

Tensions Between Constituency and Regional Members of the Scottish Parliament Under  
Mixed-Member Proportional Representation: A Failure of the New Politics

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*Abstract:* About a decade after devolution in the United Kingdom created a Scottish Parliament elected by mixed-member proportional (MMP) representation, tensions between those representatives elected by the two different routes (single-member constituency and multimember region) remained. This article shows how controversies in 2008 over the level of office allowances, as well as the wording of the code of conduct, demonstrate that Members of the Scottish Parliament (MSPs) held differing views on the constituency role of MSPs, and that the partisan animosity between the Scottish National Party (SNP) and Scottish Labour has been exacerbated by the competition at the constituency level facilitated by MMP. This deeply partisan outcome, while reflecting the successful operation of rational choice logic on the part of individual politicians, worked against the larger attempt to engineer a less adversarial post-devolution politics in Scotland.

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## **Introduction**

One aspect of the devolution of power to Scotland was the introduction of proportional representation (PR) for Scottish Parliament elections. This was part of the ‘new politics’ that was meant to replace the majoritarian, winner-take-all approach typical of British politics (Brown, 2000). Critics have argued that the new politics advocated by supporters of devolution in the late 1990s did not materialise (Mitchell, 2010), though others (Crawford, 2010) remain upbeat. This article argues that one crucial aspect of the attempt to engineer a new politics in Scotland after devolution, the electoral system, not only failed to facilitate a new politics, but actually exacerbated the existing animosity between Scotland’s two main parties, the Scottish National Party (SNP) and the Scottish Labour Party, by providing an environment that fosters tensions between Members of the Scottish Parliament (MSPs) elected in single-member constituencies and in larger multimember regions. The SNP and Labour are long-standing rivals (Lynch, 2002), with the latter party dominating Scottish politics in the late twentieth century and participating as the bigger partner in two Labour-Liberal Democrat majority coalition governments (1999-2007) immediately after devolution.

The mixed-member proportional (MMP) electoral system, introduced for the first Scottish Parliament election in 1999, allows voters to cast one vote for a candidate in one of 73 single-member constituencies, while another vote can be cast for a party list (or an independent candidate) in eight electoral regions. MSPs are elected by plurality (the most votes) in the former case, while in the latter, they are usually elected from closed party lists in such a way that the overall regional result – adding the seven regional MSPs and nine (on average) constituency MSPs – is roughly proportional on a partisan basis to the results of the regional vote. Research carried out in the first decade of devolution shows that tensions between constituency and regional MSPs, who serve overlapping geographical areas, have developed over constituency service (Cowley and Lochore, 2000; McCabe and McCormick,

2000; Bradbury and Russell, 2005; Bradbury and Mitchell, 2007; Carman and Shephard, 2007; Lundberg, 2007).

This article confirms those findings, adding that the tensions had not subsided at the end of the first decade of devolution by providing a case study of parliamentary submissions of MSPs who reacted, in 2008, to proposals both to entrench and expand the office allowance disadvantage for many regional MSPs, and to revise the wording of the MSPs' code of conduct in a more neutral direction. This hostility to the interests of regional MSPs reflects, to some extent, the circumstances of election results before 2011: the majority of Labour and Liberal Democrat MSPs were elected in single-member constituencies, while most SNP and Conservative MSPs were elected in multimember regions. Many constituency MSPs displayed rational self-interest (at least in the short term) by supporting rules that would potentially harm their opponents' ability to compete with them on an electoral basis. This deeply partisan outcome, while reflecting the successful operation of rational choice logic on the part of individual politicians, worked against the larger attempt to engineer a less adversarial post-devolution politics in Scotland.

Rationality here is defined as the desire by constituency candidates to maximise their votes (Downs, 1957) by performing constituency service, making a local name for themselves and gaining a personal vote that might withstand drops in support for their party (Fenno, 1978; Cain *et al.*, 1987). MMP with dual candidacy (where candidates are able to stand in both single-member constituencies and on party lists simultaneously) provides an electoral incentive for list-elected candidates who want to contest a constituency within their region at the next election; rather than shirking constituency duties, as might be expected with closed-list PR (Bowler and Farrell, 1993), list-elected candidates who plan to stand as both regional list and constituency candidates at the next election have an electoral incentive to target the constituency they hope to be nominated in for extra attention. Constituency-elected

candidates, particularly those who believe themselves likely to be re-elected in their constituency without recourse to the party list, might find it rational to maximise their vote by reducing competition from regional list-elected candidates who target their constituency by ‘shadowing’ them – behaving like surrogate constituency MSPs.

