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SPECIAL CONFERENCE ISSUE: MMP AND THE CONSTITUTION

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THE BEST OF BOTH WORLDS? MMP ELECTORAL REFORM AND CONSTITUTIONAL DEVELOPMENT IN SCOTLAND AND WALES

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This article assesses the constitutional implications of the mixed member proportional (MMP) electoral systems adopted in the Scottish Parliament and the National Assembly for Wales in the United Kingdom from 1999. It assesses the extent to which they have conformed to expectations that MMP will achieve the best of both worlds on both inter-party and intra-party dimensions of political relationships. This would suggest the achievement of both fair representation and strong government, as well as both local accountability and programmatic and national/regional representation. The first part analyses the political origins and expectations of the MMP systems. The second part assesses the implications of the systems in relation to five comparative themes: elections and party systems; government formation; parties and representation; executive-legislature relations; and public perceptions. The third part then assesses reviews of the MMP systems and subsequent approaches to reform. Overall, the article argues that the expectations for MMP have to a significant extent been accurate. However, the constraints imposed by Labour Party interests and the implicit legacies of the United Kingdom Westminster culture have also had a significant impact. To varying extents, Scotland and Wales represent cases where the expectation that MMP will achieve the best of both words in representative government and popular representation has been only partly realised.

I   INTRODUCTION

Mixed member proportional (MMP) electoral reform has now been introduced in a number of states and has become a distinctive, if still limited, trend. Mixed member systems as a whole are

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characterised by two tiers, in which seats are allocated at one tier nominally to particular constituency candidates, and at a second tier to party lists. There are many cases of such systems but on closer inspection the majority are mixed member majoritarian (MMM) systems, in which the two tier electoral system is a parallel one with no linkage between them. In contrast, in MMP systems the two tiers are linked by the fact that the party list component seeks to proportionalise the overall result by compensating for constituency results. The exact terminology to be used is open to question as in some analyses the distinction would be made between mixed member compensatory (MMC) systems and MMM systems. But Farrell, Taagapera and Shugart have all argued that the defining component of an MMP system is that "at least one-quarter of seats should be adjustment seats." This is taken to indicate that the "full reintroduction of PR is desired" and that multi-party government is more likely.[1]

Taking these criteria, the West German (and subsequently German) system, in providing for 50 per cent single member plurality (SMP) seats and 50 per cent regional list seats, has been seen as the original MMP system, used both at the federal and *länder* levels. New Zealand has held elections under an MMP system since 1996. In 2008 this was composed of 52.5 per cent SMP seats, 5.8 per cent SMP Māori seats and 41.7 per cent national list seats.[2] Other examples are the Bolivian and Venezuelan MMP electoral systems, which were introduced in the early 1990s and were closely modelled on the German case. In 1999, MMP systems were also introduced for the new devolved Scottish Parliament and the National Assembly for Wales in the United Kingdom. These varied over the ratio of constituency to list members. 73 of the 129 members of the Scottish Parliament (MSPs) are elected on an SMP basis and 56 are elected as regional list members (eight in each of seven regions). This means there is an SMP to list member ratio of 57 per cent: 43 per cent. In Wales, 40 of the 60 Assembly Members (AMs) are elected on an SMP basis, and 20 are elected as regional list members (four in each of five regions). This involves a different ratio of 67 per cent SMP members to 33 per cent list members. In both Scotland and Wales, list members are elected using the d'Hondt formula. In both cases the systems are known as additional member systems (AMS) but are quite clearly examples of MMP.

MMP has been advocated for its ability to finesse competing requirements of electoral systems; to achieve "the best of both worlds".[3] Shugart highlights two dimensions upon which MMP seeks to

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1   David M Farrell *Electoral Systems: A Comparative Introduction* (Palgrave, Basingstoke, 2001) 114-115; and Rein Taagapera & Matthew Soberg Shugart *Seats and Votes: The Effects and Determinants of Electoral Systems* (Yale University Press, New Haven, 1989) 131.

2   Ryan Malone *Rebalancing the Constitution: The Challenges of Government Law-Making under MMP* (Institute of Policy Studies, Wellington, 2008).

3   Matthew Soberg Shugart " 'Extreme' Electoral Systems and the Appeal of the Mixed-Member Alternative" in Matthew Soberg Shugart and Martin P Wattenberg (eds) *Mixed Member Electoral Systems: The Best of Both Worlds?* (Oxford University Press, Oxford, 2001) 25.

achieve the best of both worlds: the inter-party dimension and the intra-party dimension. The inter-party dimension focuses on the way in which MMP systems, in bringing greater proportionality to the result than SMP systems, may change the party system, change relations between parties and lead to a move from the orthodoxy of single party governments to that of coalitions. On this dimension, the best of both worlds involves the construction of governments that are more representative of electoral opinion because of greater proportionality in representation, but are still strong because in the changed party system effective coalition blocs and options emerge. The intra-party dimension focuses on the way in which MMP systems, in returning both single member constituency representatives and regional or national party list representatives, may lead to more diverse forms of party representation. The best of both worlds here involves the retention of local constituency accountability whilst also achieving forms of regional, national and/or programmatic representation.

The aim of this article is to assess the implications of MMP electoral systems for constitutional development in the devolved government of Scotland and Wales. Recently, there has been a growth in academic research of electoral reform and constitutional development in the United Kingdom. Yet, three features of the literature are evident. First, analysis of the implications of MMP in Scotland and Wales that is primarily focused at the devolved level and that compares the cases is relatively rare.[4] Secondly, the literature is instead dominated by a well-established focus on the United Kingdom Westminster Parliament regarding the problems of the SMP system and the possibilities of reform at the national, rather than devolved level.[5] Finally, studies drawing on the experience of MMP in Scotland and Wales for debates about Westminster reform have also tended to focus on proportionality and representation, but relatively less on other issues of constitutional significance.[6] Consequently, this article seeks to fill a gap by providing a comparative analysis of the Scottish and Welsh MMP systems which addresses the full range of research questions these cases raise.

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[4] See for example Dan Hough and Charlie Jeffery (eds) *Devolution and Electoral Politics* (Manchester University Press, Manchester, 2006) and Jonathan Bradbury (ed) C*onstituency Representation, Devolution and MMP Electoral Systems: Comparative and UK Perspectives* (special issue) in (2007) 17 Regional and Federal Studies.

[5] Vernon Bogdanor *The People and the Party System: The Referendum and Electoral Reform in British Politics* (Cambridge University Press, Cambridge, 1981) and Paul Mitchell "The United Kingdom: Plurality Rule under Siege" in Michael Gallagher and Paul Mitchell (eds) *The Politics of Electoral Systems* (Oxford, Oxford University Press, 2005).

[6] See for example Patrick Dunleavy and Helen Margetts "Mixed Electoral Systems in Britain and the Jenkins Commission on Electoral Reform" (1999) 1 British Journal of Politics and International Relations 12 and Patrick Dunleavy and Helen Margetts "The Impact of UK Electoral Systems" (2005) 58 Parliamentary Affairs 854.

The article is in three parts. The first part explores the reform debates that led to the introduction of MMP systems in Scotland and Wales and assesses the expectations that accompanied them. This clarifies the mix of idealistic and party interest factors that ensured introduction at all. It also explains, however, that the political parties had a limited vision for seeking the best of both worlds from MMP reform. While generally the Scottish parties embraced change, in both Wales and Scotland the influence of Labour Party and more generally "old world" Westminster assumptions about how both inter-party and intra-party dimensions would operate under MMP were strong. The second part then considers the operation of the MMP systems in Scotland and Wales in practice. It assesses the implications of the systems in relation to five comparative themes: election and party systems; government formation; parties and representation; executive–legislature relations; and public perceptions. This assessment clarifies the significant constitutional changes that have resulted from the use of MMP, which were more than the Labour Party envisaged. However, it also suggests that the implications have been greater in Scotland than in Wales, and in both cases Labour Party interests and the shared inheritance of Westminster practice have significantly shaped experience. The third part considers the policy reviews of MMP that have already occurred in Scotland and Wales. This argues that further development of the MMP systems in Scotland and Wales, ultimately determined by the United Kingdom Labour Government, has been characterised either by incrementalism or indeed inaction, with resulting protests from parties other than Labour. Meanwhile, Labour's adverse reaction to the changes that have occurred has meant the party has hardened its reluctance to extend MMP reform to the United Kingdom level. The conclusion reviews the significant distinctiveness of inter-party and intra-party relations in Scotland and Wales under MMP compared to those seen under the United Kingdom SMP electoral system. Nevertheless, it highlights Scotland and Wales as examples of only partial development towards any theorised expectation of the "best of both worlds", on account of constraints imposed by a dominant party – namely Labour – and the continuing influence of implicit "old world" Westminster assumptions about how party government and representation should be conducted.

