The Legislative Capacity of a Small-State Parliament: An Analysis of the Parliament of Bhutan

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Abstract

As part of its decades-long transition from absolute- to constitutional- monarchy, the Himalayan Kingdom of Bhutan in 2008 established a new, bicameral, parliament. Very little analysis has been conducted on this institution; this article begins to fill this lacuna by investigating the legislative potential of the parliament, and placing it in the comparative context of parliaments in other 'small' states. Embracing Arter's distinction among studies of legislative capacity, operation and performance, the article pursues the former, using aspects of Lijphart's work as an organizational framework. The analysis reveals a first chamber designed along majoritarian lines, and which, due to its small size, cannot be expected to exhibit great legislative capacity. However, it also reveals a second chamber that, while small, is both 'symmetrical' and 'incongruent', and that therefore greatly enhances the overall legislative capacity of the parliament, and boosts its comparative position among parliaments of small states.

Introduction

In 2008, the Himalayan Kingdom of Bhutan took two significant steps in its decades-long transition from an absolute monarchy to a constitutional monarchy. First, the country established a bicameral parliament; second, that body then endorsed the new, democratic constitution that had been years in the making. In 2013 and 2018 subsequent parliamentary elections took place, which resulted in smooth transfers of power in both cases. While there exist small literatures on Bhutan's democratic transition

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(For example: Gallenkamp, 2010; Sonam Kinga, 2010; Masaki, 2013; Turner, Sonam Chuki, & Jit Tshering, 2011; Turner & Jit Tshering, 2014) and on the new constitution (For example: Lungten Dubgyur, 2008; Lee, 2014; Sonam Tobgye, 2015), very little analysis has been carried out on the new parliament itself. This paper will begin to fill this lacuna, by investigating the legislative capacity of this institution, and placing it in the comparative context of 'small' parliaments in other 'small' states.

We proceed in the following manner. After setting the framework for the study, we consider the new Bhutanese political system from four perspectives: the party system, the degree of concentration of executive power, executive-legislative relations, and the electoral system. In each area, we consider what these tell us about the legislative potential of the parliament, and, in particular, the first chamber, i.e. the National Assembly (NA). We then consider the division of legislative power between the NA and the second chamber, the National Council (NC). We will find that this final perspective provides a quite different outlook on the legislative potential of the parliament, as opposed to considering the NA alone. We end with some concluding comparative notes.

Framework

Arter has reasonably succinctly set out the difficulties involved in comparing legislative bodies:

> The problems of comparing democratic assemblies are legion. Legislatures operate in countries with differing regime histories, differing constitutional rules and represent societies that differ, sometimes appreciably, in structure, wealth and wellbeing. They display differing levels of institutional development, work according to differing rules of procedure and function in polities with differing degrees of executive stability. They may for convenience be 'clustered'... but each has its own individuality and distinctive legislative culture. (Arter,

2006, p. 247)

In the case of Bhutan, just a few of its characteristics would serve to highlight the potential pitfalls: it was only in the first decade of the 21st Century that it completed a transition from absolute monarchical rule to constitutional democratic rule; its transition was initiated internally and from above – by the monarchy itself – rather than externally or from below; it has no history of colonization, and thus no externally imposed inheritance of a particular model of democratic structure; it is the only country to hold the Vajrayana version of Mahayana Buddhism as its state religion.

Despite the difficulties, however, Arter does not counsel despair. He noted three streams in legislative studies research: work on the 'legislative capacity' of parliaments, which deals with the inputs that give such bodies 'differential potential'; work on the 'legislative operation' of a parliament, which deals with processes of 'the way parliaments work in practice'; and work on the 'legislative performance' of parliaments, dealing with the outputs of such bodies, which then allows classification based on 'policy power or influence in the policy process' (Arter, 2006, pp. 249-250). The present paper proceeds from the view that work on the latter two of these areas, the last most particularly, for any specific legislature, is to a significant degree dependent upon a prior understanding of the first area. That is, work on the superstructure – operation and performance – can only proceed once the foundation – an understanding of the likely capacity – has been established.

Legislative capacity may be conceived of as a legislature's 'potential to make decisions independently of the executive' (Arter, 2006, p. 248). This capacity can be affected by a variety of factors, ranging from the 'macro' level – such as constitutional rules themselves, or the structure of the legislature – to the 'micro' level, including legislative enactment procedures, or the existence and rights of legislative committees. In combination, these factors can provide greater or lesser potential for the

legislature to initiate and pass legislation on its own, or effectively to scrutinize or influence legislative initiatives of the executive. Thus, an evaluation of a legislature's capacity begins with an evaluation of this constitutional and institutional context. This, then, is the primary purpose of this paper: to investigate the legislative capacity of the new Bhutanese parliament.

It will not be sufficient, however, to consider the Bhutanese parliament in isolation. A secondary aim of the paper is to place this institution in a comparative context. Keeping in mind Arter's cautionary note, we will nevertheless seek to situate the Bhutanese parliament in the realm of systematic inquiry. To do so, we will utilise the relevant parts of one of the broadest and most well-recognised frameworks in comparative politics, i.e., the variables identified in Lijphart's work on majoritarian and consensus democracy (Lijphart, 1984, 1999, 2012). Why this framework? First, Lijphart investigated many of the sorts of macro-constitutional and institutional structures and arrangements that are germane to the determination of legislative capacity. Second, he used a variety of standard measures in his work, producing scores for, in his later books, the legislatures of 36 democracies; these scores provide useful benchmarks for comparison. Third, the data in the latest edition of his *Patterns of Democracy* overlap the period in which Bhutan's parliament was established, thus aiding in the comparisons.