Devolution was supposed to facilitate a less adversarial, more pluralistic, new politics in Scotland, and PR, seen by Arend Lijphart (1999) as a crucial component of the consensus model of democracy, is a major part of this effort to engineer a shift from the adversarial behaviour associated with the Westminster model (Bulmer, 2011; Lundberg, 2012). Yet many of the comments made by MSPs about their colleagues in 2008 indicate that at least some aspects of the old politics were alive and well. The mixed-member form of PR has exacerbated the long-standing tensions between Scottish Labour and the SNP by creating an environment that fosters constant competition. Labour used to have great success in constituency races, winning most of its seats on that basis. Perhaps because of this history of success, only a small number of Labour constituency candidates also stood on regional party lists. Labour’s failure to participate extensively in dual candidacy – which is the practice of most other Scottish parties – led in the 2011 election to the loss of several high-profile candidates, some of whom ended up as advisers to novice Labour list candidates elected in what would probably have been their places had they practised dual candidacy (*Scotsman*, 2011).

This failure makes Labour’s assumptions appear flawed, indicative of short-term rational calculations that neglected long-term considerations. In a broader sense, the outcomes examined in the following case study may lead observers to question the utility of institutional engineering in facilitating significant changes in the operation of politics. While at the ‘micro’ level, individual politicians appear to respond to the electoral incentives created by MMP in Scotland, there has been a failure at the ‘macro’ level to engineer a less

adversarial new politics. To top off this failure of institutional choice, MMP allowed the SNP to win a majority of seats on a minority of the vote when the party won 69 of the Scottish Parliament's 129 seats in the 2011 election – exactly what the designers of the Scottish Parliament's electoral system believed could not happen (Mitchell, 2000). The Scottish experience with institutional engineering may be of interest to other countries contemplating changes in their political institutions – ‘engineers’ should look carefully at the party system and electoral competition when considering institutional changes, not forgetting how a proposed change's impact on the ‘micro’ level of politicians' behaviour might affect the larger goal.

### **MMP in Scotland**

MMP (usually called the ‘additional member system’ in the UK) was originally recommended by the Scottish Constitutional Convention in the 1990s as it drew up the blueprint for Scottish devolution (Curtice, 1996). Introduced in New Zealand in 1996 after two referendums, MMP is based upon the German electoral system and the New Zealand-coined term ‘mixed-member proportional’ is commonly used by political scientists worldwide (Shugart and Wattenberg, 2001; Lijphart, 1999; Reynolds *et al.*, 2005). MMP is ‘mixed’ because representatives are elected via two different routes – by single-member plurality, and by regional or nationwide party lists. In Scotland, the regional (rather than nationwide) compensatory mechanism yields a less proportional result on a partisan basis than is the case in other MMP systems, such as New Zealand's, but it is not correct to label Scottish MMP as semi-proportional, since compensation is attempted; semi-proportional non-compensatory or ‘parallel’ mixed-member systems do exist (called ‘mixed-member majoritarian’ or MMM) and are actually more common than MMP (Shugart and Wattenberg, 2001).

The proportional nature of MMP has, in fact, revealed the true extent of political pluralism in Scotland since the late 1990s (Table 1). Labour was the dominant party in Scottish politics for decades, but has been facing challenges from the SNP since the 1970s with the rise of a national identity ‘group loyalty’ or issue dimension (Brand *et al.*, 1983, p. 464), what others would call the centre-periphery cleavage, an addition to the class cleavage in Scotland (Bohrer II and Krutz 2005, p. 665). Aside from the Liberal Democrats and Conservatives, Greens and Scottish Socialists (among others) have also been elected to the Scottish Parliament, so the party system in Scotland has been described as one of moderate pluralism (Bennie and Clark 2003, p. 153), although the competition between the SNP and Labour has not been ‘moderate’ – the conflicts between the two in the 1990s has been described as ‘extensive’ (Lynch 2002, p. 223).

Table 1 about here

Much of this conflict between the two parties takes place at the constituency level in Scottish Parliament elections, with Labour candidates’ initial success giving way to significant failure, as election results in Table 1 reveal. Labour’s share of both the regional vote and the constituency vote has dropped from a 1999 level of 33.6% and 38.8%, respectively, to 26.3% and 31.7% in 2011. The party’s number of constituency seats won (out of the 73 available) dropped from 53 in 1999, to 15 in 2011. The compensatory nature of MMP means that Labour’s regional seats (out of the 56 available) rose from 3 in 1999 to 22 in 2011. From 1999 to 2011, Labour went from a party of primarily constituency-elected MSPs (and a large number of them) to a party in which most MSPs are elected from regional lists. The opposite process has occurred for the SNP, which rose from 27.3% and 28.7% of the 1999 regional and constituency vote, respectively, to 44.0% and 45.4% in 2011, with an increase in constituency seats from 7 in 1999 to 53 in 2011.