II   UK POLITICS, DEVOLUTION AND EXPECTATIONS OF MMP IN SCOTLAND AND WALES

The new, devolved institutions established in Scotland and Wales under the Scotland Act 1998 (UK) and the Government of Wales Act 1998 (UK) had significant powers. The Scottish Parliament became the body responsible for all primary legislative powers except those explicitly reserved for Westminster. In practice this represented legislative and executive autonomy across a wide range of domestic policy areas. The National Assembly for Wales received a different form of devolution: primary legislative powers remained with the Westminster Parliament, while the Assembly received secondary legislative and executive powers. Again, though, this covered a wide range of domestic policy areas and in practice could entail significant policy-making power. Later, the Government of Wales Act 2006 (UK) also enabled the Assembly to develop law-making powers on an incremental basis. Both the Scottish Parliament and the Welsh Assembly are funded by block grant from Westminster. They represent a major change in the United Kingdom's constitutional arrangements

and were the result of a complex set of pressures, including the re-awakening of Scottish and Welsh national identities amidst British imperial decline and the more recent adverse responses to the territorial effects of state reforms conducted under the Conservative Governments from 1979-1997.

Perhaps it is not surprising that the creation of new political institutions in such circumstances brings with it an interest in devising innovative approaches to how politics will be conducted. Specifically, it offers a special opportunity to innovate in electoral systems, free of the constraints of established practice. This proved to be the case with the advent of devolution in Scotland and Wales, but the pressures that determined the selection of MMP electoral systems were complex and the expectations that accompanied them were predominantly shaped by the Labour Party, as the party in government after 1997 that introduced devolution. Given this background, consideration of the origins of reform actually needs to start by considering electoral system politics at the United Kingdom level during the 1980s and 1990s.

The development of the British political tradition generally sustained a principled case for the advantages of an unwritten constitution and strong, single-party parliamentary government. In this context, an SMP electoral system was used for its ability to deliver clear parliamentary majorities under which parties could exercise effective power. It also served party interests, with "established politicians attempting to protect their positions by means of seat redistributions and/or attempts to alter the voting rules".[7] During the crucial debates at the end of the First World War, the Conservative Party opted to continue with SMP even under a universal franchise, because it believed it could continue to win elections outright; and both the Labour and Liberal parties supported it because both believed that they would benefit from disproportional representation. The Liberals subsequently supported proportional representation, but for the bulk of the 20th century the Conservatives and Labour consistently sustained the SMP system for Westminster: on an idealistic basis in part, but unquestionably also because they were both able to win elections and form single-party governments.

Since the 1970s, as the vote has fragmented, a principled defence of the SMP electoral system has been harder to maintain. In 1970 the Labour and Conservative parties between them polled 89.5 per cent of the United Kingdom vote; in 2005 they managed only 67.6 per cent. Yet Labour and the Conservatives have continued to dominate seat representation and have alternated in forming single-party governments. Westminster's Gallagher Index of Disproportionality score rose from 2.8 in 1951 to 20.6 in 1983, and was still at 16.8 in 2005. The SMP system has in effect operated like a straightjacket to keep Labour and the Conservatives in charge. As Mitchell puts it: [8]

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7   Mitchell "The United Kingdom: Plurality Rule under Siege", above n 5, 158.

8   Ibid, 167.

By imposing a very high effective threshold the SMP electoral system is protecting the dominant parliamentary positions of Labour and the Conservatives and preventing even the moderate pluralism that currently exists in the electoral-level party system from fully flourishing.

It has also led to criticism that parliamentary representation has struggled to reflect the United Kingdom's increasingly diverse socio-economic composition. Finally, it has been criticised for facilitating executive domination of the legislative programme, the overriding importance of the party whip and the marginalisation of Parliament. Public perceptions of Westminster have become increasingly critical.[9]

Accordingly, it was in the Westminster context that MMP electoral reform was first recognised as an approach that could maintain strong parliamentary government while also answering calls for fairer representation. The succession of electoral defeats under SMP that led to Conservative governments from 1979 to 1997 also created fresh incentives for the Labour Party to embrace electoral reform. Labour joined the Liberal Democrats in considering a more proportional system, and after taking office in 1997, honoured promises to set up a commission under the Liberal Democrat peer, Lord Jenkins, to consider electoral reform. Even so, Labour wished any reform to be tempered by consideration of its own party interest. The evolution of the Jenkins Report recommendations can be understood through this lens. It was guided by four criteria which were potentially contradictory but seemed to reflect the two parties' principal priorities: maintaining the constituency link and the need for stable government, which were Labour priorities; and extending voter choice and ensuring broad proportionality, favoured more by the Liberal Democrats.

Jenkins' initial attempt to finesse these competing priorities was to propose that 67 per cent of seats be elected on the Alternative Vote (AV) basis and 33 per cent elected as top-up list seats, but this went too far in the direction of proportionality for Labour's interests. Hence, the Jenkins Report ultimately proposed that the Westminster Parliament move from a 100 per cent SMP system to one based on 80-85 per cent single member seats, albeit now elected by the majority AV method, and 15-20 per cent regional list seats.[10] This came to be known as AV-plus. This was a compromise that would routinely curb excessive majorities for single-party governments, with the Liberal Democrats as the principal beneficiary, but still made possible the Labour Party's desired prospect of single-party government. If such an electoral system had been introduced it would actually have failed to meet Farrell, Taagapera and Shugart's required threshold of 25 per cent list seats to be called an

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9   Nicholas Baldwin (ed) *Parliament in the 21st Century* (Politico's Press, London, 2005); Patrick Dunleavy "Facing Up to Multi-Party Politics: How Partisan Dealignment and PR Voting Have Fundamentally Changed Britan's Party Systems" (2005) 58 Parliamentary Affairs 503; and Matthew Flinders "Majority Democracy in Britain: New Labour and the Constitution" (2005) 28 West European Politics 62.

10   Independent Commission on the Voting System *Report of the Independent Commission on the Voting System* [the Jenkins Report] (Stationary Office, London, 1998)

MMP system. The recipe would have allowed for possible coalition governments only when the parties were actually very close, as in 1992.[11]

In practice, post-1997 euphoria at the size of its majority was such that the Labour Government resisted even this advantageous compromise and electoral reform was abandoned. Nevertheless, as devolution was being established for Scotland and Wales, the critique of the SMP system at Westminster and the debate about electoral reform still had a powerful influence on approaches to the electoral systems to be used for the new institutions. Indeed, the effects of the Westminster SMP system had been even more disproportionate in Scotland and Wales, leaving them as Labour Party fiefdoms, with Wales in particular betraying the hallmarks of a one-partyist political culture. By 1997, there was no Conservative United Kingdom Parliament representation in either Scotland or Wales, despite the party gaining between 15 and 20 per cent of the vote across the two countries. The Liberal Democrats and nationalist parties – the Scottish National Party (SNP) and Plaid Cymru – also experienced proportional under-representation. In introducing devolution in both Scotland and Wales even Labour at the United Kingdom level recognised the problems for legitimacy if an SMP system were used.

The decision to use MMP also emerged from specifically Scottish and Welsh debates about what were the best electoral systems for Scotland and Wales.[12] But again it is important to recognise that the pressure for reform and the expectations that would accompany MMP arose from a mix of both idealist and party interest motives. On the one hand, devolution was accompanied by debates about new politics in which campaigners from across the parties, including Labour, looked forward to changes in relations both between and within the parties. In Scotland, this was crystallised as a relatively commonly shared cross-party cause in the Scottish Constitutional Convention. In Wales there was a rather more fragmented political debate. Ideas of new politics included the greater prospect of government formation not on the single-party majority government model assumed at the United Kingdom level. In Scotland, the relatively high proportion of list seats meant that expectations of coalition government were very high. There was also much talk of new types of representatives, although this focused principally on aspirations for more female representation. Earlier in the 1990s, there had been some internal party reforms of candidate selection procedures for contesting Westminster seats and by 1997, 18 per cent of MPs were women. It was believed that the parties in Scotland and Wales would use the opportunity of devolution to accelerate the process of moving beyond the stereotype of the elected representative being white, male, middle-class and middle-aged. Equally, there were hopes that executive–legislature relations would be different from

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11   Mitchell "The United Kingom: Plurality Rule under Siege", above n 5 and Dunleavy and Margetts "Mixed Electoral Systems in Britain and the Jenkins Commission on Electoral Reform", above n 6.