One further aspect of our comparisons is worthy of note. As Arter noted, 'clustering' of cases for comparison is common practice. The unusual character of Bhutan as a country makes this particularly challenging. There is one category into which, however, both the country and its parliament clearly fall: they are small. It is of course the case that, as is well-documented by Maass, agreement on what constitutes a 'small' state has been elusive (Maass, 2009). However, Bhutan would count as 'small' on any of the most commonly used quantifiable criteria surveyed by Maass. It is small in population terms, numbering about 750,000; it is small in geographical size, comprising approximately 38,000 km^2, i.e. between the sizes of Switzerland

and Belgium; and it is small in economic terms, its annual Gross Domestic Product (GDP) amounting to approximately $US 2.5 billion, or about 0.003 percent of global GDP (United Nations, 2019). For our purposes, we have used the most common criterion – population size – to select those states present in Lijphart's work for which we will provide comparable data. These include: Trinidad and Tobago, and Mauritius, both with populations greater than Bhutan, but under 1.5 million; and the Bahamas, Barbados, Iceland, Luxembourg, and Malta, all with populations smaller than that of Bhutan.

Corresponding to its population size, Bhutan's parliament – currently comprising 47 and 25 seats for the first- and second-chambers, respectively – is relatively small. Its total membership of 72 places it as the ninth smallest of the 79 bicameral legislatures in the Inter-Parliamentary Union (IPU) database; most of the eight smaller bicameral legislatures belong to very small Caribbean island states (Inter-Parliamentary Union, 2019b).

This fact is relevant because comparative research has repeatedly shown that the size of a legislature has pervasive effects on its legislative capacity, operation, and performance (See for example: Chen & Malhotra, 2007; Rush, 2013; Stone, 1998; Thomas & White, 2016; White, 1990). While a myriad of other factors will ultimately affect a legislature's performance, the size of the membership may be considered a key factor affecting the ability of a legislature to act independently of the executive. As this is intrinsic to what we have defined as 'legislative capacity', it is an appropriate factor around which to organize our comparisons.

To summarise, then, we will be attempting to characterise the legislative capacity of the Bhutanese parliament, and place it in a comparative context. To do so, we are using aspects of Lijphart's work as an organizational framework. We will be focussing on a range of standard measures, taking particular note of comparable data on small, democratic states.

Party system

The first of Lijphart's variables to be considered is the party system, the two poles of the variable being a two-party system and a multi-party system (Lijphart, 2012, pp. 60-78). We shall discuss below the detail of the electoral system used for the NA, but at this point it can be summarised as a two-round system, in which the 'Primary' round serves as the elimination round, with only the two highest polling parties in that round permitted to compete in the 'General' round. Thus, the electoral system enforces a two-party system in the NA. That said, however, it is worth considering the party outcomes in more detail, using the measure set out by Lijphart, i.e. the Laakso-Taagepera index (Laakso & Taagepera, 1979), as this will highlight the changes in the outcomes of the first three general elections.

The Laakso-Taagepera index of the effective number of parties is calculated as:

$$N = 1/\Sigma s_i^2$$

in which s_i is the proportion of seats of the *i*-th party. Using this index, a chamber that had an equal number of members from each of two, and only two, parties, would score exactly 2.0.

In 2008, the Druk Phuensum Tshogpa (DPT) won 45 of the 47 NA seats, while the People's Democratic Party (PDP) won the remaining two seats (Election Commission of Bhutan, 2015, p. 20). This lopsided result produces an index of 1.09, indicating the degree to which the chamber approached a one-party system. In the subsequent general elections, however, the results have become progressively more balanced. In 2013, the DPT won only 15 seats, and the PDP 32, producing an index of 1.77; in 2018, the DPT won 17 seats, while the Druk Nyamrup Tshogpa (DNT) won 30, for an index of 1.86 (Election Commission of Bhutan, 2015, p. 73; 2018a, p. 3; author's index calculations).

To compare the Bhutanese figures with those of the countries studied by Lijphart, we compute the mean of our figures for the

three elections, i.e. 1.57. Unsurprisingly, this places Bhutan among the democracies with the fewest effective political parties: the mean for all countries in Lijphart's study was 3.19, and only five countries had mean indices lower than 2.0 (Lijphart, 2012, pp. 73, 75). As Table 1 indicates, four of those five are members of the small state group we have identified above. Table 1 also indicates the degree to which the effective number of parties is associated with majoritarian (MAJ) versus proportional (PR) electoral systems.

Table 1. *Effective number of parties in selected small states*

Country (Elec. Sys.)	Effective parties	Country (Elec. Sys.)	Effective parties
Bahamas (MAJ)	1.69	Iceland (PR)	3.72
Barbados (MAJ)	1.68	Luxembourg (PR)	3.48
Mauritius (MAJ)	2.85	Malta (PR)	1.99
Trinidad (MAJ)	1.87		
Mean	2.02		3.06

Source: Inter-Parliamentary Union, 2019b; Lijphart, 2012, pp. 74-75.

If the 2008 election was an outlier, whose extreme result will not be repeated, one would anticipate that the Bhutanese mean would move closer to that of the other countries using majoritarian electoral systems. However, given that the electoral system used for the NA will always produce two parliamentary parties, the Laakso-Taagepera index will always fall between 1.0 and 2.0.

What implications does this have for the legislative capacity of the parliament? It is an initial indicator that Bhutan's new political system has been designed to lean toward the majoritarian, as opposed to consensus, model of democracy. By extension, as the former model is typified by executive dominance of the legislature, it is an indicator that the legislative capacity of the parliament may be impaired.

Concentration of executive power

Regarding support base, coalition theory sets out a three-fold classification: minimal winning cabinets, oversized cabinets, and minority cabinets (Lijphart, 2012, pp. 79-80). Of the 'minimal winning' type, the single-party majority cabinet is the most majoritarian of the possibilities. Looking across the 36 democracies in his analysis, over the period 1945-2010, Lijphart found only five countries that always had minimal-winning cabinets of the single-party type: Bahamas, Barbados, Botswana, Jamaica, and Malta (Lijphart, 2012, pp. 98-100).

As Table 2 demonstrates, minimal-winning cabinets are more prevalent in the small states included in Lijphart's study than in the overall group; this is true, as the figures for Iceland and Luxembourg indicate, even where a 'Westminster' heritage is absent.

Table 2. *Proportions of time during which minimal winning and one-party cabinets were in power, 1945– 2010*

Country	Minimal winning (%)	One-party (%)	Mean (%)
Bahamas	100.0	100.0	100.0
Barbados	100.0	100.0	100.0
Iceland	90.3	2.3	46.3
Luxembourg	90.8	0.0	40.4
Malta	100.0	100.0	100.0
Mauritius	30.6	0.0	15.3
Trinidad	99.2	89.5	94.3
Mean	*87.3*	*56.0*	*70.9*
36 Country Mean	64.2	56.4	60.3

Source: Lijphart, 2012, pp. 99-100.