The results for the 2007 election (Table 1), in which the SNP won one more seat than Labour and went on to form a minority government, show how Labour had begun to lose a significant number of constituency seats (from 53 in 1999 to 37 in 2007), with the SNP making big gains (from 7 in 1999 to 21 in 2007), though Labour still held more constituency seats than the SNP, and only held 9 regional seats. Continued decline for Labour at the constituency level would, however, force the party to rely upon a larger number of regional seats after future elections, yet the party's MSPs have constantly displayed a hostile attitude towards regional MSPs. One of the Scottish Parliament's earliest decisions established a system of office allowances for its members. Shortly after the parliament first began its business in 1999, Labour's MSPs joined Liberal Democrats in introducing a system of office running cost allowances that discriminated against parties with more than one regionally elected MSP per region by reducing the allowance: once a party had more than one regional MSP elected, the MSPs only received a portion of the full allowance that was determined by adding 30 per cent of the full allowance for each subsequent MSP elected and then dividing the sum by the total number of the party's MSPs in that region (Scottish Parliament 1999, col. 301). Because most Labour and Liberal Democrat MSPs were elected on a constituency basis, while most SNP and Conservative MSPs were elected on a regional basis, this system of office allowances would have an adverse impact on the opposition: regional MSPs from the same party were expected to open (and share) only one office per region, although this could be expanded to two offices in sparsely populated regions.

During the debate, Labour MSPs invoked the notion that constituency MSPs, not regional ones, would be the first point of contact for most of their constituents, regardless of how constituents voted at the last election (Scottish Parliament, 1999). A set of guidelines added to the MSPs' code of conduct more explicitly cited an 'expectation' that a constituency MSP would be the 'usual point of contact' for constituents, despite the 'key principle' that all

MSPs have equal status; the ‘guidance’ also required regional MSPs to work in ‘more than two’ constituencies (Scottish Parliament, 2000). Discouraging the shadowing of constituency MSPs by their regional counterparts, who might be trying to raise their electoral profile in the event that they stand against the incumbent in the next constituency election, is probably the main factor motivating constituency MSPs’ hostility to their regional counterparts. If most of your party’s representatives are elected in constituencies, it may be rational to support policies that are likely to hurt your opponents.

This rudimentary rational choice logic might have explained Labour’s position on regional MSPs before the 2007 election, but the party’s lacklustre performance in that election should have forced some questioning of not only the attitudes towards regional MSPs, but also dual candidacy. Labour fielded very few of its constituency candidates on regional lists (only 19%, compared to 52% for the Liberal Democrats, 78% for the SNP, and 86% for the Conservatives) in 2011 (*Guardian*, 2011), costing the party some high-profile candidates. This issue could have been revisited, with Labour’s Scottish Executive Committee’s chair after the party’s 2007 defeat, Stuart Clark, on record saying that Labour should consider changing its opposition to dual candidacy (Macdonell, 2008).

Yet the party did not alter its hostility to dual candidacy, and to regional MSPs in general during the period after the 2007 election, as the case study to follow illustrates. Explaining Labour MSPs’ views on these matters, with reference to the rational choice literature, is difficult. A survey of the literature reveals a dispute between scholars who believe that political actors make rational choices along the lines of classical economics, using well-informed cost/benefit analyses, and those who argue that there are boundaries to such rationality. Bounded rationality is, according to Herbert Simon, ‘behavior that is adaptive within the constraints imposed *both* by the external situation and by the capacities of the decision-maker’ (Simon, 1985, p. 294), resulting in an approach that combines the

‘economic’ and ‘psychological’ versions of rationality. Bryan Jones (1999, p. 298) argues that ‘most behavior in politicians is adaptive and intendedly rational but that limits on adaptive behavior, imposed by human cognitive/emotional architecture, may be detected in even the most stable of environments’. In the business psychology literature, Daniel Kahneman and Dan Lovallo (1993, p. 28) find evidence suggesting ‘that many significant decisions made in organizations are guided by unrealistic forecasts of their consequences’. Cognitive illusions, such as a sense of electoral invincibility, can lead to miscalculations (Jones, 1999, p. 306). A politician’s short time horizon can also compromise rational behaviour (Pierson, 2000, p. 479). Short-term considerations, perhaps aided by British majoritarian cultural attitudes, appear to have guided Labour MSPs in their continued hostility towards regional MSPs.