12   Jonathan Bradbury "The Blair Government's White Papers on British Devolution: A Review of *Scotland's Parliament* and *A Voice for Wales*" (1997) 7 Regional and Federal Studies 115 and Paul Mitchell "The United Kingdom: Plurality Rule under Siege" in Gallagher and Mitchell, above n 5, 157.

those in Westminster. Specifically, it was believed that electoral reform would usher in a different kind of politics, requiring parties to work less by the Westminster adversarial model and more by European collaborative models.[13]

On the other hand, there were also a number of self-interested reasons for why MMP was viewed as an attractive option by the parties in each country. Only the Conservatives unambiguously supported the use of SMP for reasons of party tradition and policy at the United Kingdom level, despite the fact that MMP would provide them with better representation in the devolved institutions than would SMP. The Liberal Democrats, the SNP and Plaid Cymru all called for electoral reform to give them better representation. Despite the fact that other parties would gain from list seats, the Labour Party also wanted MMP instead of SMP for reasons of realpolitik. In Scotland, the imperative that led the Labour Party to embrace MMP was the fear that under an SMP system the SNP might, in time, just as easily gain a majority as the Labour Party, thus giving them the basis to press for a referendum on independence. In embracing MMP, and the probability of never being able to achieve a single-party majority, Labour in effect took the vow of coalition to ensure against an SNP majority. Hence, there were both realist and idealistic imperatives in pressing for an MMP system that would guarantee greater political pluralism. Even so, Labour expectations were that they would generally be the largest party and that a Labour–Liberal Democrat coalition was the most likely outcome from the first elections.[14]

In Wales, Labour also had party interests in introducing an element of PR to the electoral system, although these were different in nature and therefore inspired a lesser commitment to PR. First, there was the need to have the support of other parties simply to win a much tighter referendum on devolution. Secondly, Labour recognised that an assembly over-dominated by the party might make it look like a glorified one-party state which would bring the Assembly into disrepute. On the other hand, Labour did not fear Plaid Cymru in the way that Labour did the SNP. Hence, Labour in Wales ultimately also embraced MMP but not in a way that would inevitably hamper its ability to win a majority. The fact that only 33 per cent were top-up list seats meant that results were likely to be less proportionate. Labour expected that while the system would guarantee a sizeable number of opposition members, it could still gain a majority on the basis of dominating constituency seats.[15]

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13   Bradbury "The Blair Government's White Papers on British Devolution: A Review of *Scotland's Parliament* and *A Voice for Wales*", above n 12.

14   Scottish Constitutional Convention, *Scotland's Parliament, Scotland's Right (Report to the People of Scotland)* (Convention of Scottish Local Authorities, Edinburgh, 1995) and Alice Brown "Designing the New Scottish Parliament" (2000) 53 Parliamentary Affairs 542.

15   J Barry Jones "Post-Referendum Politics" in J Barry Jones and Denis Balsom *The Road to the National Assembly for Wales* (University of Wales Press, Cardiff, 2000) 194 and National Assembly Advisory Group *Final Report* (Welsh Office, Cardiff, 1998)

Overall, it was expected that the introduction of MMP in Scotland and Wales would result in political and constitutional change. Given the greater commitment to MMP and political pluralism, these expectations were higher in Scotland than in Wales. At the same time, though, aspirations for new politics were combined with imperatives for reform founded on party interest. The specific influence of the Labour Party on the design of the MMP systems, as the party in office at the United Kingdom level, led to expectations that they would in practice operate in a way constrained by Labour Party interests. Labour expected a Labour–Liberal Democrat alliance to be the main coalition option in Scotland and expected to form the government alone in Wales; it did not envisage in either case a new party system of competing coalition blocs and clear multiple coalition options. Nor did Labour expect the advent of regional list members to change the nature of party representation. To a large extent this was because Labour expected to dominate constituency representation and therefore have very few regional list members in either Scotland or Wales. Regional list members were simply there to give opposition parties representation; beyond that their roles inspired little thought.

At the time, it was also recognised that the expectation of new politics could be seen principally as a rhetorical strategy for the initial promotion of devolution and not as representing a set of coherently thought-out new principles for conducting representative democracy. In this context it was likely that the parties would, more broadly, still be influenced by their experiences of working within an SMP system at Westminster. Despite the potential for change there were still assumptions among all the parties that good government was associated with strong decisive party government and high levels of internal party cohesion and that representation was closely identified with representing constituents.[16] The potential legacy of a Westminster political culture would be all the greater for Westminster not being reformed at the same time. Any aspirations to achieve the best of both worlds on both inter-party and intra-party dimensions of constitutional development were likely to remain heavily constrained by "old world" party interests and political cultural assumptions associated with the experience of the Westminster SMP system.

III   THE EXPERIENCE OF MMP IN SCOTLAND AND WALES SINCE 1999

In practice, the implications of MMP electoral systems for constitutional development in the Scottish Parliament and the National Assembly for Wales have been significant. Nevertheless, the impact of party concerns and the legacy of Westminster political culture has indeed remained strong. This part looks, in turn, at the experience of Scotland and Wales in two key elements of the inter-party dimension of constitutional development under MMP: first, elections and party systems and secondly, executive formation. It then looks at the key element of the intra-party dimension of constitutional development; namely, parties and representation. Fourthly, it looks at executive–

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16   James Mitchell "New Parliament, New Politics in Scotland" (2000) 53 Parliamentary Affairs 605 and Jonathan Bradbury and James Mitchell "Devolution: New Politics for Old?" (2001) 54 Parliamentary Affairs 257.

legislature relations where the cumulative changes of inter-party and intra-party relations can be seen. Finally, this part examines public perceptions of MMP in Scotland and Wales.

A   Elections and Party Systems

There have been three sets of elections, held at the same time in the Scottish Parliament and the National Assembly for Wales: first in May 1999 and then at the end of four-year fixed terms in 2003 and 2007. Tables 1 and 2 bear out the ambition that there should be some progress towards greater predictability in the relationship between votes cast and seats won across each country, because of the use of compensatory list seats. Over the course of the 1999 and 2003 elections, under the Gallagher least squares Index of Disproportionality, Scotland scored 7.4 and Wales 10.4. In 2007 the Scottish Parliament elections scored 6.52 and the National Assembly for Wales 11.39.[17] Such scores are considerably lower than the disproportionality score for the United Kingdom Parliament.

Nevertheless, such levels of disproportionality are still relatively high compared to other systems containing a proportional element. This is mainly because the number of higher tier seats and the district magnitude of the regional higher tier seats are too low, in both countries, to compensate for the large seat bonuses achieved by Labour in the SMP constituencies. Of course, these problems have been particularly telling in Wales because not only are these two factors in play, but there are also a smaller number of seats overall in the Assembly and a smaller proportion of list seats. In both Scotland and Wales, the Labour Party has been the principal beneficiary of the weight given to SMP constituency representation and factors affecting electoral bias in representation among these constituencies. This ensured that Labour's overall representation in both countries was consistently the most disproportionate of all the major parties, but again it was more marked in Wales: in the most recent election in 2007, Labour was 6.5 per cent over-represented in Scotland and 13.7 per cent over-represented in Wales. Labour's disproportionality in representation was such that while the rise in the vote share for small parties, cumulatively summed under the heading "Others", could be reasonably reflected in representation in the Scottish Parliament, it could not in Wales.

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17   The figures for the 1999 and 2003 elections were calculated by Mitchell "The United Kingdom: Plurality Rule under Siege", above n 5, 177. The figures for 2007 were calculated by the author.