The institutional design of the Bhutanese system means that it will join the select group of countries that always have

single-party majority governments. Even under extraordinary circumstances of 'national crises', the constitution prescribes only that the 'Opposition Party shall aid and support the government', rather than entertaining the possibility of a formal coalition government (Bhutan, 2008a, Article 18, s.6).

As to legislative capacity, this concentration of executive power provides a further indication that the NA is likely to be executive-dominated.

Executive-legislative relations

Lijphart identifies three characteristics of parliamentary government that distinguish it from other types (Lijphart, 2012, pp. 106-107). The first of these is that the head of government and cabinet are responsible to the legislature, and can be dismissed at any time via the equivalent of a vote of no-confidence. This is indeed the case for the NA, as set out in various articles of the constitution ((Bhutan, 2008a, Article 10, s.24, Article 17, ss.6-7). While the details do not affect the classification, it is worth noting that the bar is set quite high for a successful no-confidence vote. Although it only requires a vote of one-third of the total members of the NA to trigger a no-confidence vote, success in the vote itself requires support of two-thirds of the membership (Bhutan, 2008a, Article 17, ss.6-7).

The second characteristic noted by Lijphart is that the head of government is selected by the legislature, rather than via popular vote (Lijphart, 2012, p. 107). The investiture of the government may be accomplished in a number of ways, including, for instance, a formal investiture vote in the lower chamber. Bhutan follows instead the general practice in the 'Westminster' tradition, in that it is the King who appoints as Prime Minister the leader, or nominee, of the party that has won the majority of seats in the NA (Bhutan, 2008a, Article 17, s.1). For greater certainty, the constitution also notes that a 'candidate for the post of Prime Minister... shall be an elected member of the National Assembly' (Bhutan, 2008a, Article 17, s.4).

Lijphart's third characteristic is that 'parliamentary systems have collective or collegial executives' (Lijphart, 2012, p. 107). The Bhutanese constitution sets out that this shall be the case; Article 20 notes both that 'The Executive Power shall be vested in the Lhengye Zhungtshog [Cabinet] which shall consist of the Ministers headed by the Prime Minister', and that the 'Lhengye Zhungtshog shall be collectively responsible to the Druk Gyalpo [King] and to Parliament' (Bhutan, 2008a, Article 20, ss. 2, 7).

Lijphart goes on to use cabinet durability as a measure of executive dominance of the legislature in parliamentary systems (Lijphart, 2012, p. 117*ff.*). Two Bhutanese cabinets have completed their terms in office to date: that of Prime Minister Yigme Thinley (9 April 2008 - 29 April 2013) that had a duration of 5.06 years; that of Prime Minister Tshering Tobgay (27 July 2013 - 9 August 2018), that had a duration of 5.04 years (Bhutan. Office of the Prime Minister and Cabinet, 2019). As indicated in Table 3, the mean of these two figures, 5.05, is below both Lijphart's overall mean and the mean for our selected group of small states. However, as only two data points offer limited guidance on this critical point, we shall consider another indicator.

Table 3. *Mean cabinet duration in selected small states, 1945–2010*

Country	Mean cabinet duration (years)
Bahamas	9.44
Barbados	8.87
Iceland	3.20
Luxembourg	5.87
Malta	8.85
Mauritius	2.39
Trinidad	6.95
Mean	6.51
36 Country Mean	5.35

Source: Lijphart, 2012, pp. 120-122.

An alternative way of thinking about the potential for executive dominance, not surveyed by Lijphart, is particularly relevant to smaller legislatures (Rush, 2013, pp. 183-185). This is the ratio of members of parliament who are also members of the executive, to those members who are not. In smaller legislatures, having a relatively high proportion of the membership in the executive leaves a smaller proportion available for executive scrutiny.

Bhutan currently has 10 departmental ministries, in addition to the Prime Minister (Bhutan. Cabinet Secretariat, 2019). The constitution prescribes that any change to the number of ministries must be approved by parliament, and that 'Ministries shall not be created for the purpose only of appointing Ministers' (Bhutan, 2008a, Article 20, s. 2). The latter provision appears to have been designed specifically to prevent the use of increases in the size of the ministry as a strategy to undermine scrutiny (Sonam Tobgye, 2015, p. 229).

Rush suggests that, in larger parliaments, the executive normally constitutes less than 20 per cent of the total membership (Rush, 2013, p. 184). However, of the 36 small legislatures that he surveys, in more than 85 per cent of the cases the executive constitutes more than 20 per cent, and ranging up to 69 per cent, of the membership. In Bhutan, the executive currently constitutes 23.4 per cent of the Assembly, but constitutes only 15.3 per cent of parliament overall. In comparative terms, it is in a relatively good position in this regard.

The picture painted by this section is of an unequivocally parliamentary system in which the Assembly, due to the constitutionally entrenched high bar for no-confidence votes, will find it very difficult to dislodge the executive. It will thus be left to a force external to the parliament – the voters of Bhutan – to prevent long-lasting cabinets; voters have embraced this responsibility in 2013 and 2018, by dismissing the first two elected cabinets after only one term each. The constitution does, however, provide parliament with the internal ability to prevent erosion of its current position regarding the proportion

of ministers in the NA. Thus, to the degree that defending the current balance in the NA *vis-à-vis* the executive is linked to the maintenance of parliament's current legislative capacity, the latter is in the hands of parliament itself.

Electoral system

As the method for choosing the members of a legislature is consequential for that body's legislative capacity, we need to consider this subject here. We will begin with a brief sketch of the system used for NA elections; we discuss the system used for NC elections in a subsequent section.

General elections for the NA use the single-member plurality or 'first past the post' method (The fundamental framework for National Assembly elections is set by the constitution: Bhutan, 2008a, Article 12, s. 1, & Article 15, ss. 5-8). However, prior to the General election, if there exist more than two registered political parties, a Primary round of elections is held. In the Primary round, voters select only political parties, rather than individual candidates. Subsequently, only the two political parties receiving the greatest number of votes in the Primary round are permitted to field candidates for the General election. While the constitution provides for a maximum of 55 NA constituencies, only 47 have been used for the first three General elections.

