

Bicameralism in the Isle of Man

Peter Edge

1. Introduction.

Unicameralism is the norm in small democracies, to a far greater extent than for larger democracies. Supplementing Inter-Parliamentary Union data on 190 parliaments globally,¹ with a review of 29 national legislatures of dependent territories,² shows a significant difference: of the 190 legislatures of sovereign states, 79 were bicameral (42%); of the 29 legislatures of dependencies, 5 were bicameral (17%). The explanation for this may be both a reduction in the benefits of bicameralism for small democracies, and the capacity issues which are an ever-present concern for small democracies.

In her seminal study of the contemporary House of Lords, Russell builds on earlier work by Patterson and Mughan to cluster possible functions of bicameralism into representation and redundancy.³ The representation function allows opportunities “for different groups to be represented, which may benefit those who are absent from, or disadvantaged by, arrangements in the first chamber”.⁴ A territorial model for representation, for instance, may allow representation of jurisdictions or regions within a state. Alternatively, a second chamber may also represent “an alternative logic of representation”, such as that of Australia where the first chamber uses first past the post electoral rules, while the second chamber uses proportional representation. The redundancy function, however, refers to the duplication inherent in a two chamber system: “legislation is looked at not once, but twice”, with potential benefits for the quality of policy decisions, particularly where the second chamber is designed to bring a different perspective to bear. Additionally, the delay inherent in this duplication allows issues to be discussed beyond the first chamber, potentially involving a broader discussion in the nation.

Small democracies, while in some instances wealthy on a per capita basis, have restricted resources for governance. The costs inherent in the duplication which is not simply a bug, but a feature, of bicameralism may explain the relative absence of bicameralism in small democracies. Additionally, for a number of small democracies representation of sub-units may not be so pressing a factor as to justify the expense. Bicameralism is “[t]ypically associated with large, decentralised or federal states” so that, as Murphy observes, it is unusual to find it

¹ <https://www.ipu.org/national-parliaments> (accessed 2/8/2022).

² The total number of dependent territories is larger than this, with “forty-odd non-sovereign island territories” identified by G Prinsen, A Lotti, A Worliczek, “Wallis and Futuna have never been a colony’: A non-sovereign Island territory negotiating primary education with Metropolitan France” (2022) 92(1) *Oceania* 133 at 134. I have, however, excluded dependent territories with no permanent population, no civilian government, or no distinct governmental structures within the dependent territory.

³ M Russell, *The contemporary House of Lords: Bicameralism Revived*, (OUP, 2013), Ch. 3.

⁴ *ibid* p.44.

“within a centralized and unitary Irish state with a population of less than five million”.⁵ Bicameralism is, indeed, “often portrayed as the quintessential federal institution”.⁶

If a small democracy can afford bicameralism, however, some of the functions identified by Russell will still apply. A second chamber may be designed to provide representation of different perspectives in the legislature. It may serve an important role in scrutinising legislation proposed by the first chamber. It may impede the speedy passing of at least some legislation, at least in normal times, providing opportunities for reflection and public engagement with the proposed legal changes.

If a small democracy sees the advantages of bicameralism as meriting a departure from the more common unicameral form, then composition of the second chamber poses serious challenges. Direct election is not unknown. The Northern Mariana Islands and American Samoa are small democracies – each around 50,000 population – with a directly elected second chamber; possibly as a result of their dependence upon the United States which has a similar structure.⁷ Direct election to a second chamber may result in a large and so expensive second chamber, or to one where the members can point to a larger electoral mandate than members of the first chamber, raising substantial issues of legitimacy in the event of a conflict. Sub-units of the nation may not be strongly formed enough to justify representation in the national legislature, and if directly elected may similarly produce tensions of mandate and authority between the first and the second chamber. A second chamber nominated by the government may struggle with legitimacy – as Johnston and McLean observed dryly in 2021, “to propose a new nominated upper house in Jersey might meet resistance”.⁸ If a small democracy wishes for a bicameral legislature, then how is the second chamber to be composed?

The Isle of Man has, for more than a century, taken a distinctive approach to this, which I describe elsewhere as first chamber franchise, by which I mean where a democratically elected first chamber, sitting as the first chamber, appoints the majority of the second chamber as part of their parliamentary business.⁹ This paper will sketch out the shape of the Manx experience since 1919, and bring out themes which may be useful to Jersey and Guernsey in evaluating any bicameral future. Although previous considerations of bicameralism for Jersey have mentioned the existence of bicameralism in the Isle of Man, its distinct form has not been

⁵ MC Murphy, “Bicameralism in a unitary state”, in DM Farrell and N Hardiman, *The Oxford Handbook of Irish Politics*, 2021 at 330.

⁶ J Poirer and A-G Gagnon, “Canadian Federalism: The impact of institutions on key political and societal actors”, in A-G Gagnon and J Poirer, *Canadian federalism and its future: Actors and Institutions*, (2020).

⁷ What Veenendaal characterises these as “historical-institutional” arguments in relation to federalism in microstates – WP Veenendaal, “Origins and persistence of federalism and decentralization in microstates” (2015) *Publius: The Journal of Federalism* 1.

⁸ R Johnston and I McLean, *Electoral systems for the States of Jersey: Some briefing notes*, (2012).

⁹ <Ref to follow in January>

considered – perhaps unfortunate for the only bicameral Crown Dependency, and one of only two British dependencies with bicameral legislatures.

2. The development of the Legislative Council in Tynwald, 1417-2023.

The central organ of governance in the Isle of Man is Tynwald, which is for most purposes a bicameral legislature, although for a number of functions the two chambers sit together as Tynwald Court – leading Tynwald to be described as a tricameral legislature, albeit one with only two sets of members.¹⁰ The two chambers are the House of Keys, roughly analogous to the House of Commons, and the Legislative Council, roughly analogous functionally to the House of Lords, although with a very different history and composition.

