks present in the Scotland Bill obviate the need for a second chamber as part of the parliamentary design.

- Given the novelty of the arrangements, and the need to see how the system works in practice, it would be prudent to provide for two review mechanisms:
 1. A Scottish Parliamentary Committee with an ongoing constitutional review function along the lines of the Swedish Committee on the Constitution, or the similar parliamentary committee in Queensland, and
 2. an independent review commission in Scotland meeting in five years time to consider the role of the Scottish Parliament in the evolving scheme of Scotland's and the United Kingdom's constitutional architecture.

ONE - INTRODUCTION

Introduction

There will be a Scottish Parliament. It will be unicameral and have 129 members. The First Minister and the other Ministers will be drawn from it.

This report arises out of an apprehension that a parliament with just one chamber is flawed. The report is not concerned with the relative merits of bicameral and unicameral systems. It is a survey of six unicameral parliaments to see how well, or otherwise, they work.

The report has two principal conclusions. First that the question of checks and balances needs to be addressed by considering the dynamic relationship between the parliament and the executive, particularly when the executive is controlled by a majority in the parliament. Second, that the effectiveness of a parliament is a question of overall design, of which the presence of a second chamber is just one of many elements.

Good governance requires a vital political culture and respect for democratic institutions. Badly designed unicameral parliaments can produce bad government. Parliaments need to be designed to ensure they are a constant, credible and legitimate check on government. Where they fail to provide that check a culture of corruption and abuse can flourish. Queensland, a jurisdiction which abolished its upper house (which itself was ineffective) and did not introduce constitutional reforms to improve the quality of the Parliament, was rocked in the 1980s by a culture of sleaze that led to four National Party ministers and a former police commissioner being jailed for corruption and related offences.

Another of the parliaments studied, British Columbia, prior to the significant reforms of the last decade or so was dominated by one party or another for significant periods of time. Until change began to occur in 1972, the Parliament was called for only a few weeks a year and opposition members were not even given permanent office space, making it almost impossible to carry out the task of scrutinising the government.

On the other hand, well designed unicameral systems can produce good government. The two Scandinavian jurisdictions studied, Denmark and Sweden moved to unicameralism at the same

time as introducing a range of other constitutional and parliamentary reforms. These two jurisdictions have enjoyed well functioning parliaments, providing balanced checks on the powers of the majorities in their parliaments and their executives.

Comparative Approach

The parliaments examined are those in: New Zealand, Sweden, Denmark, the Australian State of Queensland and the Canadian Provinces of Quebec and British Columbia. They range from parliaments which are similar to the Scottish Parliament in terms of size and position within the constitutional system (for example the sub-national Parliament of the Australian State of Queensland) to dissimilar in size and constitutional position terms (the Swedish Parliament). The former are chosen for their more direct applicability, the latter because aspects of their structure and operation are particularly instructive.

The parliaments chosen represent European and Commonwealth countries, and national and sub-national levels. Five out of the six Parliaments began as bicameral legislatures, but all have abolished their second chambers in relatively recent times. The survey is not intended to represent a comprehensive overview of unicameral systems. Its purpose is to provide a range of comparative examples from which lessons may be drawn in designing the unicameral system in Scotland.

Each jurisdiction has its unique features and the underlying principle must be to ensure that the constitutional architecture designed for Scotland, is architecture appropriate to the whole context of governance in Scotland. Constitutional arrangements need to be framed to suit the political behaviour in the jurisdiction concerned and regular reviews of the system's efficacy are worthwhile to take into account changing political circumstances.

Structure of the Report

This report contains four parts, an executive summary and a bibliography. Part I is this Introduction.

Part II contains the overviews of the six parliaments, including:

1. an overview of the jurisdiction:
 - description of the electoral process,

- political composition of the parliament,
- term of the parliament, its powers and procedures,
- relationship of the executive to the parliament,
- reasons the parliament was established with one chamber, or if there has been a change from bicameral to unicameral, the reasons for the change,
- if there has been a change from bicameralism to unicameralism, the steps taken, if any, to alter the structure and operation of the remaining chamber.

2. A brief summary of the checks (legal and political) within the jurisdiction's constitutional framework on the powers of the parliament and its relationship to the executive with particular reference to five key areas:

- passage of legislation
- scrutiny of the executive
- defence of the constitution and human rights
- redress of grievances
- other protections against the abuse of power.

Part III draws together the check and balance functions outlined in respect of each parliament and places them into three categories:

1. Constitutional Design
2. Parliamentary Design and Procedure
3. External Checks

Part IV considers the measures contained in the Scotland Bill 1997 in terms of the three categories set out in section III

Part IV concludes with an assessment of the viability of the unicameral nature of the Scottish Parliament as currently proposed.

TWO - THE PARLIAMENTS

Sweden - The Riksdag

Description of the Electoral Process

Sweden, a country of approximately 8 million people has a parliament, called the Riksdag, made up of 349 members elected on a proportional basis. The country is divided into 29 multi-member constituencies, of between 2 members for the Island county of Gotland to 36 members for the County of Stockholm. The electoral system distributes seats evenly according to the total number of votes received. 310 of the 349 seats are permanently assigned to a constituency, with the balance distributed after the election among the parties in each constituency. To be allocated seats parties must either receive 4% of the total votes cast, or 12% of the votes in one constituency.

Political Composition of the Parliament

The parties represented in the Riksdag are, in order from right to left, the Moderate Party (also called the Conservatives), the Centre Party, the Liberal Party, the Social Democratic Party and the Left Party. From 1932 to 1976 the Social Democrats governed almost without interruption. That dominance lessened after 1976, since then the clear demarcation has been between the socialist and non-socialist parties.

Term of the Riksdag, its Powers and Procedures

Elections are held every fourth year on the third Sunday in September. The next election is in September 1998. There is provision for extra elections in exceptional circumstances such as the government losing the confidence of the Riksdag, but since the new Constitution (Instrument of Government 1974) came into force in 1975 this has not occurred. The Riksdag is the sole legislator, the old requirement that the most important legislation be approved by both the Riksdag and the government having been abandoned. In addition to the legislative function, the Riksdag provides a forum for the questioning of government Ministers, and supervision of the Executive via supervisory committees and special officers, such as the Parliamentary Ombudsmen and Auditors.

Relationship of the Executive to the Riksdag

The Executive is appointed from the Riksdag and depends on the confidence of the Riksdag to continue in office. The government consists of the Prime Minister and other members of the

Cabinet, which must not be less than five in number. Ministers sit in the Riksdag, but do not have a vote. Once appointed their voting places are taken up by substitute MPs elected in the previous election. The Riksdag chooses the Prime Minister by voting on a single candidate put before it by the Speaker. The Speaker consults with the leaders of the Riksdag parties prior to putting a name forward. If more than half of the members of the Riksdag vote against the proposed candidate, the candidate is rejected. In all other cases the candidate is accepted. If the Speaker is unable to have a candidate accepted after four attempts a fresh election is called. The Prime Minister appoints the other Ministers and the heads of various departments of state. If the Riksdag, by vote of more than half its members, declares it has no confidence in any Minister, the Speaker must discharge the Minister, unless within a week the government calls an extraordinary general election.

Number of Chambers

The Riksdag became bicameral with the Riksdag Act of 1866. Debate in the 1960s led to the abolition of the first chamber, with the election in the autumn of 1970 being the first for a unicameral Riksdag. In the early seventies a complete revision of Swedish constitutional law resulted in the Instrument of Government 1974 and Riksdag Act 1974, which remain in force.