Lijphart suggests that electoral systems may be described in terms of seven characteristics; as some of these apply only to proportional electoral systems, or to presidential systems, we consider here the four applicable to the Bhutanese system: the electoral formula, the district magnitude, the total membership of the chamber to be elected, and the degree of malapportionment of the chamber (Lijphart, 2012, pp. 131-132).

As noted above, the electoral formula used for NA elections is best described as plurality: whichever candidate wins the most votes in a constituency during the General election is declared the winner. While this system is not uncommon - 11 of Lijphart's

36 democracies used it - neither is it the most prevalent: taken together, the various sub-types of proportional representation are more common (Lijphart, 2012, pp. 132-136).

It is worth noting that the effect of the Primary round of elections is that, while the General election is conducted on a plurality basis, the system as a whole mimics a majority formula. Majority formulas are designed such that the winner must secure an absolute majority; this is sometimes, as in the presidential elections in France, accomplished via a two-round election in which, should no candidate win an absolute majority in the first round, a second round run-off is conducted in which only the two top vote-winners from the first round compete.

This is clearly the intention of the Bhutanese system: political parties must field a candidate in each constituency, and are barred from fielding more candidates than there are constituencies (Bhutan, 2008b, s. 207; Election Commission of Bhutan, 2013). Thus, there can be only two candidates for each constituency in the General election; as there are rules in place to break ties, one candidate must receive a majority.

District magnitude refers to the number of members to be elected from each district. In a plurality electoral system, use of a district magnitude greater than one tends to result in greater disproportionality in the results (Lijphart, 2012, pp. 137-138). As Bhutan uses single-member districts, the disproportionality inherent in plurality systems is not exacerbated.

The next factor with which we need to be concerned is the size of the legislature: i.e., the number of members to be elected. Plurality electoral systems tend to produce disproportional results, but this disproportionality is aggravated if the membership of the legislature is below the cube root of the population (Lijphart, 2012, pp. 141-142). Given that the estimated population at the time of the design of the parliament was approximately 650,000, the cube root law would have prescribed an Assembly of 87 members; with the population now in excess of 750,000, the

corresponding figure would be at least 91 members (United Nations. Department of Economic and Social Affairs. Population Division, 2019). Given that the constitutional limit for the size of the NA is 55 members, and that its current size is 47, one would expect that significant disproportionality would result.

Lijphart next considers the contribution of malapportionment to electoral disproportionality (Lijphart, 2012, p. 143). In single-member constituencies, such as those used for NA elections, malapportionment means that the constituencies have substantially unequal voting populations. It is particularly difficult to avoid malapportionment where single-member constituencies are used, because equal apportionment would require that a relatively high number of small districts be drawn, each having exactly equal electorates.

Regarding malapportionment, the generally accepted measure is that advanced by Samuels and Snyder (Samuels & Snyder, 2001). Their formula is calculated as:

$$MAL = (1/2)\ \Sigma|s_i - v_i|$$

where Σ signifies the summation over all districts i, s_i is the percentage of all seats allocated to district i, and v_i is the percentage of the overall population (or registered voters) residing in district i (Samuels & Snyder, 2001, p. 655). In the case of Bhutan, it is the number of registered voters, rather than overall population, that is relevant, as it is on this basis that seats are apportioned (Bhutan, 2008b, s.5). In this section, we shall focus on the Assembly; we consider malapportionment as it affects the NC below.

The application of the Samuels-Snyder formula to the NA, on a constituency basis, yields a score of 0.1402. This means that 14.02 percent of seats are allocated to districts beyond what an equitable share, based on their numbers of eligible voters, would give them. Table 4 puts Bhutan's score into context by comparing it with malapportionment in the first chambers of

selected other countries.

Table 4. *Malapportionment in selected first chambers*

Country	Samuels & Snyder Index score
Barbados	0.0364
Belize	0.0753
Estonia	0.0140
Iceland	0.1684
Malta	0.0088
Overall Mean (78 countries)	0.07

Source: Samuels & Snyder, 2001, pp. 660-661; figures for Bahamas, Luxembourg, Mauritius, and Trinidad not included in Samuels & Snyder.

It is notable that the malapportionment of Bhutan's NA is relatively high; while the most malapportioned first chamber in Samuels and Snyder's study was almost twice as malapportioned as the NA, Bhutan's figure would have placed it as the 13th most malapportioned out of the 78 lower chambers included in their analysis. What is typical about Bhutan in this regard, however, is that Samuels and Snyder found that malapportionment did correlate with being a poorer, recently-established democracy (Samuels & Snyder, 2001, pp. 659, 662). As well, chambers selected via a single-member district electoral system, such as that used for NA elections, also tended to have higher levels of malapportionment (Samuels & Snyder, 2001, pp. 663, 665).

Having considered the various relevant attributes of the electoral system used for the NA, we may now consider the degree of disproportionality it produces both in individual elections, and overall. Disproportionality for parties in an individual election is easily determined as the difference between their vote share and seat share. The data for the 2008, 2013 and 2018 elections are provided in Table 5. The potential for this electoral system to produce a highly disproportional result was amply demonstrated

in 2008, in which a roughly two-thirds to one-third split in vote share translated into a roughly 96 per cent to 4 percent split in seat share.

Table 5. *Vote and seat shares: National Assembly general elections*

	DPT	PDP	DNT
Year	Vote share/ Seat share (%)	Vote share/Seat share (%)	Vote share/ Seat share (%)
2008	66.99/95.75	33.01/4.25	-
2013	45.12/31.92	54.87/68.09	-
2018	45.04/36.17		54.96/63.83

Source: Election Commission of Bhutan, 2015, pp. 71, 73; 2018a; International Foundation for Electoral Systems, 2008.