Before the 19th century, neither chamber included members elected by even a small subset of the Manx population. Members of the House of Keys (MHKs) were appointed by the Lieutenant-Governor from nominations by the Keys themselves – leading to a self-perpetuating oligarchy.¹¹ Nonetheless, the Keys was seen as to some extent representing the country. This was in contrast to the Legislative Council, which was composed of the principal officers of the Lord of Man, joined by the Lord Bishop of Sodor and Man. Tension between these two bodies was, as anticipated at the time, exacerbated by the introduction of democratic election to the Keys from 1867, and the balance of power between the two has shifted very considerably since that time.¹²

In particular, before 1961 legislation required the approval of both the Keys and the Council – giving the Council a veto over legislation which had been approved by the democratically elected Keys. The absolute veto of the Council over legislation became a central concern for the Keys, eventually leading to the Isle of Man Constitution Act 1961, which introduced a procedure whereby a Bill could become an Act of Tynwald without the consent of the Legislative Council expressed both in its own Branch, and in Tynwald Court as a whole. This required not only a majority or, in some cases, a special majority in the House of Keys, but also that the Council should have had repeated opportunities to pass the Bill itself. Originally, these provisions could only be triggered if the Council had failed to pass the Bill after two years, but in 1978 this was changed to one year. In 2006 the Constitution Act 2006 simplified the 1961 mechanism to allow the House of Keys to dispense with the consent of the Council to a Bill which had not been passed by the Council within 12 months of being sent to the Council from the Keys. This override was triggered by the passing of a motion with a special majority of 17/24. At the time of writing, these mechanisms have only been used twice, but the possibility of override has influenced Council voting on other occasions.¹³

As noted in my introduction, the focus of this piece is on composition of the second chamber. In particular, who sat in the Council? how did they get there? how has this changed over time? There is a fundamental division between different types of Legislative Council member which needs to be addressed now, as it underpins the structure of the discussion which follows.

¹⁰ See further P.W. Edge, *Manx Public Law*, (1999) pp.135-139.

¹¹ *Manx Public Law*, pp.136-7.

¹² See further P.W. Edge, “1867: When democracy came to the Isle of Man?”, *English Legal History* 8 April 2017.

¹³ See further P.W. Edge, “Lisvane’s Legacy? Constitutional reform in the Isle of Man”, (2020) 40(1) *Legal Studies* 22-41.

Before 1919 the Legislative Council was composed entirely of officers – effectively being the Council of the Lieutenant-Governor sat for legislative business. Although membership varied over the centuries, the key feature is that these were officers who sat *ex officio* – that is by virtue of their administrative, judicial, or ecclesiastical role in the government of the Isle of Man. In contrast to the Keys, which were seen as in some sense representative of the Manx people even before the introduction of (admittedly imperfectly) democratic elections in 1867, the Council was seen as the Imperial establishment of the Isle of Man.

In 1911 a Departmental Committee was appointed by the UK Home Secretary, led by Lord MacDonnell. The Committee considered proposals from the Keys for the creation of an Executive Council, and reforming the composition of the Council so that the majority of its members would be directly elected, with a minority nominated by the Crown. The Report supported the idea of an elected element in the Council, while rejecting direct election in favour of the Keys acting as an electoral college. The Report's reasoning is interesting: “if the party system were developed in the House of Keys we think that there would be much to be said for direct election; and should a well-marked division on party lines become hereafter developed in that House, we would advise that the elections should then be by the constituencies.”

The Report supported the Lord Bishop remaining in the Council because of ‘his traditional connection with the Council and Tynwald, ... the ecclesiastical interests confided to his charge, and ... his respected and authoritative personality’. It did not, however, see a justification for retaining other ecclesiastical officers, and was concerned that the Council should be of moderate size. As a result, the Isle of Man Constitution Act 1919 removed the Archdeacon, the Vicar General, and the Receiver General. They were replaced with two members appointed for fixed terms by the Lieutenant-Governor, and four members elected by the House of Keys. Incremental reforms replaced both *ex officio* and appointed members with members elected by the House of Keys, so that since 1990 the Legislative Council has consisted of the President of Tynwald, who is elected by the members of Tynwald and sits *ex officio* as President of the Legislative Council; the Lord Bishop of Sodor and Man, who sits *ex officio*; the non-voting Attorney General, who sits *ex officio*; and eight Members of the Legislative Council (MLCs) elected for a fixed term by the House of Keys.

The 20th and 21st century Legislative Council, then, was and is a modern iteration of an ancient part of the Manx constitution. Although radically different from the Council of earlier centuries, no longer being a body of Crown appointees dominated by the Lieutenant-Governor, it constitutes a long history of Manx bicameralism. As I discuss later, reforming bicameralism is significantly different from adopting bicameralism. Nonetheless, the composition of the 20th and 21st century Council can help to inform such discussions.

I will consider the *ex officio* and appointed members first, these groups having been eliminated or much reduced in importance in the contemporary Legislative Council. I will then consider at greater length the eight elected MLCs.

3. Ex officio members and appointed members.

As the Manx constitution developed throughout the twentieth century, and in particular as the dominance of the democratically elected Keys within that constitution became stronger, the *ex officio* members were removed, to be replaced by elected members. Similarly, the two appointed members were also replaced with elected members in 1969.

The process by which these members were selected for the Legislative Council is, compared with the elected members discussed below, opaque. Nonetheless, some patterns in who joined the Legislative Council through these routes can be observed.

Firstly, no woman was ever appointed to the Legislative Council as an ex officio or appointed member. Up until 1961, three seats were legally reserved for men. The two appointed members had, by Manx statute, to be men.¹⁴ This measure was passed in the same year as legislation opening up candidature to the House of Keys to women, so their exclusion from the Legislative Council is particularly striking. These posts were opened to women in 1961, but with the abolition of elected members in 1969, no woman was ever appointed to the Legislative Council. A third post, that of Lord Bishop of Sodor and Man, was governed by ecclesiastical law which until 2015 excluded women from appointment as the Lord Bishop, and so entitled to a seat in Legislative Council.¹⁵ Beyond these legally reserved seats, the shape of the Manx legal profession for much of the twentieth century effectively excluded women from the three seats held by legal officers. In all three cases, the predominant supply chain was through the Manx Bar, which was even later to admit women than bars elsewhere in our islands. The first woman advocate was Clare Faulds, who was called in 1973.