Table 1 Distribution of votes and seats in Scottish Parliament, 1999-2007

	Constituency		Regional lists		Total seats
	Vote share (per cent)	Seats won	Vote share (per cent)	Seats won	
1999					
Conservative	15.5	0	15.4	18	18
Labour	38.8	53	33.6	3	56
Liberal Democrats	14.2	12	12.4	5	17
SNP	28.7	7	27.3	28	35
Others	2.7	1	11.3	2	3
2003					
Conservative	16.6	3	15.5	15	18
Labour	34.6	46	29.3	4	50
Liberal Democrats	15.4	13	11.8	4	17
SNP	23.9	9	20.9	18	27
Others	9.6	2	22.6	15	17
2007					
Conservative	16.6	4	13.9	13	17
Labour	32.2	37	29.2	9	46
Liberal Democrats	16.2	11	11.3	5	16
SNP	32.9	21	31.0	26	47
Others	2.0	0	14.6	3	3

Table 2 Distribution of votes and seats in National Assembly for Wales, 1999-2007

	Constituency		Regional lists		Total seats
	Vote share (per cent)	Seats won	Vote share (per cent)	Seats won	
1999					
Conservative	15.9	1	16.5	8	9
Labour	37.6	27	35.5	1	28
Liberal Democrats	13.5	3	12.5	3	6
Plaid Cymru	28.4	9	30.5	8	17
Others	4.7	0	5.1	0	0
2003					
Conservative	19.9	1	19.2	10	11
Labour	40.0	30	36.6	0	30
Liberal Democrats	14.1	3	12.7	3	6
Plaid Cymru	21.2	5	19.7	7	12
Others	4.8	1	11.8	0	1
2007					
Conservative	22.4	5	21.5	7	12
Labour	32.2	24	29.6	2	26
Liberal Democrats	14.8	3	11.7	3	6
Plaid Cymru	22.4	7	21.0	8	15
Others	8.3	1	16.2	0	1

When one turns to the effect of the MMP systems on the party systems, the implications of generally fairer party representation can still be seen in the emergence of party systems quite distinct from the Conservative–Labour dominated system at Westminster and from the relatively unchallenged hegemony that Labour enjoyed in Scotland and Wales in the context of Westminster

elections prior to devolution. The change though has been more marked in Scotland than in Wales. In Scotland there has been substantial change at each election. The 1999 election saw a growth in the party system, with Labour unable to achieve a majority and the SNP emerging as the second largest party clearly ahead of the Conservatives and the Liberal Democrats. In 2003 further party system growth was such that the Scottish Parliament was dubbed the rainbow Parliament, as 17 of the seats were won by small parties (the Scottish Socialist Party and the Green Party) or independents. At the 2007 elections the party system shrank as the SNP became the largest party, having consolidated a large part of the support that in 2003 went to the small parties. This means that party system change is rather less marked by multi-partyism than in 2003, but there is still a significant departure from pre-1999 Labour Party dominance. The Scottish Parliament now has a multi-party system, but one marked by two parties being pre-eminent, the SNP and Labour. In 2007 they were very close in terms of vote share and seats and between them received 65.1 per cent of the constituency vote. Government has to be formed on a minority or coalition basis but these two parties currently provide the poles of power.[18]

In Wales, the vote share over the course of the three elections has become more markedly fragmented between the three main British-wide parties and Plaid Cymru. By 2007 it was clearly a multi-party system. Labour had failed to win a clear Assembly majority and was unlikely to do so in the future. Both the Conservatives and Plaid Cymru have developed and consolidated their vote share to guarantee that they each garner between 20 per cent and 25 per cent of the seats at each election. Even so, after the 2007 elections, because of the higher proportion of SMP constituency seats, Labour still retained 26 out of 60 seats despite getting less than a third of either the constituency or list vote. This has meant that in contrast to Scotland, the party system is still influenced by the legacy of Labour one-partyism; in Wales only Labour can offer itself as a single pole around which a potentially effective minority or two-party coalition government can be established.[19] This may change. It is possible that with further electoral decline the disproportionate representation Labour has continued to enjoy may disappear sooner rather than later. For the time being, however, the break from Labour Party dominance is less marked in Wales, prevented in part by the fact that the milder form of MMP in Wales operates in somewhat similar fashion to SMP at Westminster, as a straightjacket on the fuller flourishing of political pluralism.

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18   John Curtice "Proportional Representation in Scotland: Public Reaction and Voter Behaviour" (2004) 40 Representation 329; Catherine Bromley "Devolution and Electoral Politics in Scotland" in Hough and Jeffery, above n 4, 192; and Neil McGarvey "Devolution in Scotland: Change and Continuity" in Jonathan Bradbury (ed) *Devolution, Regionalism and Regional Development: The UK Experience* (Routledge, London, 2008) 25.

19   Richard Wyn Jones and Roger Scully "Devolution and Electoral Politics in Scotland and Wales" (2006) 36 Publius 115 and Jonathan Bradbury "Devolution in Wales: An Unfolding Process" in Bradbury, above n 18, 45.

Overall, therefore, MMP electoral systems in Scotland and Wales have in part worked to the idealistic expectations of their framers. They have produced fairer party representation than may have been expected under SMP. They have also allowed the development of party systems that better reflect the moderate pluralism that has generally developed in British politics than does the SMP system at Westminster. Indeed, the early experience of MMP has suggested the potential for the new systems to engender quicker and greater change than might have been expected. Notably, the possibility of an SNP surge in popularity came perhaps sooner than was expected; equally, in Wales the PR element of the system and Labour's unexpected decline in its constituency vote meant that Labour's expected majority proved elusive.

Nevertheless, these trends have been clearer in Scotland than in Wales, reflecting the greater commitment to political pluralism in Scotland than in Wales in the usage of an MMP system that has a higher number of top-up list seats. In addition, while the impacts of MMP on party representation and the party systems in both Scotland and Wales have been significant, as of 2007 they had not been transformative; the dynamics of party politics still operated within a framework of adaptive change broadly envisaged or conceded by the major parties in the late 1990s. Equally, the realpolitik considerations of the Labour Party in embracing MMP have also largely been born out. In Scotland, Labour's embrace of MMP worked to prevent the SNP surge in 2007 from being turned into a working majority as it might have been under an SMP system. After 2007 the state-wide parties could collectively veto the more radical policies of an SNP minority government. In Wales, the realpolitik considerations of the Labour Party have again been effective, in so far as the MMP system has allowed Labour to be the largest party on a disproportionately high share of the vote.

B   Executive Formation

Electoral outcomes from MMP in Scotland and Wales have also led to significant innovation in executive formation compared to previous experiences at Westminster. Two alternatives have become the orthodox expectation in both countries: majority coalition government and minority single-party government. In practice, majority coalition government has been most evident; with a Labour–Liberal Democrat coalition occurring in Scotland between 1999 and 2007 and in Wales a Labour–Liberal Democrat coalition between 2000 and 2003 and a Labour–Plaid Cymru coalition from 2007. Minority single-party government has occurred on a number of occasions in Wales, in each case under the Labour Party: in 1999-2000, in 2005-2007 and briefly again after the 2007 elections. In Scotland, minority single-party government was experienced for the first time under the SNP after 2007. To a significant extent these developments also went beyond Labour Party expectations. In Wales, executive formation on the basis of coalition and minority government had not been envisaged. The formation of an SNP minority government as early as 2007 had also not been envisaged by Labour.

At the same time, these new approaches to executive formation were accompanied by clear commitments to stability and coherent government. When majority coalitions have been established, in both Scotland and Wales they have been strongly informed by the kind of conventions

traditionally associated with United Kingdom Cabinet government. In 2007, when Labour in Wales floated the idea of pursuing a New Zealand-style confidence and supply approach to minority government, the party received short shrift from both Plaid Cymru and the Liberal Democrats; their political support would be given either as part of a formal agreement within government, therefore exchanging disciplined support for political influence, or not at all, thus retaining complete freedom to oppose. When coalitions have been formed, parties have felt bound by their manifesto pledges and post-election formal coalition agreements and by the observance thereafter of conventions of ministerial and collective responsibility.[20] The behaviour of Plaid Cymru ministers in Wales since 2007 has been a prime example of the strong desire to demonstrate disciplined commitment to principles of collective responsibility.

Such episodes provide some evidence of a move to the best of both worlds, with more representative coalition governments made up of more than one party but which still behave as much as possible as a coherent government. However, just as the move towards electoral proportionality has been a qualified one, so too has been the move towards new party approaches to executive formation. In Wales, single-party majority government on considerably less than 50 per cent vote share is still, in fact, a distinct possibility and did actually occur between 2003 and 2005. After the 2003 elections, Labour won only 40 per cent of constituency vote share and 36.6 per cent of list vote share but still gained 30 out of 60 seats. The fact that the presiding officer and deputy presiding officer were elected from other parties then meant that, whoever was in the chair, Labour had a technical majority of one. This Labour majority administration ultimately ended when a single Labour AM left the party whip in 2005, but despite the brevity of its majority control, the Welsh Labour Party still aspires to achieve a working majority once again.