The First or Upper Chamber of the Riksdag, represented county and city councils of the largest municipalities. It was designed as a conservative check on the more popularly elected Second or Lower Chamber. Its predominant effect over its last thirty or so years was to stabilise the continuance in government of the Social Democratic Party. Revision of the Constitution to introduce one chamber, and alter the system of voting in the remaining Chamber to a purely proportional one was driven by a perceived need to reform the system so that it more accurately reflected the will of the electorate.

Design of the Structure and Operation of the Remaining Chamber after moving to Unicameralism

There are six main elements of the unicameral Riksdag which are identified as replacing positive aspects of the bicameral system:

1. procedural rights given to a minority of the Riksdag
2. the lack of a rule requiring members to live in the areas they represent is seen as likely to increase the chances of providing a better range and quality of candidates,

3. the electoral system was reformed to provide that parties meeting the threshold of 4% nationally or 12% in a constituency receive the same proportion of Riksdag seats as they do votes,
4. the comparatively large size of the Riksdag, as a unicameral legislature, means that it is well populated to provide sufficient parliamentarians to sit on the range of committees,
5. the sixteen Committees are specialist in so far as each deals with legislation within a distinct subject area, and
6. the Committees are empowered to initiate matters on a far wider scale than previously.

Checks on the Riksdag

General

Electoral System

In Sweden the move from a bicameral to a unicameral parliament was viewed as necessarily associated with a review of the electoral system. This was connected with the composition of the two houses becoming similar, with members from the second or lower chamber frequently moving up to the first chamber. The terms of the two chambers differed, the first had a term of eight years and the second a term of four. Although the first chamber had the democratic legitimacy of being elected by municipalities and councils, it came to reflect public opinion that was about six years old, whereas the second chamber was based on opinion only about two years old.

After World War Two, the second house (which at the time was elected under the Sainte-Lague method of proportional representation) was mostly evenly divided between socialist and non-socialists. It was the first chamber's predominantly social democratic majority that supported the Social Democrats' long period in government. Part of the reason for the conceptual connection between the electoral system and the number of chambers was concern about how a single house would represent the councils and municipalities which had been represented in the first house.

Number of Members

The size of the Riksdag is an important factor. Its 349 members ensure there are enough members to sit on a comprehensive range of parliamentary committees, and compensates for the loss of the members provided for such work by the first house. Another important factor is the provision of substitute members to take the place of the Speaker, Deputy Speakers,

government members and members on leave for extended periods of time. Substitute members are effectively standby members.

(ii) Passage of Legislation

Committees

There are sixteen permanent committees and one advisory committee on European Affairs. The Riksdag may also appoint additional committees for specific purposes. The committees are appointed for the same period as the Riksdag. Committees may meet jointly where the subject matter being dealt with crosses different committee areas. The committees' main tasks are to consider all bills referred to them from the Chamber and report back to the Chamber with their views.

The committees also have the right, within their fields of competence, to take the initiative of proposing action to the Chamber. All business of the Riksdag (including all bills) must pass through the appropriate committee. Membership of committees is proportionate to the party share in the Chamber and there are currently 17 members on each committee and up to 26 alternates. The Foreign Affairs Committee is unique in that it does not report to the Chamber and has special consultation procedures with the government.

Scrutiny of the Executive

Riksdag Committee on the Constitution

The Committee on the Constitution is constitutionally required to examine Ministers' performance and their handling of government business. This scrutiny is intended to be primarily concerned with administrative and not political aspects of Ministers' tasks, although politics inevitably plays a role in responses to the Committee's annual report to the Riksdag.

Interpellation and Questions in the Riksdag

There are three forms of questions which may be put:

1. an interpellation, which must ordinarily be answered within two weeks,
2. a written question which must usually be answered within a week, and
3. a short oral question, put during the weekly question time, one hour every Thursday.

If an answer is not given within the time limit an explanation must be given.

Urgent Debates

Party groups may request the Speaker to organise a debate on a matter of current interest at short notice.

Separation of Executive and Legislature

Once a member of the Riksdag is appointed to the Ministry they cease to have a vote in the Riksdag. Their voting place is taken by one of the substitute members elected at the previous election. While ministers do not vote they still have a seat, take part in debates and answer questions. Thus, although the Ministry remains backed by a majority in the chamber, as in the UK, there is a greater degree of separation between members who are part of the executive and members who are legislators.

Defence of the Constitution and Human Rights

Restrictions on Powers to Alter Certain Constitutional Provisions

There are four laws referred to as Sweden's constitutional laws. The Instrument of Government 1974, the Freedom of the Press Act, the Freedom of Expression Act, and the Act of Succession. The Riksdag Act has intermediate status between a Constitutional Law and ordinary statute.

There has been antipathy from the left in Swedish politics to entrenched constitutional rights enforceable by the Courts. The Swedes like the UK, have relied on the democratic process itself as the ultimate protector of liberty. Unlike in the UK however, Sweden has developed protections for the functional elements of representative democracy by entrenching provisions to do with freedom of information and freedom of expression.

There is also a complex hierarchy of other rights (including the European Convention on Human Rights, incorporated in an ordinary statute) which are procedurally protected in a range of ways. The focus in Sweden however has been on pre-legislative measures, not post-legislative judicial review, although that has started to develop.

Redress of Grievances

Parliamentary Ombudsmen

The office of Parliamentary Ombudsman has existed since 1809. There are currently four Ombudsmen, elected by the Riksdag for four year terms. Ombudsmen investigate complaints

brought to them by citizens about any aspect of municipal or central government or the judiciary. They make findings which they convey to the agency concerned and in serious cases may request disciplinary action against officials or prosecute for breach of duty. The Ombudsmen also have a general role of reviewing legislation and may present proposals for law reform directly to the Riksdag or the government. They present an annual report which is examined by the Standing Committee on the Constitution.

Other Protections Against the Abuse of Power

Parliamentary Auditors

The Riksdag Auditors are 12 members of the Riksdag appointed by the Riksdag to scrutinise central government activities

Law Council Review

In principle major draft legislation must be referred to a Law Council, made up of members of the Supreme Court and the Supreme Administrative Court, although it is not mandatory for all legislation. The Council has the task of checking the constitutionality of laws, ensuring consistency and preserving the principle of the rule of law in the legislative process.

Committees of the Riksdag may also ask the Law Council for its opinion on measures. The Council's advice is not binding on the Riksdag, and clearance by the Law Council does not preclude the possibility of the legislation later being set aside by judicial review for unconstitutionality.

Rights of a Minority of Members of the Riksdag

The power of the majority in the Riksdag is tempered by the following provisions which give certain minorities in the chamber procedural rights:

1. one third of the Chamber can send a report back to a committee for further consideration,
2. *one third of a committee can request information and opinions from public authorities,*
3. one third of MPs (including the government) can require the Speaker to summon the Riksdag to plenary session during a recess,
4. one tenth of the MPs can request a vote of no confidence,
5. a government proposal affecting the fundamental rights and freedoms may be held in suspense at the request of 10 MPs unless 5/6ths of the MPs approve the bill,
6. if one tenth of the MPs request and one third then vote in favour, a referendum is held in respect of an amendment to a fundamental law held in suspense over an election.

Speaker's Powers in Respect of All Matters Going to the Chamber

All matters, from questions to Ministers to legislation must be passed by the Speaker. The Speaker may decline, with reasons, to submit a matter to the Chamber if it violates the Constitution or the Riksdag Act. If the Chamber disagrees with the Speaker the matter is referred to the Committee on the Constitution. If that Committee finds that the matter is not in breach of the Constitution or the Riksdag Act then the matter goes to the Chamber.