Secondly, the Lieutenant-Governor favoured continuity in his two appointed members, even beyond the long terms of office set down by statute, and with a strong preference for those who were experienced members of Tynwald before being appointed. Only nine men were appointed to these two seats, of which seven were former MHKs.¹⁶ Four of the nine served less than five years in Council, their short terms explained by death or ill-health.¹⁷ Leaving aside these short terms the remaining five members sat terms averaging 18 years – particularly striking since these five include the appointed members holding office when the posts were abolished.

Although no longer to be found in the Isle of Man, appointed members of the second chamber can be found in other small democracies, as can ex officio members. I regularly use a comparator set of 16 small democracies when considering Manx issues. These are small democracies using some form of the Westminster model which entwines the legislature and the executive. These are a mix of unicameral and bicameral legislatures, seven do not have any appointed members,¹⁸ while three have members appointed by the constituent states.¹⁹ Of the

¹⁴ Isle of Man Constitution Amendment Act 1919 s.13.

¹⁵ Bishops and Priests (Consecration and Ordination of Women) Measure (Isle of Man) 2015.

¹⁶ Of the two who were not, one had served a substantial period as Crown Receiver, a significant public office, while the other was a retired UK diplomat.

¹⁷ John Clucas for instance, resigned in 1928, after 4 years in Council, having served multiple, fragmented, terms in the Keys. His 1939 obituary referred to his being “suddenly stricken down by a serious illness eleven years ago [when he] occupied a conspicuous position in the public life of the Island”. See Ramsey Courier (1939) May 5.

¹⁸ Curacao; Aruba; Jersey (although connetables sit ex officio, and a number of non-voting Crown officers sit ex officio); Andorra; Greenland; Marshall Islands; Cayman Islands (although 2 Crown appointees sit ex officio).

¹⁹ Federated States of Micronesia; Kiribati; Guernsey.

remaining six, four have members appointed by the Governor-General on the advice of the Prime Minister and the Leader of the Opposition,²⁰ and two have members appointed by the Governor General partly on the advice of the Prime Minister and Leader of the opposition and partly by the Governor General as Independents.²¹

Focussing on the last group, all six have, hard-wired into their constitution, a party system with an official opposition.²² The most interesting for our purposes are Antigua and Barbuda and Bermuda. The Antigua and Barbuda Constitution provides for 11 Senators to be appointed on the advice of the Prime Minister (at least one from Barbuda), and four on the advice of the Leader of the Opposition. Of the remaining two Senators, however, one is appointed on the advice of the Barbuda Council, and one is appointed by the Governor-General “in his discretion from outstanding persons or persons representing such interests as the Governor-General considers ought to be represented in the Senate”.²³ Bermuda takes this further, with five appointed by the Governor on the advice of the Prime Minister, three on the advice of the Opposition Leader, and “three shall be appointed by the Governor acting in his discretion”.²⁴

The first point to make is that the constitutional, not simply political, emphasis on political parties sits poorly with the Manx position today, let alone during the period the Lieutenant-Governor appointed MLCs. Nonetheless, the structures outlined above can be seen as seeking to provide some diversity in those who are appointed – one would anticipate a set of candidates being put forward by the Opposition Leader who frequently would not have been considered by the Prime Minister. With the exception of Bermuda, however, the systems all build in a majority for the governing party.

The second point to make is that we need to be cautious in identifying close comparators. At first reading, the Barbudan, and still greater the Bermudan, systems might seem to have most in common with the Manx position before 1969, envisaging as they do some discretionary appointments by the Governor. This neglects, however, the crucial role that the Lieutenant-Governor had in Manx government until well after the Second World War. The Lieutenant-Governor was *not* a figure neutral between opposition and government: until well into the post-war period the Lieutenant-Governor *was* the government. That is, during the period of appointed MLCs, the split between MLCs selected by the Keys, and MLCs appointed by the Lieutenant-Governor, was much closer to the model in Grenada and similar jurisdictions where appointment is divided between government and opposition.

Turning from the issue of parties, another way of understanding appointed members is that it gives the government power to appoint to the second chamber in order to address weaknesses in the composition of the legislature, and particularly to bring diverse voices into the

²⁰ Grenada; Dominica; St Vincent and the Grenadines; Saint Kitts and Nevis.

²¹ Bermuda; Antigua and Barbuda.

²² See further D O’Brien, “Bicameralism in small states: The experience of the Commonwealth Caribbean”, (2018) 47(3) *Journal of Imperial and Commonwealth History* 591.

²³ Antigua and Barbuda Constitutional Order 1981 s.28.

²⁴ Bermuda Constitution Order 1968 s.27(2).

legislature. We can see this elsewhere in our islands. The First Seanad, by which I mean that under the 1922 Constitution of the Irish Free State which was abolished in 1936, initially included members appointed by the President of the Executive Council.²⁵ The President agreed to use his appointments to grant extra representation to the Protestant minority in the state, in the interests of inclusiveness.²⁶ His nominees included 16 Senators who could be categorised as being Southern Unionists, which “included elites from business as well as the landlord class ... eight were peers, four were baronets and one was a Knight”,²⁷ but also ensuring that “commerce, administration and regional interests were well represented among the remaining 14”.²⁸ It is worth stressing that appointment to the Legislative Council between 1919 and 1969 was not used in this way. No women were appointed, even when lawful to do so; and the overwhelming majority of the men appointed were Tynwald insiders who had served as MHKs before undertaking long careers in the Legislative Council. The power to appoint members to the Council was used to appoint men with a long record, and clear profile, in public life in order to balance those members elected by the Keys.

4. Elected members.

The Isle of Man Constitution Amendment Act 1919 Act defined “elected members” as “members to be elected by the House from their own members or otherwise”.²⁹ Although the Tynwald Research Paper on the 1919 Act states that the Keys were required to elect MLCs from within their own number,³⁰ this was not the law even for the first, in many ways unusual, election. The House was to elect these members within fourteen days of the 1919 reforms coming into effect, at an open meeting of the House.³¹ Elected members required at least 13 votes in their favour – a provision which, as I discuss below, frequently caused parliamentary chaos. For the first election only, the House was to determine which of the two elected members were to serve a full eight year term, and which were to serve only a four year term.³² This difference was necessary to begin a rotation by which two MLCs were to leave office every

²⁵ See more fully, L Cahillane, *Drafting the Irish Free State Constitution*, (2016).