A more sophisticated measure of overall disproportionality, used by Lijphart, is that suggested by Gallagher (Gallagher, 1991). Gallagher's index of disproportionality is calculated as:

$$G = \sqrt{\frac{1}{2}\Sigma(v_1 - s_1)^2}$$

where v_1 and s_1 are the vote and seat percentages, respectively. The results of the calculation for the first three general elections, respectively, are 28.76 per cent, 13.21 per cent, and 8.87 per cent, for a mean of 16.95 percent. Had Bhutan been included in Lijphart's study, this result would have placed it as the country with the fifth highest disproportionality of the 36 countries studied. As Lijphart noted, of the parliamentary systems in his study, the five with the highest disproportionalities were - like Bhutan - 'all small countries with plurality systems and unusually small legislatures' (Lijphart, 2012, pp. 150-151). The figures for our selected small states, disaggregated by electoral system, are provided in Table 6.

Lijphart next discusses the link between electoral systems and party systems (Lijphart, 2012, pp. 153-157). This discussion focusses on the fact that, while all electoral systems are to some degree disproportional, and plurality and majority electoral systems are systematically more disproportional than are proportional representation systems, this disproportionality works to the advantage of the larger parties. The effect of this fact is that all electoral systems tend to reduce the effective number of parliamentary parties as compared to the effective number of electoral parties (Lijphart, 2012, p. 154).

Table 6. *Mean electoral disproportionality in selected small states, 1945– 2010*

Country (Elec. Sys.)	Mean electoral disproportionality (%)	Country (Elec. Sys.)	Mean electoral dispropor- tionality (%)
Bahamas (MAJ)	16.48	Iceland (PR)	3.85
Barbados (MAJ)	17.27	Luxembourg (PR)	3.43
Mauritius (MAJ)	15.61	Malta (PR)	2.07
Trinidad (MAJ)	11.33		
Mean	15.17		3.12

Source: Lijphart, 2012, pp. 150-151

We can demonstrate this effect using the Laakso-Taagepera index, utilised earlier, which we can apply to vote shares in the Primary round of elections. As only the DPT and PDP competed in 2008, the Primary round was skipped, but we can consider the 2013 and 2018 Primary rounds; Table 7 provides the results for these elections.

Table 7. *Summary of party vote in 2013 and 2018 primary round National Assembly elections*

Party	Share of vote (%)	
	2013	2018
Druk Phuensum Tshogpa (DPT)	44.52	30.92
People's Democratic Party (PDP)	32.53	27.44
Druk Nyamrup Tshogpa (DNT)	17.04	31.85
Druk Chirwang Tshogpa (DCT)	5.90	-
Bhutan Kuen-Nyam Party (DKP)	-	9.78

Source: Election Commission of Bhutan, 2015, p. 59; 2018b; figures may not total 100 due to rounding.

The Laakso-Taagepera indices, based on these vote shares, are 3.0 and 3.6, respectively. Thus, the overall effect of the electoral system has been to reduce the effective number of parties from 3.0 and 3.6, based on Primary round vote share, to the figures we determined above, 1.77 and 1.86, based on final seat shares in the Assembly.

Lijphart's discussion of Rae's work also touches on the question of 'earned' versus 'manufactured' majorities (Rae, 1967; 1971, pp. 74-75). The degree to which this applies in the Bhutanese case depends upon one's interpretation of the two-round electoral system. It is certainly the case that majorities are 'earned' in the General election, inasmuch as one of the two contending parties will have a majority of the seats. However, if one considers the electoral system as a whole, and one takes the position that voters' true preferences for parties are as they are expressed in the Primary round, then it is the case that, since it is the system that forcibly eliminates all but the top two Primary-round parties from the General round, the parliamentary majority is, indeed, 'manufactured'.

To summarise, the electoral system used for the NA includes a series of features that, in combination, will tend to produce results characterised by rather high disproportionality. It is

nominally a plurality system, but additional features mean that it mimics a majority system. As the membership of the chamber is small relative to the population, disproportionality is aggravated. In addition, malapportionment of Assembly seats is unusually high. Together, these features have, to date, indeed produced levels of disproportionality comparable to those of other small parliaments using similar electoral systems. Given this fact, there is no reason to expect that this will change markedly unless the system itself is modified. Finally, we have noted that the overall effect of the electoral system is to reduce what might otherwise be a three-party system to a two-party system in the Assembly.

The combined effects of the features we have discussed so far produce a less than promising picture of the legislative capacity of the NA. It is selected via an electoral system designed to allow only two parties in the Assembly, one of which will always form a single-party majority government. Further, these majorities may well be disproportional, given that the Assembly is small, both in absolute terms and in relation to the size of the population, and highly malapportioned. The high threshold set for a successful no-confidence vote means that the executive will face little threat from this mechanism. The ratio of the executive members to backbenchers is, typically for a small legislature, higher than for larger legislatures, a fact that fosters executive domination and generally impairs a legislature's ability to produce independent policy input. Fortunately for the Bhutan parliament, the Assembly is not alone.

Division of legislative power

It is worth noting the decision to have a bicameral parliament in Bhutan, as this was not an obvious choice. As of 2019, of the 192 countries listed by the Inter-Parliamentary Union as having a legislature, approximately 60 per cent were unicameral and 40 per cent bicameral (Inter-Parliamentary Union, 2019a). On considering the correlations of unicameralism with relevant features of countries, Massicotte found that it correlated

with: unitary, rather than federal, form of government; small population - of 77 countries with populations under five million, 55 were unicameral; and small geographical size (Massicotte, 2001, p. 152). All three of these features apply to Bhutan, although, regarding the latter, relative geographical isolation is an issue given the difficulty of traversing the country's mountainous terrain. Despite this fact, as we shall see, Bhutan has been provided with a potentially influential second chamber.

Within the group of countries having bicameral legislatures, Lijphart notes six differences between first- and second-chambers that 'determine whether bicameralism is a significant institution' (Lijphart, 2012, p. 190). He considers the first three - relative cameral size, relative length of members' terms, and whether the second chamber has staggered terms – as affecting how the institutions operate, but not affecting whether 'bicameralism is a truly strong and meaningful institution' (Lijphart, 2012, p. 192). Despite Lijphart's opinion, it is worth considering these in the Bhutanese case.

