Checks and Balances in Single Chamber Parliaments: a Comparative Study

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Introduction

Whether a parliament should have a second chamber is just

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$arliament.
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 &&ding Qders.
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.

Introduction
There will be a Scottish Parliament. It will be unicameral and have 129 members. The First Minister and

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 Colombia. 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

political composition of the parliament,
term of the parliament, its powers and procedures, relationship of the executive to the 465 Tc 5.023 lhip

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. 3 10 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 loosing 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

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

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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

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 ap3d by the Riksdag to th-31(scr.)nise -32.772 -28712 Td34(

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 form 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 Minster'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.

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

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

The abolition of

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

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 Waitangil'e 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 statues, usually in an initial purposes and principles section. Its insertion in this form in the State Owned Enterprises Act 1986 lead to the Maori Council challenging the government's transfer under that Act of large tracks 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

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

Suggested Reintroduction of a Second Chamber In 1997 the LCARC produced an

Quebec - The Assemblke 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 AssemblCe 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 QuCbCcois.

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

Relationship of the Executive to the AssemblCe
The leader of the majority party in the AssemblCe forms the government and is the Premier. The Premier has the task of appointing the other ministers, all of whom sit in the

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 AssemblCe 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

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

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.

l - 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

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

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 hnctional 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)

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 WaitangilTe 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 Rikdsdag, 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 its passes will be challengeable if ultra vires and it will also be constrained by the European Convention on Human Rights.

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

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.

l - 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,

l. 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

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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