²⁶ L Cahillane, “Anti-party politics in the Irish Free State constitution” (2012) *Dublin University Law Journal* 34 at 64.

²⁷ I Sircar and B Hoylamd “Get the party started: Development of Political Party Legislative Dynamics in the Irish Free State Seanad (1922-1936)” *Party Politics* 16(1), 89 at 93.

²⁸ L Cahillane, “Anti-party politics in the Irish Free State constitution” (2012) *Dublin University Law Journal* 34 at 65.

²⁹ Isle of Man Constitution Amendment Act 1919 s.7(a)(2)).

³⁰ Tynwald Chamber and Information Service, “The Isle of Man Constitution Amendment Act 1919 and the Legislative Council” (2019) PP 2021/0027.

³¹ *Ibid*, s.8.

³² *Ibid*, s.8.

four years,³³ and provided a useful precedent when Tynwald sought to return to normal business after scheduled MLC elections had not taken place during World War Two.

The House was not, then, legally required to elect MLCs from its own members. There was, however, a striking bar on the category of persons who could be elected. Other legislation of 1919 had allowed women, who had been able to vote in elections to the Keys since 1866,³⁴ to stand for election to the Keys. In introducing this entirely new category of indirectly elected member of Tynwald, however, the 1919 Act specifically excluded women from consideration.³⁵ It was not until 1961 that women could be considered for election.³⁶ This 1961 Act, it should be noted here, also shifted the balance between Keys and Council from parity – giving the Council a substantial veto power over legislation for instance – to a situation where the directly elected Keys was the dominant chamber.

Although the foundation of elected members entry into the Council - election by the House of Keys as part of normal parliamentary business - has not changed in the century of operation, there have been significant changes in how members were elected (primarily through changes to Standing Orders), and who the Keys elected (primarily through individual voting decisions, but supported in some cases by changes to Standing Orders and practice).

4(A). How were MLCs elected?

There was always the possibility of the House being unable to swiftly reach a consensus as to who should be appointed. This was particularly pronounced between 1987 and 2015, the worse, but by no means exceptional, case being the two rounds of voting required in 2015. In 2017 there were substantial reforms to the process. In the five elections since 2017, only one round has been required to fill each set of vacancies – in the case of 2018, five seats at once. These reforms appear to have successfully addressed a particular problem, that of unacceptable delays in appointing to a vacancy. What were these reforms?

Firstly, for nearly a century these posts required a positive vote by 13 of the 24 Keys – a particular challenge when one or more MHKs was absent from the chamber. This was exacerbated in one election, that of 1970, where an MHK who participated in the vote which resulted in their elevation to the Council was, unlawfully, excluded from subsequent rounds of voting made in order to determine who should join them.³⁷ A candidate who had secured the support of the majority of the Keys present, but less than 13, was then required to secure a confirmatory vote of 13 – failure by the Speaker to call for this vote led to his needing to apologise for an unlawful, and so void, appointment in 1970.³⁸ Although confirmatory votes were normally successful, with MHKs recognising the will of the majority voting, this was not

³³ Ibid, s.10.

³⁴ House of Keys Election Act 1866.

³⁵ Isle of Man Constitution Amendment Act 1919 s.12.

³⁶ Isle of Man Constitution Act 1961 s.25.

³⁷ Manx Hansard, HK 27/10/1970, discussed as void in Manx Hansard, HK 3/11/1970.

³⁸ Manx Hansard, HK 27/10/1970, Speaker's apology in Manx Hansard, HK 3/11/1970.

always the case. In 2017, the procedure was changed to allow a majority of those MHKs voting to fill a seat.³⁹

Secondly, before 2017 each MHK had a limited number of votes – one for each vacancy. In 2017 the process was changed to allow MHKs to vote for or against every candidate.⁴⁰ In the first round of voting under the new scheme, this allowed some MHKs to vote for a large range of candidates – a total of 149 votes were cast in favour of candidates (against a maximum of 120 under the old scheme), with one MHK voting for 13 of the 15 candidates, and another for 11 of the 15.

Thirdly, before 2017 MHKs voted by secret ballot – a sharp contrast with the normal, albeit not invariable, open ballot of business in the Keys and in Tynwald. A secret ballot might be thought to increase the scope for “delays and political games”,⁴¹ as MHKs could make inaccurate claims about not only their intentions, but their actual voting patterns. By its nature, it is difficult to provide substantial instances of this happening. It was referred to by the proposer of the change from the secret ballot, who hoped for “far less spoiling of papers, time wasting and underhand tactics”.⁴² In 2015 Dudley Butt began his final speech in the Legislative Council by thanking “those who voted for me in 2005 – the 14 votes I got; thank you to the 20 people who said they voted for me! (laughter) And ditto in 2010”.⁴³ This good humoured reference to deception as to voting was repeated, without disagreement, by an MHK in 2016.⁴⁴ In 2017, the Standing Orders Committee did not recommend changing the secret ballot, although one member, Mr Hooper, objected to the retention of the secret ballot on the basis that “The electorate has a right to know how their elected representatives vote on any issue of policy or legislation”.⁴⁵ When the report came to the House of Keys, the question of an open or secret ballot was hotly contested. Ultimately, the House agreed on a public, rather than a secret ballot.⁴⁶

On a final procedural note, the way in which information on candidates was made available to MHKs varied over time. For most of the twentieth century, nominations for vacant seats were put forward in debate, with the merits of the candidate being put forward by the MHKs proposing and seconding the candidate. By 2003 these were supplemented by proposals for candidates which were circulated in advance,⁴⁷ and following the 2017 reforms nomination was in writing – even proposers no longer spoke on their candidate, as “nomination papers are

³⁹ SOC para.16.

⁴⁰ SO 8.3(5).

⁴¹ Manx Hansard, HK 4/4/2017 at 832-833.

⁴² Miss Bettison, at 754 K134 at 767–768

⁴³ Manx Hansard, TC 18/2/2015 at 1278 T132.

⁴⁴ Manx Hansard, TC 17/5/2016 at 1480 T133 per Mr Chris Thomas.

⁴⁵ SOC, para.18.