Denmark - The Folketinget

Description of the Electoral Process

Denmark, a country of about 5 million people, has a legislature, the Folketinget, made up of 179 members directly elected on a proportional basis. Electors either cast a personal vote for a candidate or vote for one of the party lists. Of the 175 seats reserved for Denmark, 135 are distributed among constituencies. The 40 remaining are distributed to ensure proportionality of representation amongst the parties. The threshold for gaining a seat is winning one constituency seat, 2% of the valid votes cast in the country or having at least as many votes as the average number of valid votes cast in the region, per constituency seat. In addition there is a threshold to reach before being allowed to stand, of either being previously represented in the Parliament, or gathering the supporting signatures of 1/175th of the votes cast in the last election. Persons not elected are placed on a list of substitute members by the Ministry of Justice after the election. Four seats are allocated, two each to the Faroe Islands and Greenland.

Political Composition of the Parliament

The Conservative and Liberal parties both emerged as clubs in the Rigsdag (the bicameral parliament established in 1849, consisting of the Folketing and the Landsting) and were established by 1870. The Social Democrats were formed outside the Parliament in the early 1870s. Parties have also emerged from single issues, such as the Christian Peoples Party, the Pensioners Party, the Unemployment Party and the Green Party. Nine parties stood in the 1994 election, with eight being elected.

Term of the Folketinget, its Powers and Procedures

Elections are held at least every four years, although the Prime Minister may call snap elections. The Folketinget jointly with the Monarch is the legislator, although, as in the UK, the Parliament is supreme in practice.

Most bills are introduced to the Folketinget by the government although any member does have the right to do so. Bills receive three readings, with a committee consideration stage after the first, and if necessary also after the second. A bill becomes law with confirmation by the Monarch.

Apart from the legislative function the Folketinget's other key function is supervision of acts of the government and executive. It has the power to force a minister's or government's resignation by vote of no confidence, it controls finance, it elects the State Accountant to scrutinise public accounts, it may prosecute a minister for misconduct, and it debates and queries the government's policies.

Relationship of the Executive to the Folketinget

Following an election the Monarch consults the leaders of the parties elected to the Folketinget and then designates the majority leader to form the government. The designated leader then appoints the Ministry. Ministers do not have to be members of the Folketinget, but usually are. The principle that the executive must have the confidence of the parliament was confirmed in 1901, and formalised in the constitutional amendment of 1953. The executive is headed by the Monarch. It also comprises the Prime Minister and other ministers. Ministers are responsible for the work of their department, and all decisions are made in the Minister's name.

Number of Chambers

The constitution of 1849 introduced a two chamber parliament (the Rigsdagen) with a directly elected lower chamber (the Folketing) and an upper chamber elected indirectly via an electoral college (the Landsting). Over the next hundred years various amendments made the Landsting obsolete. After the Second World War a Constitutional Committee was formed which led to a new Constitution Act of the Danish realm on 5 June 1953. This Act abolished the Landsting.

Design of the Structure and Operation of the Remaining Chamber after moving to

Unicameralism

The 1953 Constitution in addition to abolishing the Landsting also introduced other reforms which strengthened checks on executive power. The principle of cabinet responsibility to the parliament was formalised. There was a new provision for one third of the members of the Folketinget to have any law passed put to referendum for confirmation, with the exception of financial laws. An Ombudsman was introduced, and various constitutional guarantees of rights were introduced or strengthened.

Checks on the Folketinget

General

The Electoral System

The Danish proportional electoral system is similar to Sweden's and New Zealand's in that seats are allocated at two levels, first in multi-member constituencies and second from lists to ensure that the proportion of seats allocated in the parliament reflects the proportion of a party's vote. The system has led to the predominance of coalition governments, with the necessary constraints this imposes on individual parties.

Passage of Legislation

Referendum Referral by a Minority of the Parliament

Under the Danish Constitution there are five circumstances in which a binding referendum is held:

1. In respect of a bill (except finance, taxation, naturalisation and expropriation bills) a third of the Folketinget can require the bill be put to referendum before it becomes law. If a majority making up one third of those entitled to vote, vote against the bill, it is void. This procedure has been used once.
2. If less than 5/6ths of the Folketinget vote in favour of a Treaty ceding sovereignty (for instance accession to an EU Treaty), but more than half, then the bill is put to referendum. If a majority making up one third of those entitled to vote, vote against the bill, it is void.
3. In respect of international treaties if the Folketinget so decides, and the treaties concerned do not otherwise involve a ceding of sovereignty such as to trigger the ceding of sovereignty provision in the Constitution.
4. In respect of constitutional amendments: first the Folketinget passes the amendment, an election must then be held and after the election the amendment is put to referendum. The amendment passes if a majority making up 40% of those entitled to vote, vote for it.
5. When altering the voting age: first the Folketinget passes the bill, the bill is put to referendum, and if it gains the support of a majority making up 30% of those entitled to vote, it is passed.

The Folketinget can hold a consultative referendum, and to date has done so once.

Committees

The Folketinget has 24 standing committees, corresponding generally to the work of a ministry. Each committee has 17 members. Committee seats are allocated according to party strengths in the Folketinget. Committees examine bills as part of the legislative process, make investigations and may question the minister responsible for the bill. Committees also have a general power to initiate investigations of government and administration within their area of competence.

Scrutiny of the Executive

See above for discussion of the general investigative role of parliamentary committees and below, for discussion of the Ombudsman.

Defence of the Constitution and Human Rights

See above for discussion of the procedure for constitutional amendment.

Redress of Grievances

Ombudsman

The Constitution requires the Folketinget to elect at least one Ombudsman. The Ombudsman is elected after each general election. The Ombudsman reports to the Folketinget both annually and in respect of specific complaints received where the Ombudsman judges them to involve errors or deficiencies of administration of major significance. Although appointed by the Parliament, the Ombudsman is an independent officer and may not be a member of the Parliament. In addition to investigation of matters brought to the Ombudsman by citizens, the office also has the power to initiate its own general investigations into matters of public interest.

New Zealand - The House of Representatives

Description of the Electoral Process

New Zealand, a country of just over three million people has a parliament of 120 members. Since 1996 they have been elected by a mixed member proportional (MMP) system. Voters have two votes, one for a constituency member of parliament and one for a party list. Sixty members of parliament are elected from constituencies, 5 from special Maori seats and the balance of 55 from the party lists. To gain a list seat a party must poll above 5% of the party vote, or win an electorate seat. List seats are distributed among the parties to ensure the proportion of seats a party has in Parliament matches its proportion of the total vote.

Vacancies in electorate seats are filled by by-election, and list seats by the next candidate on the list.

Political Composition of the Parliament

New Zealand politics has been dominated by two main parties for much of this century, the National Party (conservative) and the Labour Party. During the 1980s this dominance waned. Associated with the move from first past the post voting to MMP there has been a proliferation of parties, with National and Labour remaining the major right and left wing parties respectively. In addition there is the New Zealand First Party, a populist right wing party, currently in a governing coalition with the National Party, the Alliance Party (a combination of three other parties, the Democrats, New Labour and the Greens) and ACT, or the Association of Consumers and Taxpayers.

Term of the House of Representatives, its Powers and Procedures

The New Zealand parliament is elected for a three year term, although the Prime Minister may advise the Governor-General to call an election prior to the end of that term. The House of Representatives is the sole and all powerful legislature. It may make laws in any area and there is no comprehensive written constitution constraining it. Bills receive three readings and are subject to select committee scrutiny where public submissions may be heard. After third reading they become law with the assent of the Governor-General.