Equally, notwithstanding the more orthodox incidence of coalition government, this does not reflect a move towards the general formation of stable coalition blocs or alternative coalition options. In fact, despite the apparently strong commitment to political pluralism in Scotland, there have in fact been very limited coalition options for forming a government. Labour has consistently dismissed forming a coalition with either the SNP or the Conservatives, leaving the Liberal Democrats as its only possible coalition partner. Consequently, when the Liberal Democrats refused to form a minority coalition with Labour after the 2007 election, this ended any chance of Labour retaining power. At the same time, neither the Conservatives nor the Liberal Democrats have shown any willingness to go into coalition with the SNP, separated by the fundamental difference of opinion over the SNP's policy of Scottish independence. The disinclination of the three unionist

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20   There have been four formal coalition agreements to programmes for government in Scotland and Wales. These are: *Making it Work Together* (Scottish Labour and Liberal Democrats, 1999); *A Partnership for a Better Scotland* (Scottish Labour and Liberal Democrats, 2003); *Putting Wales First* (Welsh Labour and Liberal Democrats 2000); and *The One Wales Agreement* (Welsh Labour and Plaid Cymru, 2007).

parties to combine forces in 2007 left only one option of a minority SNP government, albeit supported in a small way by an agreement with the Greens.[21]

The parties in Wales have offered more coalition alternatives. Labour has formed coalitions with both the Liberal Democrats and Plaid Cymru. At the same time, the Labour–Plaid Cymru coalition in 2007 emerged in the face of an alternative option of a so-called rainbow coalition of Plaid Cymru, the Liberal Democrats, the Conservatives and an Independent member. This was only dropped when the Liberal Democrats became divided over whether to agree to it and the socialist wing of Plaid Cymru objected to collaboration with the Conservatives. Plaid Cymru ultimately chose to enter a coalition with Labour, but only after Labour agreed to make progress on giving the Assembly more legal powers. Such rainbow coalition arrangements have emerged in a number of Welsh councils, meaning this outcome is still a possibility for the Assembly in the future.[22] Overall, the less visceral hatred of Plaid Cymru as a force for independence and the partial rehabilitation of the Conservative Party in Wales have made for more options for executive formation in Wales than in Scotland.

Even so, in neither Scotland nor Wales have really robust coalition blocs emerged that do not involve the Labour Party, and in the absence of clear alternatives Labour's dominance in executive formation has remained. The SNP minority government in Scotland after 2007 was the first example of any approach to executive formation not involving Labour, either at all or as the major partner. Equally, the fact that when majority coalitions have been established they have been strongly informed in both Scotland and Wales by the kind of conventions traditionally associated with United Kingdom Cabinet government, has meant that Labour as the senior party has been able to have a predominant influence on the executive agenda. Despite the evidence of MMP engendering a move towards the orthodoxy of coalition government, the limited coalition options have kept Labour in office for a large part of the time. Equally, the way in which coalition government has been conducted has perpetuated the political culture of Westminster single-party government.

C Parties and Representation

The introduction of devolution added a further tier of representatives, which sat between local government councillors at the local level and constituency MPs sitting for Westminster and list members of the European Parliament at higher levels. The use of MMP electoral systems in Scotland and Wales meant that this new tier would also carry both constituency and list members. This invited consideration of two issues that might affect the intra-party dimension of party representation: that list members might contribute to innovation in descriptive representation; and that they might provide regional or programmatic representation to complement continued local

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21 Peter Jones "Scotland: The Nationalist Phoenix" in Alan Trench (ed) *The State of the Nations 2008: Into the Third Term of Devolution in the United Kingdom* (Imprint Academic, Exeter, 2008) 23.

22 Richard Wyn Jones and Roger Scully, "Welsh Devolution: The End of the Beginning and the Beginning of…?" in ibid, 57.

representation by constituency members. In practice, list representatives contributed some innovation but to a significant extent, replicated patterns of descriptive representation among constituency members as well as their approaches to local representation.

The potential for list members to have an effect on descriptive representation lies in the fact that list selection usually hands greater power to the central party to determine the kinds of candidates it wants, compared to the more local member-influenced approaches in party constituency selection.[23] The key issue in both Scotland and Wales proved to be the political recruitment of women candidates. Since 1999, both the Scottish Parliament and Welsh Assembly have had an impressive record on this issue. Female representation has consistently accounted for over a third of the membership of the Scottish Parliament (37 per cent in 1999, 40 per cent in 2003 and 35 per cent in 2007) and even more of that of the National Assembly for Wales (40 per cent in 1999, 50 per cent in 2003 and 47 per cent in 2007).[24] There is also evidence that in their legislative roles women members have had some impact in shaping a different culture and policy agenda for the devolved institutions as compared to Westminster. Both the Scottish Parliament and the National Assembly for Wales were notable for adopting family friendly hours and in both Scotland and Wales a policy feminisation effect was noted over the first years of devolution.[25]

However, the evidence suggests that Labour Party constituency selection was the biggest contributor to female candidate recruitment. The Labour Party used the device of twinning constituency selection in 1999 in both Scotland and Wales. Under this approach, pairs of Labour constituency parties were twinned to produce one male and one female candidate to stand in neighbouring constituencies. Subsequently, Labour in Wales used all-women shortlists to select candidates in targeted constituencies in both 2003 and 2007. Given Labour's previous innovations in the Westminster context to use all women selection shortlists to increase the number of female MPs in 1997, the key issue was not the nature of the electoral system per se but simply the fact there were a set of elections in 1999 in which there were no incumbents and new rules could apply across all

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23   See Leon D Epstein *Political Parties in Western Democracies* (1 ed, Transaction Publishers, New Brunswick, 1980).

24   Jonathan Bradbury, David Denver, James Mitchell and Lynn Bennie "Devolution and Party Change: Candidate Selection for the 1999 Scottish Parliament and Welsh Assembly Elections" (2000) 6 Journal of Legislative Studies 51; James Mitchell and Jonathan Bradbury "Political Recruitment and the 2003 Scottish and Welsh Elections: Candidate Selection, Positive Discrimination and Party Adaptation" (2004) 40 Representation 289 and Jonathan Bradbury "Devolution and Party Organisation in the UK: Statewide Parties and Statewide–Regional Branch Relations over Candidate Selection in Scotland and Wales" in Wilfried Swenden and Bart Maddens (eds) *Territorial Party Politics in Western Europe* (Palgrave Macmillan, Basingstoke, 2008) 119.

25   See Esther Breitenbrach and Fiona Mackay (eds) *Women and Contemporary Scottish Politics: An Anthology* (Polygon, Edinburgh, 2001) and Paul Chaney, Fiona Mackay and Laura McAllister *Women, Politics and Constitutional Change: The First Years of the National Assembly for Wales* (University of Wales Press, Cardiff, 2007).

selections. The cultural change in the Labour Party was the most significant factor and, crucially, the party made sure positive action on female representation was applied most strongly to constituency selection, where the greatest chances for election actually occurred, rather than list selection.

Only in the case of Plaid Cymru in Wales was there any evidence that list selection clearly contributed to increased female representation. In both 1999 and 2003, Plaid Cymru perceived their constituency parties as being more inclined to select male candidates and therefore used "list zipping" as a means to counteract this bias. This involves running separate male and female candidate ballots and placing the most popular female first on the regional list and the most popular male second. None of the other parties used list selection procedures to increase female representation.

In addition, beyond the achievement of increased female representation, candidate selection under MMP did not have notable success in bringing forth new kinds of candidates. For example, the recruitment of former local government councillors and representatives' former researchers into the Scottish Parliament and National Assembly was noticeably higher than that of representatives with experience of working in the private sector.[26] Not until 2003 did either institution manage to elect a black and minority ethnic (BME) candidate and, somewhat ironically given Labour's strong association with the BME vote, in Wales this was achieved by Plaid Cymru.[27] Overall, irrespective even of the movements towards greater female representation, internal party cohesion remained an overriding factor in the culture of political representation under MMP, regardless of whether it was local representation, legislative activity or policy development.

The approaches of constituency and regional list members to representation were of more significance in evaluating the impact of the MMP system specifically. Research conducted in 2002 and 2004 suggested some evidence of regional list members prioritising programmatic and interest representation, for example Green Party MSPs in Scotland. Nevertheless, the core focus of most regional list representatives' work was that of providing local representation to their constituents. This was true both of constituency and regional list members in both Scotland and Wales, who routinely devoted over 12 hours per week simply to dealing with local constituents' problems, though overall the public demand placed on members was higher for constituency than for list members.