⁴⁶ Given effect by House of Keys Standing Orders 8.3(13) (as amended).

⁴⁷ Manx Hansard, HK 18/3/2003.

published and ... form part of the permanent record".⁴⁸ Standing Orders set out the form of this written nomination.⁴⁹ All nominations must be in writing in advance, and include the qualifications and experience of the candidate; why the proposer considers them to be suitable; the name of an MHK proposer, an MHK seconder, and at least two other MHKs who are supportive of the nomination; and contact details for the candidate. The requirement for nominations to be made in advance ruled out new candidates being put forward during the voting process – as the Standing Orders envisage, if a nomination process completely failed “the Speaker shall call for fresh nominations” in writing, available in advance of a vote.⁵⁰ This documentation is supplemented by a duty upon the Speaker to organise “at least one joint meeting between candidates and Members To ensure that all candidates are known to the House ahead of the Election”.⁵¹ As the 2017 report on Standing Orders noted, mandatory hustings are “an acknowledgement that in future there may potentially be a much wider range of candidates from our community”.⁵² I address this important change in who is elected in the sections below.

4(B). Elections from Tynwald.

In the twentieth century the only persons elected to the Legislative Council were either sitting MHKs, former MHKs, or sitting members of the Legislative Council. Before the 1980s, there is only one example of MHKs electing someone who was not a sitting MHK or MLC. Of the 49 seats filled during this period, only Joseph Callister (in his 1951 election) was not then in Tynwald. Joseph Callister cannot, however, be seen as a Tynwald outsider. He was a sitting MHK when, in 1946, he was elected to Council at a bye-election. He failed to retain that seat in 1950, but was returned to Council in a 1951 bye-election. In the 1980s and 1990s there was an increased willingness to elect former members of Tynwald, although current members of Tynwald continued to be the overwhelming majority of those elected. In the 1980s, 13 sitting members of Tynwald were elected, as opposed to 3 former members. In the 1990s, 15 sitting members of Tynwald were elected, as opposed to 2 former members.

For much of the twentieth century, it is not simply that MHKs and former MHKs enjoyed a comparative advantage which led to them excluding non-MHKs from vacancies. With only one exception, it is not until the 1980s that a person without experience as an MHK was even nominated. That exception is Walter Quayle, who having just failed to win a seat in a General Election to the Keys in 1919, was nominated in the first MLC elections held later in that year. The other 118 candidates considered between 1919 and 1980 had all previously sat in Tynwald. Such an overwhelming predominance of practice could easily slip into a constitutional understanding that MLCs should be chosen from the Keys, requiring Speakers and MHKs on a number of occasions to remind the House that they could appoint “from their own members

⁴⁸ Manx Hansard, HK 12/3/2018.

⁴⁹ House of Keys Standing Orders 8.2(5) (as amended 4 April 2017).

⁵⁰ House of Keys Standing Orders 8.3(11) (as amended 4 April 2017).

⁵¹ House of Keys Standing Orders 3.1(3) (as amended, 4 April 2017).

⁵² Mr Ashford, Keys Hansard, 753 K134 (4 April 2017).

or otherwise”. In the 1950 election, for instance, the Speaker reminded members of this, noting “it is not always recognised”.⁵³

The 1980s saw the first pattern of nominations of persons from outside Tynwald. 8% of the 39 candidates considered in that decade were not current or former members of Tynwald. Non-Tynwald candidates in the 1980s were, however, put forward in very particular circumstances. A particular issue faced an MHK if they took a seat in the Legislative Council in a bye-election. They inherited the remainder of the term of office of the MLC they replaced, which could be very short. In this case, they would be giving up the rest of their membership of Tynwald as an MHK in return for a much shorter period as an MLC. Before the 1980s, this was dealt with by an understanding by the Keys that the person would be re-elected at the next normal election to their position as an MLC. In 1931, for instance, F.S. Dalglish had given up his seat in the Keys in February to become an MLC,⁵⁴ and when the post was considered for the full-term in November, debate explicitly referred to him having been given to understand he would be re-elected.⁵⁵ In 1935, filling a seat only between July and November, the Speaker asked for “a tacit understanding” that the MHK elected would be re-elected in November.⁵⁶ In due course, he was re-elected as one of two candidates for two posts.⁵⁷

By the 1980s, however, this approach seems to have fallen into disuse – to speculate, perhaps because it was seen as inappropriate to enter into understandings as to future votes, or because of doubts that such an understanding would be adhered to at the time of the future vote. In 1981 a short vacancy arose due to an MLC returning to the Keys. No MHK stood, but four ex-MHKs did stand, and one was elected. Proposers stressed the short-term nature of the post, and so the difficulty of filling it from the Keys. Ex-MHKs and – significantly – non-MHKs similarly dominated by-elections in 1987 and 1988. In the 1987 by-election one MHK stood, joined by three ex-MHKs and two non-MHKs: Alan Killip, former Deputy Chief Constable, and Fred Watterson, former Mayor of Douglas.⁵⁸ Killip was considered, without success, at the normal election in 1988,⁵⁹ the first person without Tynwald experience to be considered for a full duration post since 1919. In the 1988 bye-election, one MHK was joined by two ex-MHKs and one ex-MLC in being considered for the single seat.⁶⁰

It was not until the 1990s that persons without experience of Tynwald began to be nominated for full-term seats. Overall 22% of candidates for seats in this decade were not current or former members of Tynwald. The 21st century saw a continuing transformation not only of the range

⁵³ Manx Hansard HK 31/19/1950.

⁵⁴ Manx Hansard HK 3/2/1931.

⁵⁵ Manx Hansard HK 17/11/1931.

⁵⁶ Manx Hansard HK 9/7/1935.

⁵⁷ Manx Hansard HK 19/11/1935.

⁵⁸ Manx Hansard HK 16/11/1987.

⁵⁹ Manx Hansard HK 01/03/1988.

⁶⁰ Manx Hansard HK 10/5/1988.

of candidates, but of those successfully elected as MLCs. In the 2000s, 39% of the 67 candidates were not former members of Tynwald; in the 2010s, 59% of 58 candidates, and in the (truncated) 2020s, 78% of 27 candidates. There was a similar change in the profile of MLCs elected – in the 2000s, 16% of 18 appointments; in the 2010s, 37% of 19 appointments; and in the 2020s (so far), 50% of 10 appointments.