Relationship of the Executive to the House of Representatives

The Ministry is made up of the majority parties in the Parliament. The Prime Minister in a National lead government then appoints ministers. All ministers are nominally answerable to Parliament, which could force their resignation by a vote of no confidence. The current government is the first elected under the MMP voting system. An innovation in political arrangements is the formal coalition agreement between the two governing parties, which provides amongst other things for the apportionment of cabinet posts between the parties.

Number of Chambers

Since 1 January 1952 New Zealand has been a unicameral state. Prior to that the New Zealand Parliament was constituted by a lower house called the General Assembly and an upper house called the Legislative Council. The General Assembly was elected on a first past the post basis. The Legislative Council, nominated by the government, was an instrument of patronage and had become obsolete in so far as it did not function as a check on the power of the lower house.

Design of the Structure and Operation of the Remaining Chamber after moving to

Unicameralism

The abolition of the upper house contrasts with the Danish and Swedish moves to unicameralism. In New Zealand no significant work was done on the likely effect of abolition and no reforms comparable to the checks introduced in Denmark and Sweden (e.g. the altered voting systems, or Ombudsmen) were immediately introduced. After abolition little more happened in the way of constitutional reform to introduce checks on government until the late 1970s and 1980s. The closest thing to consequential reform was the Electoral Act 1956 which, with joint party support, sought to entrench key electoral provisions, in particular the Parliament's term.

Checks on the House of Representatives

General

Until the 1980s the New Zealand Parliament was characterised by very few checks or balances, triennial elections being the only significant one. During the eighties however a reform process began, which like those in British Columbia, Queensland and to an extent now in the UK turned the situation around, with the introduction of a range of constitutional reforms from MMP to a statutory bill of rights.

Mixed Member Proportional electoral System

The new electoral system, with the likelihood of producing either minority governments or coalition arrangements is initially likely to be less accommodating of strong executive power. The first past the post system produced (almost always) clear majorities in the House of Representatives, which was effectively captured by those majorities. There remains the possibility though that a stable coalition may emerge as has occurred in Germany, which has had the same electoral system and coalition government for almost eighteen years now. For the moment however, the nature of the breakdown of New Zealand parties, with at least two parties on either side of the political divide, means that the range of parties in the House is likely to increase the power of the House to exercise real control over the Executive.

Referendums

Referendums may now occur in New Zealand in two distinct circumstances. First are those which are put on a particular issue, such as the 1993 referendum on the electoral system, or the 1997 referendum on superannuation. They may be either binding or non-binding. The second

are those held under the Citizens Initiated Referenda Act. That Act allows for a certain number of electors to petition for a referendum on a particular issue. The referendum outcome is non-binding. There has been one such referendum, concerning whether the number of fire-fighters should be reduced. The fire-fighters' cause won soundly but the result was not taken seriously by the government and it is too early to tell whether the Act will produce real constraints on the policies pursued by the government.

Passage of Legislation

Committees

The committee system was substantially reformed in 1985, extending the jurisdiction and powers of the parliamentary committees. The advent of MMP is likely to increase the importance of committees in the parliament, as they are no longer controlled by a single governing party. Committees have a range of roles including: examining all bills except those being dealt with under urgency or Appropriation and Imprest Supply bills, general inquiries within their subject areas, in respect of the Finance and Expenditure Committee, financial scrutiny, and consideration of petitions to parliament. There are currently twelve standing committees based around government department subject areas and four specialist standing committees concerned with parliamentary administration (e.g. the House Business Committee). The enlargement of the Parliament under MMP has also allowed an increase in committee membership from five to eight. Membership reflects party balances in the House, but is ultimately at the recommendation of the House Business Committee.

Scrutiny of the Executive

Parliamentary Questions

There is a question time on every sitting day. Questions fall into three categories: 1, written questions, which are answered in writing, 2, questions put on notice which are answered orally and in respect of which supplementary questions may be put, and 3, urgent questions not on notice concerning events arising after the lodging of oral questions. There is a limit to the number of oral questions accepted for each sitting day, but question time goes on until they are all dealt with. The opportunity to put questions is allocated between the parties according to their membership in the House.

Defence of the Constitution and Human Rights

New Zealand Bill of Rights Act 1990

This Act is an ordinary statute, intended to provide strong interpretative guidance to the New Zealand Courts. The parliament can pass laws contrary to its provisions but if it appears that a bill contravenes the Act the Attorney General must bring this to the attention of the House. So far its major impact has been in case law, in particular in the area of criminal procedure.

Redress of Grievances

Ombudsman

The Ombudsman is empowered to investigate complaints lodged with her or him (there is no parliamentary filter as in the UK) and also to make general inquiries of its own initiative into matters of general administration.

Other Protections Against the Abuse of Power

Treaty of Waitangi/Te Tiriti o Waitangi

This treaty, upon which European settlement in New Zealand is in part based is now regarded as one of New Zealand's constitutional documents. It was first included in New Zealand Statute law in the Treaty of Waitangi Act 1972 which established the Waitangi Tribunal. The Tribunal has the task of investigating grievances concerning breaches of the Treaty. It is now also included in various other statutes, usually in an initial purposes and principles section. Its insertion in this form in the State Owned Enterprises Act 1986 led to the Maori Council challenging the government's transfer under that Act of large tracts of Crown land. The transfer having been held contrary to the principles of the Treaty the government was forced to amend the statute.

Queensland - The Legislative Assembly

Overview

Description of the Electoral Process

Queensland, one of the Commonwealth of Australia's six constituent States, with a population of about three million, has a Legislative Assembly with 89 members elected with an optional preferential voting system, which ensures that the candidate elected receives a majority of the votes cast. The Electoral Act 1992 contains a threshold requirement for parties seeking registration: either already having a member in the Assembly or a minimum membership of

500 electors. This has hindered the appearance on the ballot paper of minor parties, although, given the electoral system, it is difficult for minor parties to be elected.

Political Composition of the Parliament

Queensland has had remarkably stable government for much of this century. From 1915 to 1957, when the Labor Party split (and with the exception of 1929-32) the Labor Party held power. From 1957 to 1989 the conservative Liberal-National coalition held power. The State currently has a Liberal-National government, holding 44 seats and which is also dependent on the support of an independent member.

Term of the Legislative Assembly, its Powers and Procedures

Elections are held at least every three years, with the possibility of early elections if the Premier calls one. The Assembly is chaired by an elected Speaker, who, unlike in Westminster does not resign from her or his party and must still contest elections. The Assembly is the legislative arm of the Queensland government. Legislation passes through three readings and since the establishment in 1995 of six standing committees, committee scrutiny also. Prior to 1995 the legislative process of the Queensland Parliament was, to say the least, efficient. While the Assembly is sitting there is a weekly Question Time during which government Ministers are open to question.

Relationship of the Executive to the Legislative Assembly

The Government is made up of the majority party or parties in the Assembly. The leader of the Government is called the Premier. In Liberal-National governments the Premier selects members to become ministers and apportions portfolios. In Labor governments the party caucus elects members to become ministers and the Premier then apportions responsibilities.

Number of Chambers

The Colony of Queensland was created by separation from the colony of New South Wales on 6 June 1859. It was created with a bicameral legislature, an elected lower house, the Legislative Assembly and an appointed upper house, the Legislative Council. The Council largely came to represent conservative interests. Early this century the Labor Party included abolition of the upper house in its manifesto. It carried through abolition in 1922.