### **Competition between MSPs**

The tensions between the two types of elected representatives seen in Scotland are far less evident in the ‘homeland’ of MMP, Germany. Werner Patzelt (1997, p. 60) argues ‘it is obvious that for an MP the constituency work is a critical part of holding his office. Consequently, the representatives devote about one-third of their working hours to constituency work’. Most Germans do not appear to distinguish between constituency and regional (federal state-elected) representatives (Burkett, 1985, p. 130), largely because dual candidacy is allowed and is commonly practised (Jesse, 1988, p. 120; Massicotte, 2004, p. 73). This means that candidates losing in constituency contests can be elected through party lists when they are in sufficiently high list positions, usually establishing offices in constituencies where they were defeated; shadowing of constituency-elected candidates is thus normal (Burkett, 1985, p. 129-30). German Bundestag members receive the same office allowance regardless of how they are elected (German Bundestag, 2012).

In New Zealand, MPs elected via a national party list receive smaller office allowances than their constituency-elected counterparts because the assumption is that the latter will use the allowance for two offices, while the former will only have one; some MPs find this unfair, claiming that the disparity in allowances can limit ‘the ability of list MPs to make contacts with voters to the depth and extent of constituency members’ (McLeay and Vowles, 2007, p. 74). Other MPs, however, accept the lower allowance for list MPs (including some Green list-elected MPs interviewed in 2010 by the author), and there was no move to equalise allowances. Dual candidacy is practised in New Zealand, and while party politicians do not seem very concerned about it, there has been some public unease. An official inquiry into MMP in 2001 rejected restrictions on the practice, and the early years of MMP saw little transfer between the two tiers of MPs from election to election (McLeay and Vowles, 2007, p. 76). The matter of dual candidacy was brought up for public consultation in the review of MMP that followed the 2011 referendum on whether to retain the system (in which 58% of voters voted to keep MMP), and the majority of public comments were supportive of the practice (Electoral Commission, 2012). New Zealand politicians interviewed in 2010 by the author were tolerant of MMP, with members of most parties supportive of the system and very few in favour of significant change. Furthermore, there was no domination of constituency seats by just one major party in New Zealand or Germany in the way that Labour dominated such seats in Scotland and Wales in the early years of devolution (Bradbury, 2007, pp. 153-4), so both major parties in New Zealand and Germany could expect to win seats in both the constituency and list tiers, making it less attractive to imply that list-elected colleagues were ‘second-class’ representatives.

While dual candidacy appears not to be especially controversial among politicians in Germany or New Zealand, the practice is so disliked by the UK Labour Party that it was banned for Welsh Assembly elections (as of 2007), though not for Scottish Parliament or

London Assembly elections (but Labour's candidates for the latter two bodies do not normally pursue dual candidacy). Although some Labour deputies have no problem with the competition they face from other parties' MSPs or Welsh Assembly Members (AMs), others refer to regional MSPs and AMs who lose constituency races (often to Labour candidates) and win via their dual candidacies on regional lists as having been 'rejected by the voters', to use the language of former Welsh Secretary Peter Hain (BBC News Web site, 2006). By contrast, scholars have argued that dual candidacy in Germany facilitates the competition over constituency service that enhances the link between representatives and their constituents (Lancaster and Patterson 1990; Klingemann and Wessels 2001; Massicotte 2004), and the same should be the case in Scotland and Wales (Lundberg, 2006). Part of the problem for Labour in accepting dual candidacy appears to lie in its highly majoritarian view of democracy, a view that is incompatible with the logic of PR (Lundberg, 2007, p. 164). These cultural attitudes combined with short-term rational calculations to maintain Labour hostility towards regional MSPs, as the case study below will show.

### **Revisiting office allowances**

Events in 2008 allowed for a reassessment of the relationship between constituency and list MSPs. Looking into the issue of office allowances for MSPs, the Allowances Review Panel stated 'we are as satisfied as we can be that a greater workload falls on constituency Members' (Allowances Review Panel, 2008, p. 32), despite recognising that 'we could not make a detailed assessment of caseload' (Allowances Review Panel, 2008, p. 31). Nevertheless, the panel recommended that the annual office staff salary allowance for constituency MSPs be set at a maximum of £62,000, while the limit for regional MSPs should be £45,000, based upon the notion that constituency MSPs should be able to hire 2 to 2.5 full-time equivalent staff members, while their regional counterparts should only be able to hire

1.5 to 2 (Allowances Review Panel, 2008, pp. 33-4). The previous office allowance reimbursement system, as set out in 2001, was characterised by a reduction in the portion used to reimburse the office running costs of regional MSPs when more than one was elected from a party's list in a region, but did not contain a cap on staff salary reimbursement, the largest portion of the allowance and obviously linked to the number of staff members employed (Scottish Parliament 2001, col. 1901).