4(C). Elections to Tynwald.

From the 1990s, increasingly candidates have been considered – and later successfully elected – who were new to Tynwald. Since the 2010s these have become the majority of candidates, and in the 2020s the majority of those appointed.

One significant feature of the process is the relative transparency. I need to stress relative – there is evidence of parts of the process that have not survived (for instance candidate CVs circulated by nominating MHKs in some years; or group meetings with interested MHKs and candidates), and it seems inevitable that there are other interactions which have not been recorded. We do however have comparatively extensive records of why candidates were put forward by their nominating MHKs, either incorporated into Hansard when nominations were part of Tynwald proceedings, or by Tynwald documents. This includes both successful candidates and – distinctively – unsuccessful candidates. The public domain data, then, allowed collation of information on all 63 outside candidates considered 1962-2022. In doing so, I have focussed on the speeches (later letters) proposing a candidate, rather than carrying out independent research into the biography of each of the 63. This makes the analysis more bounded, but also keeps the focus on the characteristics that the proposer sees as persuasive. A candidate may have been an official in a youth movement, and a police officer, but the proposer’s decision to talk only of their work as a police officer indicates what the proposer saw as persuasive to fellow MHKs sitting as an electoral college. That is to say, a focus on the proposer’s choice of characteristics shows us what they regarded as relevant and persuasive to other MHKs.

This data was then analysed through quasi-judicial recursive play. An initial reading of the data, informed by the global literature, allowed preliminary identification of recurring themes, four of which are discussed below. Each proposal was then revisited, and coded in relation to each of the themes identified: professional background, Manxness and regionality, gender, and public service. This coding produced quantitative data, but the size of the data set raises significant problems for then proceeding to quantitative analysis. Even treating all nominations as part of a single data set – which risks eliding important changes over time – gives us only a very small data set. Accordingly, in the discussion that follows only very significant differences, or very clearly illustrated trends, can be given any weight.

a. Profession.

I have classed each candidate by the categories used in the Manx Census 2021, Level 2.⁶¹ To help ensure consistency of how I class particular professions or careers I have also taken account of the UK NOMIS Employment by Occupation (SOC2010) characteristics, which usefully expand the Tier 2 categories with sub-categories. I have noted every profession or career mentioned by a proposer, rather than tried to make a judgment as to “primary” career –

⁶¹ Cabinet Office, “2021 Isle of Man Census Report Part II”, GD 2022/0047.

where the proposer mentioned a number of careers, each was seen as making the nomination more persuasive. So, what professions and careers were seen as persuasive?

Dominating the nominations were the broad category of “Business, Media and Public Service Professionals”. This very broad professional category includes for instance legal professionals including judges, accountants and economists; architects; journalists and PR professions. 35 candidates fell into this category. To break these 35 candidates down a little: 15 were finance sector professionals; six accountants; six lawyers; four media professionals; and a single quantity surveyor, single actuary, single architect, and single economist. The only other categories with 10 or more candidates were Protective Services Occupations (including armed forces, police, and the fire service) with 11, and Corporate Managers and Directors with 10.

55% of the candidates were from the category Business, Media and Public Service Professionals. To put this into context, in the 2021 Manx Census, just under 7% of the Manx working population were classed in this category. Entire categories of occupation have never been mentioned in nominating a candidate – on the Tier 2 table on the Manx Census, from Secretarial and related occupations down (constituting 44% of the Manx working population in 2021), only one person had one of these occupations referred to in their nomination (so less than 2% of all nominations). John Lightfoot, described as an auto electrician who worked for the bus company for 39 years, was nominated in 2007. He was not elected.

b. Manxness and regionality.

As might be anticipated in appointment to the Manx legislature, the overwhelming majority of nominations had some argument put forward by the proposer to demonstrate the Manxness of the nominee. Only five nominees did not have an explicit point made about their Manx connections, and of these only one does not have quickly identifiable Manx connections of the type discussed below. The exception is Christine Wheeler. Her proposer in 2018 described her as “a relative newcomer to the Island but she has already demonstrated her commitment to preserving what we have building on that and successfully meeting the challenges ahead. Mrs Wheeler has familiarised herself with how our Island’s Tynwald works and has immersed herself in politics, including researching the background to a number of the issues we are currently facing”. She was unsuccessful.

So, what sort of Manx connections are seen as persuasive by MHKs in putting forward their nominations? In order of chronological depth we find Manx ancestry (11), Manx birth (9), Manx education (11), raising children in the Isle of Man (11), and long term Manx residence (48). Obviously many of these overlap – “born and bred” is an expression used of some candidates for instance – but it is striking how much emphasis is given to long term Manx residency. For a significant number of nominees (31) this is the only marker of Manxness brought out in their nomination. This suggests that nominating MHKs are working on a conception of Manxness which might best be characterised as civic nationalism – being part of the community on the Isle of Man, whatever one’s biography.⁶²

To focus more tightly, there is the issue of regionality. In 2022 a number of MLCs described themselves as “Southern”, in a statement on the future of a publicly owned southern community

⁶² See for instance N Duclos, “The SNP’s conception of Scottish Society and Citizenship 2007-2014”, (2016) 21(1) *Revue Francaise de Civilisation Britannique*

pool which begins “The Southern Tynwald members”. MLCs are not elected on a constituency basis, but on a national one. Nonetheless, this does raise the question of how far regionality is stressed when nominating prospective MLCs.

When MLCs were overwhelmingly elected from sitting members of the House of Keys, there were frequent references to geographical balance in the Council – in particular a concern that MHKs representing Douglas constituencies should not be overrepresented, reflecting other members of the Council being officials primarily resident in Douglas. In relation to appointing *to* Tynwald, however, this has become a very much less significant theme. Only 26 of the nominations were associated with a particular region. In the majority even of these nominations, regionality was associated with a particular activity – for instance specifying which part of local government the nominee had experience of. Of these 26, in only one nomination was there an echo of the former emphasis on regional representation. In 1987 Alan Killip was proposed partly on the basis that he was a Douglas resident who would be taking a seat held by a Douglas resident. He was unsuccessful.

c.Gender.