Design of the Structure and Operation of the Remaining Chamber after moving to Unicameralism

As with New Zealand abolition of the upper house was not accompanied by corresponding reform of the lower house or other constitutional reform. Furthermore, the electoral system and

Queensland voters have favoured long periods of government by one party. The period of one party domination ended in the 1980s when a series of corruption scandals lent impetus to a wide range of reforms in Queensland. A number of the reforms so far, and those mooted to come (including reintroduction of a second chamber) do establish more significant checks on the majority party in the Legislative Assembly.

Checks on the Legislative Assembly

General

The Federal System

The Commonwealth of Australia, now comprising six States and two mainland Territories, was formed in 1901. Federation was the outcome of a series of conventions and referenda throughout the 1890s. Federation brought together what were previously colonies of the United Kingdom. Power is divided between State and Federal governments in the Constitution. The two Territories operate under self government Acts, much like the States, but importantly (and similarly to Scotland in relation to Westminster), remain under the ultimate control of the Federal Parliament in Canberra, which can override any law the Territories pass.

The federal system has given rise to a complex network of inter-governmental relations, and where disagreements have arisen between governments, case law on the respective competencies of the governments. The arbiter of disagreements between governments is the High Court of Australia, which sits at the apex of the Australian court system, and is the final court of appeal from both State and Federal courts.

As in Canada the federal system provides a check on powers of the Queensland Parliament in so far as it constrains the Queensland Parliament to act within the competencies of its powers as a State. The restriction while not a pervasive cure for all maladministration can in certain cases have significant consequences, as in the landmark case of *Mabo v Queensland (No 2)* ((1992) 175 *Commonwealth Law Reports*, 1) in which the High Court of Australia held that the Queensland Coast Islands Declaratory Act 1985 (QED) was invalid because it was inconsistent with section 10 of the Racial Discrimination Act 1975 (Commonwealth). The Queensland Act sought to extinguish the traditional land rights of the local indigenous people.

Passage of Legislation

Parliamentary Committees Act 1995

Revelations of corruption uncovered in the 1989 Fitzgerald report (Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct) led the Commission to recommend *inter alia* the introduction into the Queensland legislative process of a comprehensive system of legislative committees to enhance the Parliament's oversight abilities and monitoring of the Executive. That report was followed by a further report in 1992 by the Electoral and Administrative Review Commission with similar recommendations and ultimately by the Parliamentary Committees Act 1995. That Act establishes six permanent statutory committees. Additional committees can also be created by resolution of the Legislative Assembly or an Act of Parliament.

Committees are made up of six members, three from the government and three from the opposition. The Chair is a government member and has a casting vote. The committee sessions are usually open to the public. Committees can call for public submissions and hold public inquiries. Public servants can be called before committees to answer questions about government activities and programmes.

In addition to those eight committees there is also a series of six Estimates Committees, established in 1994 and which scrutinise government expenditure proposals from each department.

This comprehensive committee system is in stark contrast to the situation prior to its introduction when the legislative process in Queensland was marked by lack of constraints on the powers of the government to use its majority in the House to pass laws.

Scrutiny of the Executive

See the discussion of the parliamentary committee system.

Defence of the Constitution and Human Rights

Proposed Bill of Rights

In addition to the Federal Constitution and its limited rights the Legal Constitutional and Administrative Review Committee (LCARC) of the Legislative Assembly is currently considering a proposal to introduce a bill of rights in Queensland.

Suggested Reintroduction of a Second Chamber

In 1997 the LCARC produced an Information paper on Upper Houses in response to public debate within Queensland concerning the possibility of reintroducing an upper house. Such a public debate has resonance with the proposals which arose in New Zealand in the 1980s, also concerning reintroduction of a second house. Whether, as occurred in New Zealand with the introduction of MMP, other constitutional reforms reduce the impetus to reintroduce a second house as a way of checking the power of the Legislative Assembly's majority remains to be seen. As in Sweden (in the late 1960s) and New Zealand (in the last decade) the issue of a second house and electoral reform were linked, with the introduction of a changed voting system obviating the need for a new second chamber, the chamber's old majority being broken up by the new voting system.

Redress of Grievances

Ombudsman

Queensland has had an Ombudsman in the UK model since the introduction of the Parliamentary Commissioner Act 1974. An interesting and recent development in respect of that office is the LCARC's receipt of complaints about the Ombudsman's office itself, leading it to use its powers under the Act to establish a standing policy for dealing with complaints against the Ombudsman. In setting up the policy the LCARC made clear that it may not investigate individual complaints but it can make investigations about general administrative practices.

Other Protections Against the Abuse of Power

Special Commissions of Inquiry

Queensland was rocked in the 1980s with revelations of corruption in the State's police force, reaching the Police Commissioner and a number of conservative cabinet ministers. The Criminal Justice Commission was set up and its inquiries eventually lead to the jailing of a Police Commissioner and four National Party Cabinet Ministers. The Commission is overseen by the Parliamentary Criminal Justice Committee. The Committee and the Commission form a two tier check on corruption in Queensland.

Quebec - The Assemblée nationale

Overview

Description of the Electoral Process

Quebec, Canada's francophone Province has a population of just over 7 million. The Quebec Parliament, called the Assemblée nationale dates back 206 years and is made up of 125 members elected on first past the post basis from individual constituencies.

Political Composition of the Parliament

The first past the post system has led to a predominantly two party system, with single party governments for long periods of time. There have been occasional break-throughs by third parties. The current government is the separatist orientated Parti Québécois.

Term of the Assemblée nationale, its Powers and Procedures

The maximum period between elections is five years, with elections commonly being held anywhere in the fourth year. The Assemblée must sit every year. Being based originally on the Westminster system, the Assemblée is responsible for passing bills which then go to the Lieutenant-Governor for assent. The Assemblée is chaired by a President, elected at the first session after an election. The Assemblée contains a number of Standing Committees through which bills pass for detailed scrutiny.

Relationship of the Executive to the Assemblée

The leader of the majority party in the Assemblée forms the government and is the Premier. The Premier has the task of appointing the other ministers, all of whom sit in the Assemblée (although it is possible for them not to do so).

Number of Chambers

Until 1968 the Quebec Parliament also included an upper house called the Legislative Council. The Legislative Council, except for an 11 year period in the middle of last century was made up of members appointed by the Crown. At abolition in 1968 the lower house was renamed the Assemblée nationale. The upper house was viewed as a redundant overhang of patronage and lacking in democratic legitimacy.

Design of the Structure and Operation of the Remaining Chamber after moving to Unicameralism

As in New Zealand and Queensland there was no major consequential constitutional reform with the move to unicameralism. While there has been some pressure to move to a

proportional voting system this has not led to any change yet. Significant structural reform was carried out to the Parliament's procedures and in particular the committee system in 1984.

Checks on the Assemblée nationale

Passage of Legislation

Jurists

The Quebec legislative scheme, although not rigid, usually provides for a range of pre-legislative checks on the content of legislation. Typically this begins with the Jurists who take proposals for legislation from Ministers and carry out comparative studies of similar legislation in other jurisdictions. They then begin to compile the contents of a bill and analyse the effect of the new legislation in conjunction with other government services. The Jurists then prepare a draft bill which is released for consultation. Once the bill has been approved by the Executive Council, the Legislation Committee, which is a committee of the Cabinet, analyses the bill, also checking that it is consistent with other Quebec laws.

Since 1978 the Jurists have also had a general ongoing task of reviewing legislation and regulations.