The existence of both constituency and list members in the same area meant that there was generally also competition in the provision of local representation by constituency and list members

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26   See Mark Shephard, Neil McGarvey and Michael Cavanagh "New Scottish Parliament, New Scottish Parliamentarians?" (2001) 7 Journal of Legislative Studies 79.

27   Mitchell and Bradbury "Political Recruitment and the 2003 Scottish and Welsh Elections: Candidate Selection, Positive Discrimination and Party Adaptation", above n 24.

from different parties. This had not been expected by the Labour Party. Such partisan competition also had a multi-level dimension. The active constituency MP was a feature of the SMP electoral system at Westminster, but it is noteworthy that the market-like dynamics of two types of member competing to represent the same constituents in the devolved context revealed the extent to which the monopoly position of Westminster MPs in their jurisdiction led to complacency or a routine approach to representation. In many instances, as devolved members undertook representative work on Westminster issues to enhance their profile, Westminster MPs were frequently forced to become more proactive themselves.[28]

The advent of this more dynamic market-like competition in providing constituency representation could be seen as advantageous to the public. However, the influence of Labour Party interests and Westminster assumptions about the rights of constituency members to exclusively represent their constituents can be seen in government reactions. The significance attached to this by the Labour Party, whose MSPs and AMs were overwhelmingly SMP constituency members up to 2007, was such that two innovations were introduced. First, in the Scottish Parliament special guidance, introduced in 1999, sought to clarify what list members were allowed to do in conducting constituency work, including the requirement that they work in more than one constituency.[29] Secondly, in Wales such was Labour's resentment of list members shadowing constituency members as part of a four year campaign to contest the constituency seat at the next election, that under the Government of Wales Act 2006 (UK) dual candidacy was disallowed. This was designed to make list members choose whether they wished to be a constituency or list candidate. On the assumption that they would opt for the safer harbour of being a list candidate, it was hoped that this would reduce their incentives to pursue competitive shadowing activity.[30] In practice the passage of time and Labour's greater reliance on list representation after the 2007 elections, particularly in Scotland, has taken the heat out of this issue, but in many individual local circumstances the resentment of constituency members remains very strong.

Overall, it is possible to conclude that MMP had some effect on approaches to representation and provided political parties with opportunities to reconsider past assumptions. First, the marked increase in female representation should be appreciated as a truly historic feature of United Kingdom political history. Secondly, competition in local representation led to novel dynamics in how representation was provided. Yet it should also be appreciated that MMP was, in part, more the

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28 Jonathan Bradbury and James Mitchell "The Constituency Work of Members of the Scottish Parliament and National Assembly for Wales: Approaches, Relationships and Rules" (2007) 17 Regional and Federal Studies 117 and Meg Russell and Jonathan Bradbury "The Constituency Work of Scottish and Welsh MPs: Adjusting to Devolution" (2007) 17 Regional and Federal Studies 97.

29 *Code of Conduct for Members of the Scottish Parliament* "Relationships between MSPs: Guidance from the Presiding Officer" (Scottish Parliament, Edinburgh, 1999).

30 House of Commons Wales Office *Better Governance for Wales* (Cm 6582, London, 2005).

setting for rather than the cause of enhanced female representation. Equally, the patterns of representation offered by regional list members and the responses of Labour constituency members were symptomatic of the fact that no prior thought had really been given to getting the best of both worlds in representation from having two types of member, and that list members in Labour Party eyes were really there simply to give the other parties more representation. In the absence of prior debate, to a significant extent list members replicated the focus of constituency members' work and the subsequent Labour-led attempts to regulate list member behaviour reflected deep resentment about the fact that list members were a power base for targeting Labour Party constituencies, rather than just a voice for other parties.

In that party interest remained an overriding feature of representative democracy as much under MMP as under SMP, the first 10 years saw most of the roles of representatives played out through the prism of highly partisan party politics. The adversarial political culture of Westminster left its legacy most clearly in the inability of the Labour Party in either Scotland or Wales to simply accept the rights of other party list representatives to offer representation on the same terms; a response that led to institutional devices to constrain list members.

D   Executive–Legislature Relations

Labour appeared to at least subscribe to the idea that members of both the Scottish Parliament and Welsh Assembly should have more power in their dealings with respective executives. The founding of the Parliament was accompanied by Labour's acceptance that at least one other party would influence policy from inside government and the design of both the Parliament and the Assembly were accompanied generally by a desire to encourage executive–legislature relations that were less executive dominated than at Westminster. The Scotland Act 1998 (UK), for example, sought to restrict the freedom for action by the executive in a number of ways, by establishing fixed term Parliaments, requiring ministers to resign on a Parliament vote and constraining policy decisions through the Human Rights Act 1998 (UK) and European law. Both the Scottish Parliament and National Assembly in various ways tried to go further than the House of Commons in emphasising the role of committees. In the case of Wales, subject committees were originally explicitly envisaged as both policy-making and scrutinising bodies. This was abandoned after a review of Assembly procedure in 2000-2001, but the subject committees remained key scrutiny bodies in both institutions. The Scottish Parliament innovated with the use of a Petitions Committee to give citizens a direct entry point to Parliament debate; both the Parliament and the Assembly innovated with regional committees to reflect the diversity of regional interests.

In practice, there is some evidence of MMP having a discernible effect in creating a balance between the authoritative executive and the active legislature. The periods of coalition majority government have seen a broadening of influence on executive action. Notably, the Liberal Democrats in Scotland forced Labour to take a different approach to university student tuition

funding in 1999 and to introduce single transferable voting (STV) for local government elections in 2003.[31] The Liberal Democrats in Wales forced Labour in 2000 to adopt a number of "free policies" including free school milk and a commission to look at the future powers and electoral arrangements of the Assembly. The One Wales Agreement that brought Labour and Plaid Cymru together in 2007 actually represented a complete merging of all the commitments in their two parties' election manifestos.

In particular instances the parliamentary arithmetic delivered by MMP has also had a major effect on executive–legislature relations. This was most evident in the periods of minority single-party government. In Wales, during the period of Labour minority administration from 1999-2000, both Plaid Cymru and the Liberal Democrats were able to exercise considerable influence on government decisions, including budgetary allocations.[32] Again between 2005 and 2007 the minority Labour administrations' budgets became the subject of considerable debate and amendment.[33] In Scotland, the minority SNP Government has since 2007 witnessed the capacity of opposition parties acting in concert to more systematically constrain the executive. By January 2009 only six government Bills had been passed since the 2007 election. The opposition parties combined in 2008 to compel the SNP Government to withdraw a flagship policy proposal to reform the system of local government taxation in Scotland. The 2009 budget became a *cause celebre*, as it was initially defeated by a combination of opposition parties and was only passed after the SNP minority Government agreed to concessions.[34]

More often, though, the executive has dominated in executive–legislature relations. In Scotland, 128 Bills were passed between 1999 and 2007, of which 103 were initiated by the executive and in the main "the parliament became little more than part of the legislation sausage machine".[35] During the one period of single-party majority government in Wales, Labour had high levels of party group unity and exercised strong executive control over budget policy and the Assembly timetable. The influence of second parties within coalition governments has also been a double-edged sword that has on the one hand broadened party influence on government policy, but on the other has bolstered

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31 Michael Keating *The Government of Scotland: Public Policy Making after Devolution* (Edinburgh University Press, Edinburgh, 2005).

32 See J Osmond "A Constitutional Convention by Other Means: The First Year of the National Assembly for Wales" in Robert Hazell (ed) *The State and the Nations: The First Year of Devolution in the United Kingdom* (Imprint Academic, Exeter, 2000) 37.

33 Jonathan Bradbury and James Mitchell "Devolution: Between Governance and Territorial Politics" (2005) 58 Parliamentary Affairs 287.

34 Michael Keating and Paul Cairney "The New Scottish Statute Book: The Scottish Parliament's Legislative Record since 1999" in Charlie Jeffery and James Mitchell *The Scottish Parliament 1999-2009: The First Decade* (Hansard Society and Luath Press, Edinburgh, 2009) 37.