As noted, the NA currently has a membership of 47, as opposed to the NC's 25. There is nothing unusual about the second chamber having fewer members: save for a few notable exceptions, such as the United Kingdom, this is almost universally the case. As Stone concluded from his study of the Australian state second chambers, however, while there 'is no ideal size for an upper house', lack of members tends to impair a chamber's ability to operate as a house of scrutiny or review (Stone, 2008, p. 178). Modern second chambers do much of their detailed work in committees, and lack of members has the tendency to impair the development of effective committee systems (Stone, 2005, p. 48). Considering the variety of sizes of second chambers in the Australian states – from 15 to 42 members - Stone concluded that 'a minimum of around forty would seem to be desirable' (Stone, 2008, p. 178).

Beyond absolute size, relative size of the second chamber to the first has obvious ramifications if, as in Bhutan's case,

intercameral conflicts are resolved via joint sittings. Again, Stone notes that there is 'no ideal ratio' for relative size: for the Australian states, the ratio varies from .45 to .60 (Stone, 2008, p. 179). More specifically, for the state of Victoria and the federal parliaments, the only two Australian parliaments that use legislative joint sittings, the current ratios are .46 and .50, respectively. At present, Bhutan's ratio is .53; if the NA were to be enlarged to its constitutional maximum of 55 members, the ratio would fall to .46. In comparative terms, however, it is notable that, while in both the federal and Victoria parliaments the passage of a bill in joint sitting requires only an absolute majority of members, in Bhutan such passage requires a two-thirds majority of those voting (Australia, 2010, s. 57; Bhutan, 2008a, Article 13, s. 4; Victoria, 2017, s. 65G(4)).

It is clear that the larger the ratio, *ceteris paribus*, the greater is the threat of defeat of government proposals, passed by the first chamber, in joint sittings. Equally clear, however, is that the partisan composition of the first chamber is crucial. For example, during Bhutan's first parliament, the government's overwhelming majority - 45 of 47 seats - meant that a cohesive governing party vote in a joint sitting needed to attract only a handful of the 25 Councillors in order to pass contested bills. By contrast, in the third parliament, a cohesive governing party vote could be blocked by a cohesive opposition party vote combined with less than one-third of the Council vote.

Second chambers tend to have legislative terms that are the equal of, or longer than, first chambers (Lijphart, 2012, p. 191). Bhutan conforms to this pattern, inasmuch as the nominal term for both houses is five years (Bhutan, 2008a, Article 10, s. 24). To date, these terms have essentially coincided, as the elections for the two houses have occurred within months of one another. Should the NA be dissolved early at some point, the length of terms would remain the same, but the coincidence of terms would end.

Second chambers often have staggered terms, with only part

of the membership being replaced at each election (Lijphart, 2012, pp. 191-192). This is not a feature of the NC, the total membership being renewed simultaneously at the end of its five-year term.

The three features of bicameral parliaments that Lijphart considers determine the strength of bicameralism are: the formal constitutional powers of the chambers; the method of selection of the chambers; and whether the chambers are designed to have differing compositions (Lijphart, 2012, pp. 192-194). We shall consider each of these in turn.

Legislatures may have a range of formal powers, including, but not limited to: creating, amending, or nullifying legislation; confirming, maintaining, or dismissing the political executive; confirming or rejecting candidates for public appointments; and ratifying or repudiating tentative international agreements (Russell, 2014, p. 52). First- and second- chambers' powers may differ both across and within these categories.

The powers of the two chambers of the Bhutanese parliament regarding the passing of legislation are set out in Article 13 of the constitution. For what we may refer to as 'ordinary' legislation, the two houses are treated equally in Article 13: such legislation may originate in either house, the voting rules are the same for each house, and the intercameral processes are identical no matter in which house the legislation originates. To the degree that equality for ordinary legislation must be qualified, it is due to the issues we discuss below.

There are, however, categories of legislation for which equality between the houses is not the rule. The first of these is 'Money and financial bills', which, according to the constitution, must originate in the Assembly (Bhutan, 2008a, Article 13, s. 2). Such a stipulation regarding 'money bills' is not uncommon in congressional or parliamentary systems, and is indeed virtually universal in Westminster-style parliaments (Russell, 2000, pp. 34-38; 2014, p. 56). Thus, in comparative terms, this stipulation

alone would not be considered an unusual diminution of the Council's power. However, the Council's power regarding 'money bills' has been severely undermined due to the interpretation of a subsequent section of Article 13, i.e., section 5:

> Where a Bill has been introduced and passed by one House, it shall present the Bill to the other House within thirty days from the date of passing and that Bill may be passed during the next session of Parliament. In the case of Budget and Urgent Bills, they shall be passed in the same session of Parliament. (Bhutan, 2008a, Article 13, s. 5)

The interpretation of this section formed part of the first constitutional case to go before Bhutan's Supreme Court (*The Government of Bhutan v. Opposition party*, 2011). While the Justices concluded that money bills required passage through both houses of the parliament, just as any other bill, they interpreted section 5 as meaning:

> the budget bill must follow the normal bill passing process but comments and proposals made by the National Council is (*sic*) not binding on the National Assembly... It is the prerogative of the National Assembly to submit the budget bill for Royal Assent without incorporating changes suggested by the National Council if deemed irrelevant. (*The Government of Bhutan v. Opposition party*, 2011, Finding 5.13).

The decision of the Supreme Court following from this Finding extended this logic from budget bills to all money bills: it ruled that 'the National Assembly has the sole authority in money and financial bills', and has thus removed from the Council not only a role in the initiation of any such bills, but also any effective legislative role in their passage (*The Government of Bhutan v. Opposition party*, 2011, Decision 6.8).

Given this interpretation of section 5, the question arises

as to whether the government could abuse section 5, and circumvent normal procedures for what we have above referred to as 'ordinary' bills simply by having them declared 'Urgent'. In fact, there is no constitutional nor statutory definition of what constitutes an 'Urgent' bill; consequently, this matter became a matter of some debate during the first parliament, including during an Extraordinary Sitting in 2009 (Bhutan, 2009a, pp. 128-134; 2009b, p. 59). The issue was finally settled in a joint sitting in May, 2011: at that time, rules of procedure were agreed, which provide guidance as to the circumstances that might prompt such a bill, and the process for declaring a bill as 'Urgent' (Bhutan, 2011, Chapter 3). While the description of the possible circumstances are necessarily rather vague – threats to national political, economic, or social security, for instance – the safeguarding provision is that the ultimate decision on the declaration of a bill as 'Urgent', no matter from where the request for such a declaration originates, shall be made by the Speaker of the NA rather than the government itself.