Committees

Committees average between 10 and 15 in membership. There are currently ten sectoral committees. Membership reflects the party composition in the house. Committees scrutinise bills in detail and any member of the Committee may suggest amendments. In certain instances the Committees can hear evidence from the public. The committee's work is then reported to the Chamber.

Since 1984 Committees have had the power, with the consent of a majority of their membership, to examine a particular issue on their own initiative. This may be a draft regulation, the workings of a public agency, financial commitments or a matter of public interest.

Scrutiny of the Executive

Questions

The Assemblée's standing orders provide for questions to Ministers. There has also been since 1978 a system known as interpellation which allows the Opposition to initiate a debate on a subject of its choice in a Committee of the Whole on Friday mornings.

Auditor-General

The Auditor General conducts annual reviews of the government's accounts. The office is also authorised to carry out reviews of the efficiency, effectiveness and economy of government activities.

Defence of the Constitution and Human Rights

The Federal Constitution and Charter of Rights and Freedoms

Canada has had a federal form of government since 1867. The country is now made up of ten Provinces and two Territories. It operates under the 1982 Constitution, which is a patriated consolidation of the various British North America Acts 1867-1975 and the Canadian Charter of Rights and Freedoms. It has a federal parliament of two houses, an elected (on a constituency first past the post basis, on average every four years) House of Commons and an appointed Senate. Senators are appointed on a regional basis by the Prime Minister. Although the Senate has *prima facie* almost the same power as the House of Commons, it is not regarded as a real hindrance to the government which is made up from the majority in the House of Commons.

The powers of the Assemblée are limited by the allocation of powers in the Constitution of Canada. The Canadian Provinces can amend some provisions of their provincial Constitutions but they cannot touch the office of Lieutenant Governor, restrict the franchise or qualifications of their parliaments, nor extend their lives. They are also constrained by the provisions of the Canadian Charter of Rights and Freedoms, which is a part of the Federal Constitution, and which itself cannot be amended by any one Province acting alone.

A corollary of the federal system and its constitutional division of legislative competencies is that Acts of legislative bodies within the system are open to challenge judicially on the grounds that they are *ultra vires* the parliament concerned. As noted with respect to Australia the levels

of government tend to act as a watchdog on each other, each ready to protect its own territory of legislative competency.

The final arbiter of disputes between the government is now the Supreme Court of Canada, which is the final court of appeal from both Provincial and Federal courts.

Redress of Grievances

Ombudsman

The Ombudsman has jurisdiction to hear citizens' complaints about maladministration. He or she is appointed by the Parliament and can be dismissed on a two thirds vote.

British Columbia - The Legislative Assembly

Overview

Description of the Electoral Process

British Columbia, a Province of Canada with a population of about four million has a Legislative Assembly of 75 members, elected on a first past the post basis from 75 constituencies.

Political Composition of the Parliament

The Legislative Assembly, until the last decade or so was dominated by one party or another for significant periods of time.

Term of the House of Representatives, its Powers and Procedures

The Legislative Assembly's maximum term is five years. Subject to the Constitution Act 1982 (Commonwealth) the Assembly has full legislative power, including the ability to amend the Province's Constitution, with the exception of the office of the Lieutenant Governor.

Relationship of the Executive to the Legislative Assembly

The government consists of the Premier and various ministers. The majority party in the Assembly forms the government, with the leader becoming the Premier and appointing other ministers.

Checks on the Legislative Assembly

Passage of Legislation

Initiative

British Columbia passed the Recall and Initiative Act in 1996. The Act allows voters to propose either new laws or amendments to current ones. Any registered voter can set the process in motion. A deposit fee is required and the proposer's draft bill must be approved by the Chief Electoral Officer prior to signatures in support of the measure being sought. If approval is given and 10% of registered voters sign the petition in favour of the measure, then the measure goes to the Select Standing Committee on Legislative Initiatives. The measure is then either adopted as an ordinary bill, following the usual legislative procedure, or, if not adopted put to referendum. If more than 50% of the total number of registered electors in the Province vote in favour and more than 50% of the total number of registered voters in each of at least 2/3rd of the Province's electoral districts vote in favour then the government must implement the measure legislatively as soon as possible. Experience in New Zealand with the Citizens Initiated Referenda Act shows that when this novel form of legislating is introduced into a system which has not previously had such a law, it will be used by voters.

Committees

In the last ten years the Committee system has been resuscitated in British Columbia, with subject area committees being established with investigative powers.

Scrutiny of the Executive

Auditor

The office of the Auditor General audits most of government, including the ministries, crown corporations and other organisations. The Office makes public reports to the Legislative Assembly.

The audit role is framed widely, and has four main goals:

1. contributing to an effective accountability relationship between government and the Legislative Assembly
2. assessing whether the accountability information provided by the government to the Legislative Assembly and public is fair and reasonable
3. assessing and providing advice on government performance
4. ensuring the office itself is an effective organisation.

Recall

This procedure is set out in the Recall and Initiative Act 1996. Broadly the Act allows for British Columbian voters to petition for the removal of a member of the Legislative Assembly between elections. A recall petition can not be made in the first 18 months after an election. If approval is given by the Chief Electoral Officer to go ahead with the recall process the proponent has sixty days within which to collect 40% of the signatures of the voters registered in the member's electoral district at the last election and who are still electors in British Columbia. If after a verification process it is confirmed that the requisite number of signatures has been collected then the member ceases to hold office and a by-election must be called within 90 days. The recalled member may stand in that election.

Defence of the Constitution and Human Rights

See the discussion above in relation to Quebec concerning the Canadian federal system and the Canadian Charter of Rights and Freedoms.

Redress of Grievances

Ombudsman

The Ombudsman was introduced to British Columbia in 1979. The office deals with complaints about the practices and services of public bodies. He or she is an officer of the Provincial legislature, independent from government and files an annual report with the legislature. The Ombudsman makes investigations and has the authority to recommend changes in anything from administrative practise to regulations or legislation.

Other Protections Against the Abuse of Power

Federal System of Government

See the discussion of the Canadian federal system above in relation to Quebec.

THREE - CHECKS ON UNICAMERAL PARLIAMENTS

This section summarises the range of mechanisms identified in the six jurisdictions which regulate the power of unicameral parliaments and the executives drawn from them. The countries with the check are indicated in brackets after each heading. The checks fall into three categories:

1. Constitutional Framework.

This category covers the major aspects of constitutional design which place checks on the powers of the branches of government, such as a federal or quasi-federal system, or an entrenched constitution.

2. Parliamentary Design and Procedure

This category covers the design and procedures of the Parliament, such as the provision of committees for scrutiny of legislation.

3. External Checks.

This category includes the range of other factors which play a role in keeping parliament and the executive honest and accountable. They range from the office of the Ombudsman through to the existence of an effective media and informed public debate.

1 - Constitutional Framework

Proportional Representation (Sweden, Denmark, New Zealand)

A proportional representation system has three beneficial aspects which enhance the checks on a unicameral parliament:

1. The list allows for a wider spread of candidates.

A proportional representation system which uses a list to distribute seats to ensure proportionality also allows the possibility of putting up candidates who are not interested in campaigning for a constituency and who otherwise might not stand for election. One of the alleged strengths of an appointed upper house is the ability to appoint people to the legislature who would not stand for election. The list arrangement has the potential to emulate this aspect. The quality of this check is highly sensitive to the rules for the drawing up of lists, the approach of the parties to the system, and how in particular the minority parties select list candidates, given that they are the most likely list candidates to be elected.