35 Ibid, 40.

executive authority against the influence of opposition parties and backbenchers. Executive control during coalition administrations in both Scotland and Wales has generally been strong and representatives from the backbenches have been weak, with committees' level of influence being very strongly dependent, as it is at Westminster, on the incisiveness of their work.[36]

Overall, therefore, MMP electoral systems have increased the number of parties that have influenced policy and sometimes created the conditions in which the devolved institutions have broken from the traditions of executive domination at Westminster. Even so, backbencher influence has largely been felt only in the relatively few situations of minority government. An analysis of the realities of the Labour–Liberal Democrat coalitions in Scotland and the Labour–Liberal Democrat and Labour–Plaid Cymru coalitions in Wales would stress the continued saliency of the image of the steamroller executive and the marginalised backbencher. There is of course potential for further change as the Scottish Parliament adjusts to a full term of SNP minority government and Wales may yet embrace a future multi-party rainbow coalition. It should also be noted that the National Assembly for Wales received a greater capacity to initiate primary law-making powers under the Government of Wales Act 2006 (UK), which was not implemented until the 2007-2008 session. As time passes we will be able to make clearer comparisons between the two devolved jurisdictions as to executive–legislature relations over law-making. For the time being, however, the record largely points to the fact that in both countries the executive has for the most part been dominant.

E Public Perceptions

Ultimately the MMP electoral systems, even with their full effects constrained by Labour interests, were expected to contribute to the capacity of devolution to re-legitimise governance in Scotland and Wales. Generally, this has been achieved. In the 1999 Scottish parliamentary election survey, for example, 62 per cent of respondents found the new system much fairer and 71 per cent thought it gave a greater point to voting, while only 17 per cent thought it led to unstable government and 19 per cent thought it gave too much power to small parties.[37] The Richard Commission and Arbuthnott Commission inquiries in Wales and Scotland respectively concluded that the systems were broadly supported and that major criticism had been avoided.[38] Moreover, it was apparent that the public recognised some clear changes that flowed from MMP. In particular,

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36   David Arter *The Scottish Parliament: A Scandinavian-Style Assembly?* (Frank Cass, London, 2004); J Barry Jones and John Osmond (eds) *Inclusive Government and Party Management: The National Assembly for Wales and the Work of its Committee* (Institute of Welsh Affairs, Cardiff, 2001); and J Barry Jones and John Osmond (eds) *Building a Civic Culture* (Institute of Welsh Affairs, Cardiff, 2002).

37   Lindsay Paterson and others *New Scotland, New Politics?* (Polygon, Edinburgh, 2001) 76.

38   Commission on Boundary Differences and Voting Systems *Putting Citizens First: Boundaries, Voting and Representation in Scotland* (The Stationary Office, Edinburgh, 2006) [Arbuthnott Commission inquiry]; and Commission on the Powers and Electoral Arrangements of the National Assembly for Wales *Report of the Richard Commission* (National Assembly for Wales, Cardiff, 2004) [Richard Commission inquiry].

following the 2007 elections it was widely acknowledged in Scotland that MMP could allow a break from Labour dominance and in Wales that the voters and the parties had to come to terms more concertedly with the normal outcome of coalition government. Indeed in Wales, the public was gripped by debates for over a month over who would form the government, while opinion polls indicated very clear support for coalition government of some form.

On the other hand, MMP does not appear to have encouraged higher voter turnout. The Scottish Parliament had an election turnout of 59 per cent in 1999 falling to 49.7 per cent in 2003, rising slightly to 53.9 per cent in 2007. National Assembly turnouts have witnessed a similar pattern only at a lower rate, progressing from 46 per cent in 1999 to the low of 38.2 per cent in 2003 before rising marginally again to 43.4 per cent in 2007. There is also debate about the extent to which voting in Scottish Parliament and Welsh Assembly elections is generally of a second-order type; not only lower in extent because the elections are deemed less important than Westminster elections, but also composed of proxy votes for how people feel about Westminster politics rather than specifically Scottish or Welsh politics. This leads to a swing away from the United Kingdom governing party and higher protest votes for small parties. Equally, there is evidence that many voters do not fully understand how the electoral systems work, leading to confusion over how to use the party list vote. In Scotland there is considerable evidence that many voters see the second vote, which helps to determine the allocation of regional list seats, as a second preference vote.

Equally, there is widespread lack of understanding as to how these second votes influence the overall electoral outcome of an election. The 2007 Scottish election suffered particular problems when the first and second votes were joined together on one ballot paper and the election was held simultaneously with local government elections. The number of rejected ballot papers was unusually high at just over 4 per cent for constituency votes and just under 3 per cent for regional list votes.[39] In addition, in both Scotland and Wales there have been claims that voters do not understand how defeated constituency candidates have been able to be elected as list representatives. Since the Government of Wales Act 2006 (UK) this is no longer possible in Wales, but in Scotland this can still occur.

Consequently, while MMP has received a generally favourable reaction from the electorate, there have been problems in both understanding and implementation in Scotland and Wales. The public are aware of how MMP has underpinned changes in party representation after elections; has given rise to new dynamics for executive formation that have made coalition and minority governments more common; has created some changes in the kinds of people who represent them; and has created Parliament/Assembly arithmetic in which opposition parties can influence policy. Nevertheless, it is not clear that voters view the operation of MMP any less through a lens of

39   Nicola McEwen "The Scottish Parliament Electoral System: Can Credibility Be Restored?" in Jeffery and Mitchell, above n 34, 69 and Ronald Gould *Independent Review of the Scottish Parliamentary and Local Government Elections 3 May 2007* (Electoral Commission, Edinburgh, 2007).

democratic malaise than they do Westminster. This is largely because of their continued perception of the overriding importance of the party, the dominance of established parties in the respective party systems, sustained assumptions of partisanship in representation and heavy executive control over legislative oppositions. Voters as much as elites have been slow to depart from the political cultural assumptions of Westminster.

IV   MMP, DEVOLUTION AND WESTMINSTER: PROSPECTS FOR REFORM

The experience under MMP was subjected to formal review relatively quickly in both Scotland and Wales. In Wales, the Richard Commission was created as a result of the partnership agreement between Labour and the Liberal Democrats in 2000, with part of its remit being to consider electoral arrangements. Its report in 2004 advocated an increase in the number of Assembly members to 80 and the introduction of an STV electoral system. One of the principal arguments for the change to STV was the criticism that MMP had created two types of members, whose relations were not characterised by a sense of equality or mutual respect. These recommendations were supported by Plaid Cymru and the Liberal Democrats but opposed by Labour and the Conservatives. Labour responded by backing the existing MMP system, but as has been said, with a specific revision to disallow dual candidacy. It was defended by Labour as a clear response to public incomprehension that defeated constituency candidates could still get elected "by the back door", but was attacked by the other parties as a partisan ploy, designed to scare off good candidates from challenging Labour AMs in their constituency seats in favour of the safer route of list candidacy.[40]

In Scotland, a review of the electoral arrangements for the Scottish Parliament occurred as a by-product of the United Kingdom Government's desire to review the implications of cutting the number of Scottish MPs for Westminster, thereby ending the co-terminosity of Westminster and Scottish Parliament constituency boundaries at the 2005 United Kingdom election. The resulting Arbuthnott Commission, which reported in early 2006, became an opportunity for rehearsing debates about reform and, as in Wales, the possibility of changing to STV was considered. The Labour Party aired possible reforms that echoed those in Wales. However, in contrast to the Richard Commission in Wales, the Arbuthnott Commission essentially supported the status quo of the MMP electoral system with suggestions only that party lists be open rather than closed and that different boundaries be used.[41] Its basic recommendation to keep the MMP system was accepted by the United Kingdom Government, although no move was made to include open lists. In contrast to Wales, the right to dual candidacy was maintained in Scotland.

The outcome of electoral reviews in both Scotland and Wales was the governmental decision to generally retain the MMP electoral systems established in 1999. The other parties clearly had been

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40   Richard Commission inquiry, above n 38 and House of Commons Welsh Affairs Committee *Government White Paper: Better Governance for Wales: First Report of Session 2005-06* (HC 551).

41   Arbuthnott Commission inquiry, above n 38.

keen to see change. However, what pluralism MMP had brought was still obviously resented within the Labour Party and the Government's decision to retain MMP reflected the fact that ideally, Labour would not have wished debate of the electoral systems to be reopened so soon, did not wish to revise them to advance any further change, and indeed in the change that was made in Wales to abolish dual candidacy mainly looked to neutralise perceived adverse effects that MMP had produced. Such inaction or incrementalism was generally opposed by the other parties. Nevertheless, a period of electoral review has now seemingly ended and the MMP systems in force in Scotland and Wales can be expected to remain as they are for the foreseeable future.