The research on MSPs' constituency work commissioned by the Allowances Review Panel and carried out by the Scottish Parliament Information Centre (SPICe) was based on a very small sample of five (three constituency and two regional) MSPs (Scottish Parliament Information Centre, 2007, pp. 7-8). This research was actually criticised by one of the Allowances Review Panel's members, Lord (James) Selkirk of Douglas, a former Conservative MSP for the Lothians region. Selkirk, whose dissent was recorded in the panel's report (Allowances Review Panel, 2008, p. 34), complained of how limited the evidence regarding the constituency work of MSPs was ('too small to make a judgment'), noting that 'the allowances at the outset were not identical between the two categories of MSP and I objected in principle to them widening the gap further' (Dinwoodie, 2008). Another reaction to the panel's recommendation to widen the gap between constituency and regional MSPs' office allowances came from SNP regional MSP Christine Grahame, who pointed out a major difference in three of the MSPs whose constituency caseloads were examined by SPICe: 'How could they possibly compare the two constituency MSPs who have been in office for more than eight years with a regional list MP [sic] who only came into office last May and cannot possibly have had time to build up a full case load? It's ridiculous. They are basing their recommendation on false evidence' (Dinwoodie, 2008).

The nature of the evidence used by the Allowances Review Panel to support its recommendation of a two-tier office staff reimbursement allowance arose when the Scottish

Parliament debated the issue in June 2008 and rejected the funding distinction between constituency and regional MSPs. While most of the original scheme introduced by Labour constituency MSP Tom McCabe, a member of the panel, was not controversial, McCabe recognised that the panel's 'recommendation has caused considerable concern among list members and, indeed, others' (Scottish Parliament, 2008a, col. 9667). SNP constituency MSP Tricia Marwick introduced the amendment that altered the panel's recommendation of the two-tier allowance scheme, noting that because equality between constituency and regional MSPs is a basic principle of the Scottish Parliament, in order to move away from that principle, 'overwhelming evidence that we should do so must be presented. However, there is no such overwhelming evidence, as Tom McCabe acknowledged' (Scottish Parliament, 2008a, col. 9688).

The vote on Marwick's amendment saw the SNP, Conservatives, and Greens (plus some regional Liberal Democrat MSPs, whose party allowed a free vote on the issue) succeed in overcoming Labour (and some Liberal Democrat) opposition to her proposal for a single £54,620 limit for office staff salaries, regardless of how the MSP is elected (Scottish Parliament, 2008a, col. 9691). While not all Labour MSPs spoke against Marwick's amendment, most were critical, with constituency MSP Cathie Craigie saying that in the 'Lanarkshire area of the Central Scotland region, the electorate rejected five SNP MSPs, but yet they are here in the Parliament', alluding to how dual candidacy allows those who lose constituency contests to become MSPs via the regional list when they are ranked high enough (Scottish Parliament, 2008a, col. 9695).

Hostility towards regional MSPs who try to shadow constituency MSPs they plan to stand against at the next election appeared to be a major factor in Labour's attempt to secure a two-tier allowance scheme. MSPs (and others) were invited to submit their views on the matter of how to reform the allowances system, and these submissions were available on the

panel's Web site (<http://allowancesreview.scottish.parliament.uk/>). Analysis reveals that 24 of the 48 submissions from current MSPs spoke to the issue of electoral status (whether an MSP was elected from a constituency or a region) and took a side, at least to some degree. These responses were coded as broadly positive or negative to the idea of equality, in constituency workload (with consequences for allowances), between constituency and regional MSPs.

The majority of submissions (63%) came from constituency MSPs (although they constitute the majority – 73 out of 129 – of MSPs, or 57%, so this is to be expected). However, the sample, at only 24 out of 129 MSPs, is small and does not include any Conservatives or Greens, so is not highly representative of the parliament as a whole. Nevertheless, the overwhelming majority of Labour MSPs opposed the idea of equality between constituency and regional MSP constituency workload, with all of these MSPs elected in constituencies (while two of their regionally elected counterparts supported equality). One SNP MSP and one Liberal Democrat MSP, both elected in constituencies, joined most Labour MSPs in opposing equality. By contrast, all of the regional MSPs supported equality, and one constituency-elected SNP MSP agreed with them. Therefore, opinion on the issue of equality appears to follow both party and electoral status (constituency or regional) lines.

While some comments are quite mild and difficult to code because they barely appear to take a 'side', most are unambiguous about the MSP's opinion on the issue. Constituency-elected Labour MSPs' comments tend to be rather dismissive of regional MSPs, almost always claiming that constituency MSPs have larger caseloads than their regional counterparts. Regional MSPs (most of whose submissions come from SNP members) complain about the need for equal treatment in terms of allowances and the ability to establish offices. Both groups quote from the MSPs' code of conduct frequently and claim to be working in the interests of their constituents.