2. Tends to Produce Coalition Governments.

The tendency of proportional representation systems to produce coalition governments is not a certainty. However, the current political spread in Scotland suggests that the Scottish Parliament is unlikely to be dominated by a single majority party, with the consequential need for either a formal coalition or a minority government supported by another party or parties. The lack of an overall majority is a factor which should help to increase the importance of the Parliament in the system of government, enhancing its ability to provide a meaningful check on the Executive, both in passing legislation generally and in scrutiny of government measures in committee.

In terms of a check on the power of the parliament itself, an electoral system which tends to avoid the parliament being captured by a majority, also means that the powers of the parliament are constrained by the fact that no one party can act unilaterally in abuse of its powers.

The utility of a proportional representation system as a check on the powers of the parliament and the executive is heavily dependent on the behaviour of the parties themselves. Proportional representation can produce coalition governments of significant stability, as in Germany and Italy. The post-war history of Italy shows that these can lead to as much abuse and corruption as long lasting one party government. An electoral system on its own cannot necessarily curb abuse; it must always be assessed in terms of the political practices and culture of the jurisdiction.

3. Increased democratic legitimacy.

Regardless of whether proportional representation produces a majority in the parliament or not, it still has the advantage of providing democratic legitimacy to the parliament by ensuring that the distribution of seats in the parliament more accurately reflects voters' preferences. Maintenance of democratic legitimacy is important as it helps support a culture of confidence in the parliament, which can be eroded when large portions of the electorate feel disenfranchised.

Number of Members (Sweden, Denmark, New Zealand, Quebec)

From a logistical point of view a larger Parliament allows for a better functioning committee system. It ensures that there are sufficient parliamentarians to staff committees and that members do not have to divide their time between a range of committees. A larger chamber is

in this respect a way of compensating for the members lost by the absence of a second chamber.

Defence of the Constitution and Human Rights

Protection of basic human rights and constitutional provisions falls into two broad categories:

1. Protection of the Functional Elements of a Democratic System.

The functional elements of representative democracy range from basic elements of the system, e.g. the requirement for regular elections, to associated aspects, such as freedom of political communication and access to accurate information about the performance of government. These are important human rights which help to underpin the working of democracy. Sweden has entrenched key functional elements of the democratic system, for instance, it has had specially protected freedom of the press legislation for close to two hundred years.

2. Protection of Substantive Human Rights.

This category covers such rights as the right to a fair trial or the right to privacy i.e. rights which have a direct impact on individuals, not rights which are directly connected to the workings of the democratic system.

The balance between politically oriented and judicially oriented methods for protection of these two categories of constitutional provisions varies across jurisdictions. Broadly the protections also fall into two categories:

1. Politically Orientated (All jurisdictions)

This method is identified with countries, such as Sweden and the United Kingdom which traditionally have sought to protect human rights through the operation of the democratic system. The methods may vary, but tend to involve such things as pre-legislative scrutiny of legislation to avoid bills contrary to constitutional principle being passed. Where incompatibility is found subsequently in a court case these typically stop short of allowing the Court to overturn the legislation on constitutional grounds. The fast track legislation process in the UK Human Rights Bill 1998, set in process by a declaration of incompatibility, is a recent hybrid example of this method.

2. Judicially Orientated (All jurisdictions)

Judicially orientated methods principally involve the courts having the power to strike down legislation that they find breaches constitutional provisions. Swedish courts have started to develop this procedure. United Kingdom legislation will be subject to the half way house of declarations of incompatibility under the Human Rights Act. But Scottish legislation which

breaches a provision of the Scotland Bill 1998 (effectively Scotland's Constitution) or the European Convention on Human Rights, will be liable to be struck down.

- The number of members a unicameral parliament has has a bearing on its ability to function well as a legislature. The Scottish Parliament's 129 members should allow for an appropriate range of permanent committees.

Special Commissions of Inquiry (All jurisdictions)

A general power in parliaments to set up independent commissions of inquiry has been significant in some jurisdictions, the notable case being Queensland where an inquiry led to the jailing of a Police Commissioner and four State cabinet Ministers, and brought to an end a prolonged period of one party rule.

Recall (British Columbia)

This procedure which allows voters to dismiss a member of parliament between elections is a potentially potent check on parliament in so far as it increases the accountability of individual parliamentarians to the electorate.

Initiative (British Columbia, New Zealand)

This measure allows citizens some input into the legislative agenda, either to propose new measures or overturn old ones. It may be limited to certain types of legislation, for instance excluding financial bills, and may provide for binding or non-binding referenda.

Constitutional Arrangements Unique to the Jurisdictions History (All jurisdictions)

The Treaty of Waitangi/Te Tiriti o Waitangi in New Zealand, or the case law concerning indigenous title in Australia are examples of arrangements unique to the jurisdiction's constitutional history. They are important within their jurisdiction because they constitute basic elements of the constitutional order. Due to their historical nature they may also have a valence which even if they are not strictly enforceable (as in the case of the Treaty of Waitangi in certain instances) can have significant political effect in terms of constraining the powers of the jurisdictions' parliament and executive. In some cases the constraint can also turn out to have hard legal consequences as the Queensland government found in respect of the *Mabo* case.

Distinction Between Legislature and Executive (All jurisdictions)

All the jurisdictions surveyed draw the members of their executives from their parliament. This has an impact on the dynamic of the separation of executive and legislative power. One jurisdiction, Sweden, achieves a slightly sharper distinction between legislature and executive

by drawing the ministry from the Riksdag, but once selected, replacing the ministers as voting members with substitute members. The Scottish Parliament will also have a novel input in the make-up of the Scottish Ministry, in that the First Minister must obtain the Parliament's approval of his or her Ministry before it is confirmed.

Federal Constitutions and Quasi-Federal Arrangements (Queensland, Quebec, British Columbia)

A federal system itself places checks on the parliaments which operate within it. These include checks inherent in the federal arrangement: i.e. the allocation of different powers to different levels of government; and those connected to the substance of the federal constitution, such as the Canadian Charter of Rights and Freedoms. The Scottish Parliament will be operating in a quasi-federal system, in which one guardian of the Scottish Constitution will be the Parliament at Westminster. Both types of federal system checks will apply to it: statutes it passes will be challengeable if *ultra vires* and it will also be constrained by the European Convention on Human Rights.

Second Chambers (No jurisdictions)

In two of the jurisdictions surveyed problems encountered with their unicameral parliaments have led some to suggest the re-introduction of a second house. However, both these jurisdictions, New Zealand and Queensland moved to unicameralism without any significant consequential reforms, such as a change to the voting system or an improvement in the parliamentary committee system. In New Zealand re-introduction of a second chamber was suggested by the Prime Minister as an alternative to changing to a proportional representation system. Since the change to MMP there has been no impetus for a second house. In Queensland the calls for a second house have also accompanied a range of other constitutional reforms, including the possible introduction of a bill of rights.

2 - Parliamentary Design and Procedure

Parliamentary Committees (All jurisdictions)

In all the jurisdictions surveyed the existence of a comprehensive committee system both to review legislation and initiate investigations of their own accord is a significant factor in ensuring a legislature operates well as a check on the passage of new laws and the review of current ones and government practices.

Minority Procedural Rights (Denmark, Sweden)

In both Denmark and Sweden the powers of the majority in the parliament are tempered by special procedural rights in a minority of the parliament's members. Such a scheme would be one way to maintain a check on the power of either a majority or a coalition in a parliament elected by proportional representation. Minority rights provide an effective check on both the majority in the parliament but also on the government drawn from that majority. The matters in respect of which a minority has special rights can be limited as appropriate, for example to relate only to certain types of legislation.