Reflection on the implications of MMP in Scotland and Wales for the reform debate at Westminster has been mixed. The Liberal Democrats remain in favour of a more proportional system and specifically favour PR–STV. There are some devotees of change to MMP in the Labour Party and the experience of coalitions in Scotland and Wales has shown how stable governments can be sustained at the same time as achieving fairer representation. However, generally the Labour Government under Gordon Brown has approached the introduction of a more proportional electoral system for Westminster with great scepticism. Perhaps this is not surprising. The experience of MMP in Scotland and Wales has demonstrated to the Labour and Conservative Parties how their power in a two-party system would be eroded; the opportunity to form an ideal single-party majority government would be diminished and coalitions would be much more likely. Equally, the individual experience of representation would be much less congenial with the mass of Labour and Conservative constituency representatives facing competition for the support of the electors in their own constituencies from list members. Finally, given the different basis upon which executives would have to be formed, the ability to control budgetary policy and a legislative programme would potentially also be reduced.[42] The devotees of change see advantage in all of these things but Labour Party views have, if anything, hardened against the introduction of a proportional system for Westminster.

Of course, the history of electoral reform in the United Kingdom shows that if the pressures on the existing system become too great and existing major parties feel they are likely to suffer for standing in the way of change, one of them sooner or later will make a break for it, championing reform and taking the credit for it while devising a new system in which it tries to guarantee as much of its existing levels of representation as possible. The disparity between voting patterns and party representation remains one key pressure. In 2005 there was a public outcry after Labour was elected with a solid parliamentary majority on just 35.2 per cent of the vote. During 2009, the humiliation of MPs caused by the scandal over their living expenses added further pressure for

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42   Meg Russell and Jonathan Bradbury "The Constituency Work of Scottish and Welsh MPs: Adjusting to Devolution", above n 28 and Guy Lodge, Meg Russell and Oonagh Grey "The Impact of Devolution on Westminster: If Not Now, When?" in Alan Trench (ed) *Has Devolution Made a Difference? The State of the Nations 2004* (Imprint Academic, Exeter, 2004) 193.

change, in that electoral reform could form part of a root and branch transformation of Parliament. In response, Gordon Brown recommitted the Labour Party to holding a referendum on electoral reform should they be re-elected in the 2010 general election. Yet Labour's position has departed even from the mild revisionism of the Jenkins Commission's advocacy of AV-Plus, towards favouring simply a move to the majority Alternative Vote system for the United Kingdom's existing single member constituencies. If introduced, this would no doubt reduce the size of single-party majorities but still keep them as the norm. It represents an approach designed to keep virtually all of the advantages experienced by the two main parties under the current system in tact. The Conservatives, meanwhile, have simply continued to support SMP, albeit with a reduction in the number of constituencies by 10 per cent. In a context in which the legitimacy of the House of Commons as a representative body continues to be questioned, MMP could yet return to be a central focus for debate and indeed, depending on what happens, Labour may yet rue the fact that it did not take a more radical lead on this when it had the chance.[43]

V   CONCLUSION

Scotland and Wales are key cases for the analysis of the implications of MMP electoral reform on constitutional development. Overall, to what extent have they provided evidence of how MMP can deliver the best of both worlds: both to combine fairer representation with strong government and to achieve both local constituent accountability and more diverse forms of representation? This article has reviewed both the significant changes that have followed the adoption of MMP as well as themes of continuity from previous Westminster traditions and practice.

First, it is evident that the electoral reforms in Scotland and Wales were in part inspired by "new politics" reformist considerations that sought to balance proportionality and coherent representative government with different types of representation that are commonly associated with MMP systems. However, they were promoted and shaped largely on the basis of the key, established, state-wide party interests of the Labour Party. Change went furthest in Scotland, where the proportion of list seats was closest to 50 per cent. The commitment to pluralism, reflected in the party system and the expectation of coalition governments, was relatively clear. Even so, Labour only embraced this pluralism as a necessary evil to smother SNP ambitions with the same constraints. In Wales, the commitment to pluralism and new dynamics in the party system and government was much less clear; rather, MMP was largely embraced by Labour as a device to legitimise continued Labour power by giving other parties more minority representation. Little new, detailed thinking actually occurred in the United Kingdom regarding the implications of MMP for how representation and government would be conducted. Consequently, the conservative instinct for continuity drawn from

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43   Patrick Dunleavy and Helen Margetts "United Kingdom: Reforming the Westminster Model" in Josep Colomer (ed) *Handbook of Electoral System Choice* (Palgrave Macmillan, London, 2004); Patrick Wintour "The Last Throw of the Dice" (30 September 2009) *The Guardian* Manchester 1 and Patrick Wintour "George Osborne Lifts Veil on his Age of Austerity" (6 October 2009) *The Guardian* Manchester 1.

Westminster traditions remained an implicit part of the reformist–adaptive expectations for the introduction of devolution with MMP systems.

Unsurprisingly, in assessing the outcomes of MMP the United Kingdom experience also appears less than transformative. In Scotland and Wales the principal implications have involved a changing balance of representation between established parties – including, in the context of specifically Scottish and Welsh elections, a greater prominence for the ethno-regionalist parties, the SNP and Plaid Cymru. This has gone further than Labour envisaged, but in neither case has there been a reconfiguration of the party system involving the rise of new parties to a prominent position within the party system, and Labour remains disproportionately over-represented. Equally, MMP has led to innovation in government formation to make the incidence of coalition government much more the norm, again more so in the case of Wales than Labour expected. Yet the approaches of the United Kingdom parties still look very conservative; their positions leave very few clear coalition options in Scotland and rather than a move towards clear coalition blocs, the inter-party relations over executive formation appear to proceed on an ad hoc basis. In Scotland and Wales, established parties have been reluctant to create or sustain minority single party or coalition governments. The SNP in 2007 found itself in a unique position and would have preferred coalition partners, but, failing to secure agreement from the Liberal Democrats or the Greens, accepted minority government simply as preferable to opposition.

On the issue of representation, MMP did not give rise to more varied approaches to representation. Rather, there were more far-reaching consequences than Labour reformers had expected, in that the two types of member simply competed over local constituency representation, in some cases in a highly partisan manner. This was deemed an undesirable consequence by the Labour Party, leading to the introduction of rules and legislative changes to try and constrain such competition. This failure to adapt to the individual representative implications of MMP had a knock-on consequence of reducing English MPs' possible support for MMP reform, troubled as they became by the prospect of such competition also occurring between AV constituency and list representatives if the Jenkins proposals were ever implemented for the United Kingdom Parliament.

There have been equally mixed developments in executive–legislature relations. Coalition government has increased the number of parties having influence on policy and in certain contexts the arithmetic of MMP has created situations for backbencher and opposition party influence. But to a large extent, executive–legislature relations in the Scottish Parliament and the National Assembly for Wales have remained executive dominated. Indeed, such has been the desire to maintain the appearance of executive control, even in the context of enforced minority government, that the SNP Government has since 2007 produced relatively small legislative programmes. It has marshalled its political resources to get a small amount through largely unscathed, rather than trying for a larger programme and risking the perception of failure and/or of subservience to opposition parties.

As we have seen, public perceptions of MMP in the United Kingdom have generally been favourable. When they voted for devolution in 1997, voters in Scotland and Wales were not

necessarily voting for MMP and it is hard to say whether, if explicitly given the choice now, they would feel sufficiently strongly to support it. But it has not invoked criticism. Perhaps this is the clearest indicator of all that MMP has not created a rupture in politics. Whilst MMP has had significant implications for constitutional development, it has retained much that was familiar; it has gone with the grain of adaptive change. Even with continued consideration of electoral reform, caution about further change dominates.

Overall, the experience of MMP in Scotland and Wales has led to significant distinctiveness in both inter-party and intra-party relations compared to those seen under the United Kingdom SMP system. Nevertheless, the Labour Party, in office at the United Kingdom level and historically the dominant party in both Scotland and Wales, has placed constraints on change. Equally, implicit "old world" assumptions about how party government and representation should be conducted continue to have a strong influence. So far, the cases of Scotland and Wales are examples of only partial development towards expectations that MMP will create the best of both worlds on both inter-party and intra-party dimensions of political relationships, with the consolidation of further change still to be addressed in the years ahead.