## **Revisiting the code of conduct**

Jamie Hepburn, SNP regional MSP, invoked the code of conduct when he argued that the reduction in the office running costs allowance for regional MSPs in cases where more than one is elected per party per region violates the equality of MSPs stated in the code, making it difficult for the MSPs to serve constituents: ‘all MSPs – regardless of whether they represent a constituency or a region – should be allocated equal allowances. And in a similar vein, all MSPs should be able to operate their constituency offices on an equal basis. That is, each individual MSP should be able to run an individual constituency office, and that they should certainly be allowed to inform their constituents of its existence’ (Hepburn, 2007). Another Central Scotland SNP regional MSP, Alex Neil, made similar comments regarding the need for equality. He also challenged the notion that constituency MSPs have a greater constituency caseload, saying ‘Recently one constituency MSP told me she was dealing with about 90 live cases. I am currently dealing [with] more than 150 live cases’ (Neil, 2007). In his opinion, the level of constituency caseload has less to do with how the MSP is elected and more to do with ‘which party is in government, the profile of individual MSPs and the work rate and perceived effectiveness of individual MSPs. Therefore to make a distinction in the allowances system between regional MSPs and first past the post members is an absurdity’ (Neil, 2007).

In the above examples, regional MSPs are reacting to what appears to be a common view among constituency MSPs that the former have fewer constituency cases to deal with. Labour constituency MSP Des McNulty’s submission compared the constituency workload of constituency and regional MSPs in this way, referring to the code of conduct’s ‘requirement’ that regional MSPs notify constituency MSPs when taking up a case: ‘The workload of constituency MSPs differs from that of Regional List Members – there have been very few

instances of Regional List members notifying me that they have had cases brought to them by my constituents as required by parliamentary rules, and there is little indication that any Regional List Member has ever undertaken any significant amount of casework in my area' (McNulty, 2007). The citation of a requirement for regional MSPs to notify constituency MSPs upon taking up a case frequently made by Labour MSPs is a reference to the MSPs' code of conduct, which (until it was amended in 2008) stated 'In the event that a regional ('list') MSP does raise a constituency case (for example with a Minister or local authority) he or she must notify the relevant constituency MSP at the outset unless the consent of the constituent is withheld' (Scottish Parliament, 2008b, Annexe E, Section 8.3.1).

What began as 'Guidance from the Presiding Officer' near the time of the Scottish Parliament's foundation (Scottish Parliament, 2000) had been incorporated into the MSPs' code of conduct, in its eighth section by the time the third edition was drafted in 2007 (Scottish Parliament, 2008b, Annexe E). Later in 2007, the Standards, Procedures and Public Appointments Committee began a consultation on revising the code's Section 8, 'Relationships Between MSPs', which dealt with how to handle constituency cases, and one of the issues upon which it sought written responses was 'the level of communication between regional and constituency members when approached to take on a constituency case' (Scottish Parliament, 2008b, para. 8). Two parts of the code important to the matter of equality between constituency and regional MSPs that came under consideration were the requirement for regional MSPs to notify constituency MSPs when they took up a constituent's case – frequently cited by constituency MSPs when they commented on regional MSPs' workload, as described above – as well as the assumption that constituents would normally approach constituency MSPs before regional MSPs with their cases. Both parts were in Section 8.3.1 of the code:

The basic principle is that the wishes of the constituent are paramount. In particular, a constituent has the right to approach his or her constituency MSP, or any of the seven regional MSPs elected in his or her region. They also have the right to expect an MSP to take on a case though the MSP must be able to judge how best to do so. It is expected, however, that, in practice, the usual point of contact for a constituent raising a specific personal or local matter will be his or her constituency MSP. In the event that a regional ('list') MSP does raise a constituency case (for example with a Minister or local authority) he or she must notify the relevant constituency MSP at the outset unless the consent of the constituent is withheld. A suggested pro-forma for this purpose is attached at Appendix A (Scottish Parliament, 2008b, Annexe E).

The evidence submitted to the committee included comments from 14 Labour constituency MSPs opposed to the removal of the notification requirement and/or the statement expecting constituents to approach constituency MSPs (Scottish Parliament, 2008b, Annexes F and H). On the point about assuming constituents would approach constituency MSPs first, the committee members agreed that the 'statement could be misinterpreted by the public as steering the public to their constituency MSP in the first instance' and voted overwhelmingly (with only Labour constituency MSP Cathie Craigie voting against) in favour of removing the statement (Scottish Parliament, 2008b, paras 34-6).