Provision for minority procedural rights might require an amendment to the Scotland Bill: their provision in Standing Orders might be said to amount to a derogation from the Parliament's authority as currently formulated in the Bill.

Pre-legislative Scrutiny (All jurisdictions)

Various types of pre-legislative scrutiny are used in all the jurisdictions, from the specialised Law Council in Sweden to the work of parliamentary committees. The Scotland Bill contains a number of pre-legislative safeguards and in general such arrangements are a useful factor in producing quality legislative outcomes. In some systems, such as Quebec (the Jurists) or Sweden (the Law Council) there is also ongoing scrutiny of legislation.

Parliamentary Questions (All jurisdictions)

A classic executive accountability mechanism in Westminster systems is provided by parliamentary questions or special debates. Question times allow for the querying of ministers and government members on government policy and assist the minority of the parliament in keeping a check on the majority.

Presiding Officers (Sweden in particular, but all jurisdictions to some extent)

A number of the jurisdictions give the parliament's presiding officer a role in checking the constitutionality of legislation and if necessary halting its passage. The Scottish Parliament's Presiding Officer will have some significant oversight powers in relation to checking that bills are within the Scottish Parliament's competence.

3 - External checks

Ombudsman (All jurisdictions)

This Swedish institution has now permeated the world and appears in some form in all the jurisdictions. A version of the Westminster model is required by the Scotland Bill. The office provides for accountability of government administration on an individual level. Some Ombudsmen can also launch investigations of their own initiative, which introduces a further independent voice of review.

Auditors (All jurisdictions)

Auditors now perform two useful accountability functions. First they carry out the classic financial audits but also now can carry out wider ranging reviews of the economy, efficiency and effectiveness of government programmes. As such they provide a further check on the actions of the executive and associatedly the legislature which establish the legislative framework for those programmes.

Conclusion

The parliaments which abolished their upper houses and did not at the same time carry through other reforms to introduce checks on the majority in the legislature (and the executive), notably New Zealand, and Queensland, have all in recent years had to redress this omission. This has included a range of measures such as, introduction of proportional representation, parliamentary committees and Bills of Rights. Parliaments such as Denmark and Sweden, which switched to unicameralism and introduced reforms contemporaneously have not faced such problems.

FOUR - THE SCOTTISH PARLIAMENT

This section reviews the Scotland Bill 1998 and the checks and balances it contains relating to the Scottish Parliament and the Scottish Executive. Legal and constitutional checks on the powers of a parliament and executive will always depend on the way the legal framework interrelates with the political behaviour and culture in the jurisdiction concerned. The following elements in the Scotland Bill are identified as potential checks on the powers of the Parliament and the Executive. They follow the same categorisation as in the previous chapter: 1 - Constitutional Framework, 2 - Parliament Design and Process, 3 - External Checks.

1 - Constitutional Framework

Electoral System

- The proportional representation electoral system in Scotland is likely to provide a better quality check on the power of the parliament than a first past the post system. In principle it will enhance the Parliament's democratic legitimacy because parties will be represented in proportion to their support amongst voters.
- A Parliament of 129 members is large enough for a well staffed committee system.
- The fixed four year term of the Parliament, except in exceptional circumstances, will increase the authority of the Parliament in relation to the Executive.
- Allowing the Lord Advocate and Solicitor General to sit and speak in the Parliament, without vote if they are not Members also means the Parliament will have the advantage of Scotland's senior law officers' input in its deliberations.

Quasi-Federal Relationship and Competence

- Scotland will be in a position in relation to Westminster similar to that of Queensland or Quebec in relation to their federal capitals. The major difference for Scotland is that Westminster retains ultimate sovereignty, and is the guardian of Scotland's Constitution; retaining the power to over turn any legislative act of the Scottish Parliament. In this respect Scotland is closer to the position of the Australian self governing Territories.
- The Australian Northern Territory recently experienced the reality of Canberra's ultimate legislative power when Canberra overturned by federal statute a new Northern Territory law which legalised euthanasia. The federal statute was highly unusual and the political fall out in the Territory was significant, with the conservative Chief Minister (who was against

euthanasia) decrying the passage of the federal legislation as an unwarranted intrusion in the autonomy of the Territory. The incident is an example that what may be constitutionally legitimate in legal terms may, as self governing areas became used to their legislative competence, be politically inappropriate.

- As with the Canadian Provinces or the Australian States, the Scottish Parliament has the inherent limitation of being a parliament operating within a quasi-federal framework of delineated competency. Within the system there is another government (Westminster) operating which will be watching to ensure that the devolved assembly does not encroach on matters remaining within Westminster's exclusive competence. Additionally the competence of the Scottish Parliament is limited by the European Convention on Human Rights and European Law.
- There is an intricate range of provisions to ensure that the Scottish Parliament stays within its competence. These range from pre-legislative scrutiny through to post-legislative judicial challenge.
- In terms of protection of basic constitutional provisions, such as the term of the Parliament, or the electoral system, the Scottish Parliament will simply not have the power to amend those provisions, which, along with the rest of the Scotland Act, are reserved matters, beyond the Scottish Parliament's competence.

Relationship of the Scottish Executive to the Parliament

- The Scottish Executive will be drawn from the Parliament and as in Westminster will be nominally answerable to the Parliament. Another innovation which is likely to enhance the Parliament's role as scrutineer of the Executive is that the First Minister must have the Parliament's approval of his or her choices for Ministers. Further, the Lord Advocate and Solicitor General are both to be Cabinet members, even if they are not Members of the Scottish Parliament.

2 - Parliamentary Design and Procedure

Standing Orders

- The Scottish Parliament must pass standing orders. The Scotland Bill contains a number of requirements for the Standing Orders which will provide checks on the power of the Parliament. Although a committee system is not mandated it is strongly contemplated. The standing orders provide for three main stages in consideration of bills:

1. a general debate on a bill's principles, with the opportunity to vote on the basic principles,
2. opportunity to debate and vote on the detail of bills (usually a committee stage), and
3. a final voting stage.

3 - External Checks

Audit

- There is a wide ranging audit function provided for in clause 66 of the Bill. This clause requires the Parliament to create audit machinery capable, not just for dealing with matters of financial accountability but also to consider issues of “economy, efficiency and effectiveness”. The accounts prepared and reports written in connection with the audit are then placed before the Parliament.

Ombudsman

- The Scottish Parliament is to set up an office of Ombudsman along the lines of the UK one, complete with the MP filter (clause 86).

Conclusion

The Scottish Parliament will have, in relation to the six other parliaments considered, a comprehensive range of checks on its powers. It will also have checks unique to its own constitution, such as the powers of the United Kingdom's Secretary of State for Scotland. The few extra checks which have been identified in other jurisdictions, which Scotland does not have, such as minority procedural rights, recall, or initiative, given the whole scheme of the Scotland Bill are not currently necessary.

The Bill should result in a Parliament which will serve Scotland well in the same vein as the Swedish Riksdag or the Danish Folketinget. Given the novelty of the arrangements contained in the Bill in the context of the United Kingdom's constitutional history, and the need to see how the system works in practice before making final judgements, it would be prudent to provide for two review mechanisms:

1. A Scottish Parliamentary Committee with an ongoing constitutional review function along the lines of the Swedish Committee on the Constitution, or the similar Queensland parliamentary committee, and

2. an independent review commission in Scotland meeting in five years time to consider the role of the Scottish Parliament in the evolving scheme of Scotland's and the United Kingdom's constitutional architecture.

The precise timing of the review is a matter of political judgement: the interval proposed here would initiate the review towards the beginning of the second term of the new Parliament.

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