A further consideration when evaluating the relative powers of the two chambers regarding ordinary legislation is an issue we referred to above, i.e. that of joint sittings. Clearly, if this mechanism did not exist, and the second chamber could simply defeat ordinary legislation emanating from the first chamber, the power of the second chamber would be greater. As Russell found in her 2014 study, however, most second chambers do not hold an absolute veto, but rather 'can be overruled in some way' (Russell, 2014, p. 55). Of the 74 countries she considered, exactly half allowed the second chamber to be over-ridden via a vote – simple majority, absolute majority, or super-majority – in the first chamber alone, while in only 25 countries, only eight of which were parliamentary systems, did the second chamber have an absolute veto (Russell, 2014, pp. 51, 54). Intermediate between these two categories were 11 countries that used joint sittings as a method for resolving intercameral disputes, five of which, including Bhutan, were parliamentary systems. Of these, only three others – Australia, India, and Pakistan – used joint sittings of the entire chambers. As indicated in Table 8, Bhutan

has the most stringent requirement of this group – a two-thirds majority – to override a second chamber objection.

Table 8. *Comparative parliamentary chamber memberships and joint sitting voting rules*

Country	Membership: 2nd Chamber/1st Chamber	Ratio	Voting rule
Australia	76/151	.50	Absolute Majority
Bhutan (current)	25/47	.53	Two-thirds Majority
India	250/552	.45	Simple Majority
Pakistan	104/342	.30	Simple Majority

Sources: Inter-Parliamentary Union, 2019b; individual country constitutions.

This level of stringency is raised still higher for particularly sensitive situations. For the impeachment of holders of 'constitutional offices' – members of the Supreme Court, the Auditor General, etc. – the requirement is 'two-thirds of the total number of members of Parliament'; the same hurdle is set for extending states of emergency (Bhutan, 2008a, Article 32, s. 2, Article 33, ss. 3, 8).

A final point regarding joint sittings is to note that, for one particular category of legislation, i.e. constitutional amendments, the bar for passage is set even higher:

> A motion to amend the Constitution under section 1 of this Article shall be initiated by a simple majority of the total number of members of Parliament at a joint sitting and, on being passed by not less than three-fourths of the total number of members in the next session at a joint sitting of Parliament, the Constitution shall stand amended on Assent being granted by the Druk Gyalpo. (Bhutan, 2008a, Article 35, s. 2)

Note that this section requires, for both initiation and passing, absolute majorities, and then compounds this with the need for an affirmative vote of three-quarters of this total membership for final passage. The latter hurdle is also set for establishing a Council of Regency should the King be 'unable to exercise the Royal Prerogatives by reason of temporary physical or mental infirmity', for the forced abdication of the King, or for the alteration of Bhutan's international boundaries (Bhutan, 2008a, Article 2, ss. 7(c), 24, Article 1, s. 3).

Moving on from legislation, the second chamber has no role in confirming, maintaining, or dismissing the political executive: this is left entirely to the Assembly. Neither chamber has a role in confirming or rejecting candidates for public appointments, although both the Speaker of the Assembly and the Chairperson of the Council have a role in recommending candidates for several public positions (See, for example, Bhutan, 2008a, Articles 24, 25, 26, & 27, s.2).

The NC does have one unique role assigned to it. The constitution provides that:

> Besides its legislative functions, the National Council shall act as the House of review on matters affecting the security and sovereignty of the country and the interests of the nation and the people that need to be brought to the notice of the Druk Gyalpo, the Prime Minister and the National Assembly.(Bhutan, 2008a, Article 11, s. 2).

While the section provides no specific power for the second chamber, it does perhaps imply an overview role on matters of international relations that is not uncommon for second chambers. There is no additional role for the chamber in ratifying international treaties, however: this role is simply assigned to 'Parliament' (Bhutan, 2008a, Article 10, s. 25).

The second area that Lijphart suggested was determinative of a second chamber's strength was its method of selection. For

Lijphart, the most crucial difference here was whether the second chamber was elected, as election, and direct election in particular, conferred a degree of democratic legitimacy on the second chamber that allowed it to compete in political terms with the first chamber (Lijphart, 2012, pp. 192-193). However, Lijphart was willing to allow that democratic legitimacy could be gained in ways other than direct election: the indirectly elected German second chamber, for instance, he conceded, is a very strong second chamber. Lijphart combined his evaluation of a second chamber's formal powers with his evaluation of its democratic legitimacy into a single measure of its 'symmetry' in terms of its relationship with the first chamber: symmetry signified greater strength, asymmetry signified likely weakness.

Twenty of the 25 seats in the NC are directly elected, using the single-member plurality system (Bhutan, 2008a, Article 11, ss. 1, 3). Each of the 20 dzongkhags (districts) serves as a single constituency. No candidate for the NC may belong to any political party: the NC is conceived of as a non-partisan chamber. The remaining five seats are filled via appointment by the King.

How, then, should the NC be evaluated in Lijphart's terms? Lijphart included in his 'symmetrical' category a total of nine countries; five of these were included because their chambers had formally equal powers – Argentina, Italy, Switzerland, the United States and Uruguay – and four others – Australia, Germany, Japan, and the Netherlands - because, although their chambers' powers were 'moderately unequal', their method of selection made up for this deficit (Lijphart, 2012, p. 193). This presents us with a bit of a conundrum. Given what we have seen of the Council's formal powers, it can easily fit into the 'moderately unequal' category. Additionally, the fact is that the Uruguayan second chamber can be overridden by a two-thirds majority in a joint sitting, just as in Bhutan; the Australian Commonwealth second chamber can be overridden with the lesser hurdle of an absolute majority in a joint sitting; and the Japanese second chamber may be overridden by a two-thirds majority vote in the first chamber alone. On this basis, it would seem that the

Bhutanese parliament should be regarded as symmetrical. However, five of the 25 Bhutanese Councillors are appointed, not elected: does this fact so impair the democratic legitimacy of the Council such that it must be regarded as asymmetrical?