The point about notification was more controversial. Some MSPs said that notification was not happening (and not, therefore, an indication that regional MSPs were failing to perform constituency service, as argued by Labour constituency MSPs), giving various reasons for this: 'in some cases a reflection of the consensual working arrangements between regional and constituency MSPs, and in other cases was a reflection of the specific expertise or political views of some MSPs. In some cases it was an omission arising from the speed at which a case was satisfactorily concluded' (Scottish Parliament, 2008b, para. 42). Other

reasons included confidentiality, even where this was not requested by the constituent. Conservative constituency MSP David McLetchie told the committee: ‘Confidentiality is an issue. I certainly would not notify a regional member about a case. My starting point is that an inquiry that is made at one of my surgeries is confidential and I should not share it with anyone unless the constituent asked me to do so. In a sense, the notification rule breaches confidentiality, which is not appropriate’ (Scottish Parliament, 2008c, col. 177). In the end, the committee voted to remove the notification requirement (Scottish Parliament, 2008b, para. 44).

### **Explaining the tensions between constituency and regional MSPs**

These Scottish Parliamentary debates on office staff salary allowances and the code of conduct echo the debate in 1999 on the matter of smaller office running cost allowances for regional MSPs where more than one is elected from a party in a region, as described earlier. Nearly a decade later, attitudes of MSPs do not appear to have moved on much, with several Labour MSPs (mainly, but not entirely, elected in constituencies) apparently opposed to equality for constituency and regional MSPs, while others (mainly, but not entirely, elected in regions) argued against Labour’s case. Many Labour MSPs argued that constituency MSPs have larger constituency caseloads, so they deserve larger office allowances. Labour MSPs also argued for keeping the code of conduct worded so that regional MSPs were required to notify (with a constituent’s consent) constituency MSPs when they took up cases.

While it is difficult, if not impossible, to assess independently how much time constituency and regional MSPs spend on constituency service (they do not punch time clocks!), the only book-length study on the subject found that constituency MSPs did spend a larger portion of their work time on constituency service than did their regional counterparts (Lundberg, 2007, pp. 178-9), although this type of research is based upon postal surveys of

the MSPs themselves reporting an estimate of how they spend their time and has been criticised for being potentially unrepresentative (Carman and Shephard, 2007, p. 484). A study of what MSPs do in parliament shows that regional MSPs spend more time than their constituency counterparts on committees, particularly if they did not engage in dual candidacy (Battle, 2011, p. 510). Battle's research suggests that those regional MSPs expecting to stand as both constituency and regional list candidates responded to the electoral incentive to make themselves noticed in the constituencies they believed they would be nominated in. This incentive, inherent in MMP and potentially good for voters, can cause tensions in the relationship between constituency and list MSPs due to the resulting competition.

While the designers of the Scottish Parliament's electoral system perhaps should have been aware of the potential dangers of MMP, Germany's record did not indicate tensions between constituency and party list deputies within the system – though the animosity between Labour and the SNP could be considered more severe than what exists between competing parties in Germany. Other PR systems, such as the single transferable vote (STV, popular with the SNP and Liberal Democrats, as well as the Electoral Reform Society in Britain), have their own drawbacks – STV, which allows voters to rank candidates in order of preference, contains an electoral incentive that could promote too much constituency service (and even 'pork barrel' politics) at the expense of policy expertise and parliamentary work, and STV could reduce party cohesion. Indeed, any electoral system that allows intraparty preference voting can undermine party unity (Katz 1986: 101), though several European countries do allow voters to indicate some degree of candidate preference, which may or may not be effective in altering the pre-existing party list rankings. Keeping MMP but banning dual candidacy, the case in Welsh Assembly elections since 2007, might reduce the tensions between constituency and regional MSPs, but at a price: constituency seats could become safer because competitor parties are likely to put their strongest candidates on regional lists,

leaving sacrificial lambs to challenge constituency incumbents. Where strong candidates nominated in constituency races just miss winning, they are out altogether, hurting competitors which, in Wales, are usually the non-Labour parties; there is also the problem of failing to elect strong list candidates (such as a party leader) when constituency candidates unexpectedly win, leaving no list candidates eligible for election because the party's entitlement has already been elected entirely in constituencies (McAllister and Cole, 2012: 16).

There is no easy remedy to the tensions displayed between constituency and regional MSPs, though perhaps the large reduction in constituency Labour MSPs at the 2011 election will change that party's perspective, reducing the hostility to regional MSPs that looked like a result of short-term self-interest. Labour MSPs appeared to have assumed that the 2007 election result was an aberration. Rather than seeing the result as a warning of potential trouble in 2011, Labour MSPs displayed short-term rational thinking, and this (perhaps with other influences) affected their attitude towards regional MSPs. This contrasts with the long-term rationality displayed by Labour in the 1990s, when the Scottish Parliament's electoral system was chosen, and a majoritarian system (which would have suited Labour in the short term) was rejected in favour of PR, seen as more rational in the long-term (Mitchell, 2000). Yet even here, miscalculations can be made, as the SNP's majority in 2011 shows. PR does not guarantee that no single party will win a majority of seats, and some forms of PR, particularly those using electoral regions with no national 'corrective' tier to compensate smaller parties, can make single-party majorities more likely: Spain has seen four majority governments since its transition to democracy in the late 1970s, and its lower house of parliament uses regional PR (Ministry of the Interior, 2012). Furthermore, Labour's support for a PR-elected Scottish Parliament in the 1990s was probably informed by the likelihood

that Labour would have been able to govern in coalition with the Liberal Democrats, a party Labour had been co-operating with throughout the 1990s on Scottish constitutional matters.