In relation to appointments to Tynwald, only 18 of the 63 nominees (28.5%) were women. There is, however, a potentially interesting difference when we focus on successful nominees. At five of the 13 (38.5%), the gap between women and men is halved. This is comparing two very small data sets however, and is one area where looking at the entire set of nominations together is misleading.

As noted above, before 1961 women were not eligible to be elected. It was some time after the bar on women being elected was lifted before a woman candidate was first put forward. This was Betty Hanson MHK, who was nominated in the 1978 election. She went on, in 1982, to be the first woman to be elected an MLC; to be followed by a small number of other women in the 1990s and 2000s, all of whom had experience as MHKs before joining the Council. In the 1980s, 15% of candidates were women, 6% of those elected. In the 1990s, 5% of candidates were women, 12% of those elected. In the 2000s, 10% of candidates were women, 17% of those elected.

Until the historical General Election of 2021, women were very substantially underrepresented in the House of Keys, meaning that the trend noted above of appointing former MHKs to the Legislative Council would have worked to reduce the number of women being elected. There was a significant change in the 2010s, however, both in terms of the number of women being considered and appointed, and their prior involvement with Tynwald.

In the 2010s, 22% of candidates were women, 32% of those elected. Women were appointed to seats six times in the 2010s – the appointments between 2017 and 2020 being equal to the number of women appointed before 2010. Jane Poole-Wilson was appointed for a short term in 2017, not having previously sat in Tynwald. In the 2018 contest, which included both her seat and four others, five women were appointed; with only Poole-Wilson having sat in Tynwald previously. Although there have only been a small number of processes in the 2020s, a focus on them tentatively suggests that this increase in women being nominated and elected is continuing: 50% of the candidates in the 2020s processes were women.

d.Public Service.

A recurrent theme in nominations to the Legislative Council is that the nominee has a history of public service. Often the term itself is used in nominations, but it is worth expanding. Public service is seen as about societal rather than self-interest, and close to civic mindedness. It is not, however, seen as incompatible with being paid for the activity – although not seen as synonymous with public sector employment, it is not seen as incompatible. So we find the case for a nominee as a public servant built on a career as a police officer, for instance.

An overwhelming majority of nominations referred to the public service of the nominee: all but eight of the 63. The 87% of nominees whose nomination referred to public service had the case made through involvement in a wide range of activities, and it was common for a single nominee to be associated with multiple types of public service – for instance Barbara Brereton’s nomination in 2010 referred to her public sector work in a protective service, her other public sector work, her local government roles, her work as a school governor, her work in a religious organisation, and her work in a Manx charity.

As mentioned above, public sector employment was often represented as public service: 10 by reference to a protective service such as the police or the military, and 21 by reference to other public sector careers. Taken together, this was by some distance the most common way of making a public service case, at nearly 50% of all nominations. Beyond employment, involvement in Local Government, almost always as a repeatedly elected Commissioner, was referred to for 18 nominees. We also find extensive reference to involvement of varying degrees with Manx charities – 17, as opposed to three references to involvement in non-Manx charities. The only other activities mentioned for 10 or more nominees were work with government agencies (13), work with Manx cultural associations (12) and involvement with sports and hobby clubs (11, primarily Manx football and motorsports). Focussing on the three biggest categories (public sector employment, local government, and charities), 44 of the 63 nominees had at least one of these categories in the case for their public service (just under 70% of all nominees).

The significant place of public sector employment as evidence of public service is interesting. As paid employment, it might be seen as in tension with the idea of service, and the prioritisation of the public interest over the private interest. Looking at successful nominees, there is some evidence that public sector employment was a less compelling argument than proposers may have thought. Twelve of the thirteen successful nominations included reference to public service, a theme which we have already seen as very common in nominations generally. The basis for a public service claim was very varied, but the most common claims were around involvement with governmental agencies including tribunals (five), charities (four), sports or hobby clubs (three), and Manx cultural associations (three). In contrast with nominations as a whole, reference to careers in the public sector outside the protective services were comparatively less common than in nominations generally – two of the 13, so 15%, as opposed to 33% of the nominations generally. Also much less well represented in successful nominations was involvement in local government – one of the 13, so 8%, as opposed to 28% of the nominations generally.

5. Lessons for Jersey and Guernsey?

The development of Manx bicameralism/tricameralism since 1919 was not working on a blank sheet. The fundamental structure of House of Keys/Legislative Council/Tynwald Court had been established for a number of centuries. Reforming bicameralism, the focus of the twentieth and twenty-first century developments, was much less radical a departure from constitutional traditions than a move to unicameralism – occasionally debated in the Isle of Man – would have been. Adopting bicameralism is significantly different from reforming bicameralism, even without considering new forms of entry into the national legislature. That said, there may be a number of features of the Manx experience useful to a Jersey and Guernsey readership.

Firstly, as the above discussion shows, the relationship between the two chambers is crucial to understanding how bicameralism might work. One of the foundational themes of the Manx constitution is the tension between the House of Keys, and the Imperial establishment of the Council. The 1919 reforms were the beginning of a rebalancing of the power in this relationship: introduction of elected members appointed by the Keys meant this centre of Imperial power was now being occupied by a minority of appointees of the Keys. In the context of this tension between a national Keys and an Imperial Council, a number of MHKs saw appointment of MHKs into the Council as fundamentally democratic. When MLCs were seen as allies within the Legislative Council for MHKs, proposers commented on MLCs being considered for reelection as voting with the will of the Keys, as well known for sharing the views of the Keys, as being prepared to vote in line with the Keys regardless of their own opinion, or, in the crisp phrase of Mr Cowell in 1931, as understanding they were being “sent up to voice the feelings of this House”.