Russell has offered a trenchant critique of Lijphart's use of direct election as a proxy for democratic legitimacy (Russell, 2013). She argues that 'a conception of legitimacy based purely on direct election, whereby directly elected second chambers are assumed to be legitimate and strong, and unelected chambers illegitimate and weak, is far too crude' (Russell, 2013, p. 385). Russell surveys the political science literature on legitimacy, and notes that what she terms 'perceived legitimacy' is thought to depend on three components: 'input' or 'source' legitimacy; 'procedural' or 'throughput' legitimacy; and 'output' or 'substantive' legitimacy (Russell, 2013, pp. 375-376). Regarding second chambers, input legitimacy might be enhanced, rather than diminished, by their non-majoritarian character, given that they are often designed to counter-balance a first chamber based on the majoritarian principle: a second chamber composed of experts in their various fields is one example. Similarly, such bodies may gain procedural legitimacy by having a less overtly political role, for 'their relatively less party-political ethos, and for their careful deliberation and policy scrutiny, contrasted with first chambers' (Russell, 2013, p. 376). Finally, a second chamber may develop output legitimacy via its policy intercessions, particularly when this challenge hasty or unpopular policy decisions emanating from the first chamber.

Considering the NC in light of Russell's work, it would seem that any dismissal of that body on the basis that one-fifth of its membership is unelected would be unwarranted. First, the five 'eminent persons' appointed to the Council are clearly meant to fit the 'experts in their fields' criterion, and thus might enhance the perceived legitimacy of the institution. The fact that it is the King, whose prestige is unmatched in Bhutan, who selects these appointees, would only seem to further heighten their perceived legitimacy. Second, the non-partisan nature of the Council

fits the procedural legitimacy criterion. Third, as to output legitimacy, while it may be unclear whether the Council's policy interventions have been popular, it is clear that it has caused the Assembly to re-think on a number of occasions (Gyambo Sithey, 2013, pp. 62-73).

Overall, then, it seems that Bhutan's NC fits the criteria for Lijphart's 'symmetrical' category: 'those with equal or only moderately unequal constitutional powers and democratic legitimacy' (Lijphart, 2012, p. 193).

The third feature Lijphart highlighted as determining the strength of bicameralism was whether the chambers are designed to have differing compositions, or, in Lijphart's terms, whether they are 'incongruent' (Lijphart, 2012, p.194). As Lijphart indicated, the outstanding examples of incongruence occur where territorial units of a country - often a federation – are represented equally in the second chamber, notwithstanding widely differing populations. This is, of course, the case for 20 of the 25 seats in the Council, in that each of the 20 dzongkhags has one representative.

One of the metrics Lijphart uses to gauge the degree of overrepresentation of the less populous units is the Samuels-Snyder index, to which we have referred above regarding the NA. Based on the 20 elected NC seats, the Samuels-Snyder method for measuring malapportionment produces a score of 0.1999 for the NC; this indicates that 19.99 percent of seats are allocated to districts beyond what an equitable share, based on their numbers of eligible voters, would give them. Table 9 puts Bhutan's score into context by comparing it with malapportionment in the second chambers of selected other countries.

Table 9. *Malapportionment in selected second chambers*

Country	Samuels & Snyder Index score
Argentina	0.4852
USA	0.3642
Australia	0.2962
Japan	0.1224
India	0.0747
Overall Mean (25 countries)	0.21

Source: Samuels & Snyder, 2001, p. 662; none of the small states we have previously used for comparison has a second chamber selected on a regional basis.

This comparison indicates that the degree of malapportionment in the NC is not extreme in comparative terms: if Bhutan had been included in the Samuels-Snyder study, it would have ranked as only the 16th most malapportioned of the 25 upper chambers studied, and, as Table 9 indicates, would have been below the mean for the group.

Nevertheless, although malapportionment in the NC is not extreme, it is clear that it is designed to have a different composition from the NA, and must be considered an incongruent chamber. In Lijphart's terms, we therefore have a chamber that is both symmetrical and incongruent: an example of 'strong bicameralism' (Lijphart, 2012, p. 199). This places the NC in a rather exclusive group: of Lijphart's 36 democracies only five – Argentina, Australia, Germany, Switzerland, and the United States – had second chambers that fell into this category.

To summarise, then, the sole characteristic of the NC that would tend to significantly undermine its legislative capacity is its small absolute size. The fact that it is small relative to the NA is rendered much less consequential due to the high bar - two-thirds majority - required to override the NC in joint sittings. Even allowing for the Supreme Court's interpretation regarding

money bills, the NC may be judged, in Lijphart's terms, as both symmetrical and incongruent, in short an example of strong bicameralism.

Therefore, we may conclude that, as designed, the NC makes a substantial positive contribution to the legislative capacity of Bhutan's parliament.

Conclusion

The purposes of this paper have been to investigate the legislative capacity of the new Bhutanese parliament and to place this institution in a comparative context. We have discovered a small parliament, the first chamber of which is designed along two-party, government *versus* opposition, adversarial lines. Its electoral system features significant malapportionment, and has, in 2008, demonstrated its ability to produce highly disproportional electoral outcomes. Due to its small membership and other design features, it is likely to suffer significant executive domination. In comparative terms, the chamber's characteristics mean that it would fit comfortably within the family of similar chambers in small, Westminster-style parliaments.

The saving grace for the legislative capacity of Bhutan's parliament, however, may lie with its second chamber. In legislative terms, it is nearly the equal of the first chamber. Not only is it not executive dominated, as ministers must be drawn from the Assembly, as an apolitical body neither is it subject to partisan pressures. In comparative terms, although small, it is a strong chamber.

Overall, then, when assessing the legislative capacity of Bhutan's new parliament, one must be careful to consider it in context. That is, due to its small size, it cannot be expected to have great legislative capacity, and this factor is aggravated by the fact that the Assembly is designed to be executive-dominated. However, while small size will also inhibit the second chamber, its design features mean that it greatly enhances the legislative capacity of

the parliament as a whole, and boosts its overall position among the world's small parliaments.

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