## **Conclusion**

Ultimately, MMP has failed to facilitate the kind of new politics advocated by proponents of devolution. MMP creates competition over constituency service, thanks to the presence of both constituency and regional MSPs, and Labour MSPs, predominately elected in constituencies until 2011, appeared to want to reduce this competition, which came mainly from the SNP. While dual candidacy has not been banned for Scottish Parliament elections (as it was for the Welsh Assembly), the code of conduct's notification requirement and the smaller office staff allowance proposal attempted to reduce competition over constituency service. Because most Labour candidates did not engage in dual candidacy, constituency elections really were zero-sum games, so this situation partially explains the intensity of feeling among Labour MSPs regarding competition from their regional counterparts and Labour's support for the notification requirement and smaller office allowances.

The hostility sometimes displayed by constituency MSPs towards their regional counterparts is not the only failure of the attempt to engineer a new politics into post-devolution Scotland. Scottish Labour's 2011 defeat was notable not only for the SNP's achievement of the first majority government since devolution. Labour lost a number of its most experienced MSPs, those who would have played a key role in holding the majority SNP government to account, thus exacerbating the majoritarian nature of politics after the election. Labour's 2007 result, showing a gradual reduction in its support and some SNP constituency victories at Labour's expense, should have prompted a rethinking of the party's position on dual candidacy. Rather than considering the prospect of a bad election result next time, Labour apparently assumed that its constituency candidates would prevail, with its

MSPs opposing efforts to reduce the institutional inequality between constituency and regional MSPs. Labour's short-term rationality in terms of regional MSPs illustrates institutional effects at the 'micro' level, on individual politicians, while the continued hostility of Labour MSPs more generally towards regional MSPs shows how institutional engineering can fail at the 'macro' level. This Scottish example might have implications for the broader debate over whether institutional engineering can bring about significant – and positive – changes in divided societies. The old expression 'you can lead a horse to water, but you can't make it drink' appears to fit the Scottish experience thus far.

**Table 1** Scottish Parliament elections: 1999, 2007 and 2011

1999						
<i>Party</i>	<i>% Regional vote</i>	<i>Regional seats</i>	<i>% Constituency vote</i>	<i>Constituency seats</i>	<i>Total seats</i>	<i>% Seats</i>
Labour	33.6	3	38.8	53	56	43.4
Scottish National	27.3	28	28.7	7	35	27.1
Conservative	15.4	18	15.6	0	18	14.0
Liberal Democrat	12.4	5	14.2	12	17	13.2
Greens	3.6	1	-	0	1	0.8
Scottish Socialist	2.0	1	1.0	0	1	0.8
Other and independent	5.7	0	1.7	1	1	0.8
<i>Total</i>		56		73	129	

  

2007						
<i>Party</i>	<i>% Regional vote</i>	<i>Regional seats</i>	<i>% Constituency vote</i>	<i>Constituency seats</i>	<i>Total seats</i>	<i>% Seats</i>
Scottish National	31.0	26	32.9	21	47	36.4
Labour	29.2	9	32.2	37	46	35.7
Conservative	13.9	13	16.6	4	17	13.2
Liberal Democrat	11.3	5	16.2	11	16	12.4
Greens	4.0	2	0.2	0	2	1.6
Other and independent	10.6	1	1.9	0	1	0.8
<i>Total</i>		56		73	129	

  

2011						
<i>Party</i>	<i>% Regional vote</i>	<i>Regional seats</i>	<i>% Constituency vote</i>	<i>Constituency seats</i>	<i>Total seats</i>	<i>% Seats</i>
Scottish National	44.0	16	45.4	53	69	53.5
Labour	26.3	22	31.7	15	37	28.7
Conservative	12.4	12	13.9	3	15	11.6
Liberal Democrat	5.2	3	7.9	2	5	3.9
Greens	4.4	2	-	0	2	1.6
Other and independent	7.7	1	1.1	0	1	0.8
<i>Total</i>		56		73	129	

Source: BBC News Web site (1999; 2007; 2011)

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