The 1960s and 1970s, however, saw significant shifts both in the composition of the Council, and the powers of the Council in relation to the Keys. These resulted in the Council being overwhelmingly composed of MLCs elected by the Keys, reducing the significance of MLCs being prepared to represent the voice of the Keys within Council. The opposition to the Keys within the Council, composed of appointed and ex officio members, had been eroded through constitutional reform. The 1960s also saw a sharp shift in the power of the Council from being a chamber of equal authority to the Keys – capable of vetoing legislation – to a subordinate chamber more analogous to the House of Lords. The idea that MLCs should be loyal partisans of the Keys in representing the democratic element in the Manx constitution, and that this was best guaranteed by electing an MHK known well to the House, almost disappeared. Instead, we find repeated references to the Legislative Council having a complementary, secondary, role to the Keys. The distinctive contribution of the Council meant that “it should not be an alternative House of Keys”,⁶³ and that being an MLC was “a role which is so different from that of being a Member of the House of Keys”.⁶⁴ This emphasis on the special role of the Council as complementary to, rather than duplicating, that of the Keys only increased as the Keys began to look outside Tynwald for MLCs. As noted above, numerous candidates were nominated in terms that stressed their critical skills. We find specific references to the candidates understanding of Legislative Council as “primarily a scrutiny chamber”,⁶⁵ needing

⁶³ Manx Hansard HK 7/3/1995 at K501.

⁶⁴ Manx Hansard HK 3/3/1998.

⁶⁵ Personal Statement of Conor Keenan, 23 November 2021, available online <https://www.tynwald.org.im/business/opqp/sittings/20212026/2021-PP-0203.pdf> (accessed 31

“members qualified in the ... scrutiny of legislation”,⁶⁶ with “the first and greatest responsibility as a Member of the Legislative Council [being] the scrutiny of legislation virtually line by line, and it needs an ability to concentrate, to be a clear thinker and understand how a Bill is constructed”.⁶⁷

If Jersey or Guernsey were to consider bicameralism, the purpose of the second chamber, and its relationship with the first chamber, would need to be very clearly delineated. Returning to the functions of bicameralism noted above, what aspects of parliamentary work would benefit from being duplicated? Returning to the Manx experience described above, would one chamber be dominant by design, as the House of Keys has been since 1961, or would the chambers share coordinate authority?

Secondly, deciding on the composition of a second chamber can be very challenging in a small democracy. I have suggested above that some of the common bases for membership of a second chamber – such as representing political sub-units in a state – have limited application to small democracies. There are small democracies which have a directly elected second chamber – possessions of the United States which follow structures imported from the colonial centre, as the Westminster model can be commonly found in former, or current, possessions of the British Empire. As noted above, the norm for small democracy bicameralism is for a directly elected first chamber to dominate a second chamber without that democratic mandate.

Such domination is much more difficult to justify where members of both chambers are directly elected. To take up Renwick’s suggestion in 2012 that Connetables could form a second chamber with the power only to delay legislation,⁶⁸ it is easy to imagine a situation where elected members of the States with larger numbers of voters (as may well be the case with 12 Connetables as opposed to 29 Constituency Deputies) being overridden by the first chamber would pose political difficulties. Giving such a second chamber equal status, however, would be giving seven of the 12 Connetables considerably more power than they currently exercise in a unicameral legislature. Without a strong alternative logic for the second chamber, typically to be found in the importance of representing significant sub-units of the state, and so typically associated with larger states, this is a difficult issue to resolve.

If being unable to find an acceptable way of populating a second chamber is a fundamental obstacle to a bicameral path, the Manx experience may provide an overlooked alternative model. The second chamber is clearly subordinate to the first chamber and, lacking a direct democratic mandate, this fits well with an emphasis on authority being derived from the

August 2022); Personal Statement of Kerry Sharpe, 12 March 2020, available online at <https://www.tynwald.org.im/business/opqp/sittings/20182021/2020-PP-0047.pdf> (accessed 31 August 2022); nomination of John Skinner by David Ashford, 12 March 2018, available online at <https://www.tynwald.org.im/business/opqp/sittings/Tynwald%2020162018/2018-PP-0042.pdf> (accessed 31 August 2022).

⁶⁶ Manx Hansard 18 March 2013 at 165.

⁶⁷ Manx Hansard 6 May 2015 at 58.

⁶⁸ See A Renwick, *The Jersey States Assembly in Comparative Perspective: A report for the States of Jersey Electoral Commission*, (2012).

democratic process. The second chamber is dominated, however, by members elected by the House of Keys acting as an electoral college: a process of indirect democracy, but no less democratic than, say, the appointment of the UK Prime Minister by a majority of MPs. This gives it some authority, but of a kind which is not similar even in nature to that enjoyed by the dominant Keys.

Thirdly, as the Manx experience shows, this way of staffing a second chamber is capable of contributing to increasing diversity in the national legislature. In the Manx context, we can see this in relation to gender, and previous experience of national politics. Notably, however, we do not see this in relation to social class as shown by occupation. In any case, it is open to being used not to provide a different set of voices in the national legislature, but in providing a final stage in the career of parliamentarians. The twentieth, but not the twenty-first, century experience of first chamber franchise in the Isle of Man shows this in practice.

Fourthly, one of the distinct features of the Manx political landscape is the almost complete absence of political parties. At the time of writing, the 24 member House of Keys includes two members of the Manx Labour Party, and one member of Liberal Vannin. A House of Keys dominated by independents is a key theme of Manx constitutional history. If a party, or combination of parties, commanded a majority in the Keys during the process of electing to the Legislative Council, however, there is very little to prevent them capitalising on this majority to create a similar majority in the Legislative Council – in one 21st century process, for instance, five of the eight MLCs could have been appointed. The only protection in the Manx system from this replication along party lines is the staggered appointment to the Council. The States of Jersey in particular are much closer to some degree of party institutionalisation, and have begun to reflect on how to deal with the possible development of party politics.⁶⁹

Finally, as the above discussion shows, the Manx model has changed tremendously in the last century. Readers considering a first chamber franchise model should focus on the 21st century form, particularly since the important procedural reforms of 2017, rather than the 20th century form – for instance on the open ballot rather than the secret ballot. It is a commonplace for the multitudinous flaws of the US Constitution to be put forward as a reason to reject adopting written constitutions elsewhere. As there are better models of a modern written constitution than that of the US, the modern iteration of the Manx model of first chamber franchise is better than the earlier ones.

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⁶⁹ See C Morris, M Bishop, J Corbett and P Evans, *How might the Standing Orders of the States of Jersey respond to the formation of political parties?*, (2021).