

SCOTLAND'S PARLIAMENT AND SCOTTISH LOCAL GOVERNMENT: CONDITIONS FOR A STABLE RELATIONSHIP

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There is now a high degree of clarity about the principles behind the establishment of a Scottish Parliament. These principles include:

- the need to recognise the distinctiveness of Scottish civic life and civil society;
- the more technical principle of subsidiarity;
- the principle of responding to the legitimate aspirations of a clear majority of the Scottish People.

In relation to the last of these principles, it is clearer now than it has been on previous occasions when devolution has been on the agenda that public support for constitutional reform is strong enough to be irresistible to any party which recognises the connections between democracy, the popular will and the stability of political systems.

But the structure and processes of a Parliament for Scotland will not be written on a clean sheet. The new institution will have to find an effective and credible place in the pattern of existing Scottish institutions. Of these institutions, one of the most significant, because it has a role in the development of public policy and the delivery of public services, and because it is popularly elected, is local government. There is a degree of apprehensiveness in Scottish local government about the effects of the establishment of a Parliament in Edinburgh and of a Scottish Government on

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the powers, autonomy and position of local authorities. This apprehensiveness is shared even by many, including the present author, who are enthusiastic about the devolution project.

This paper examines the putative relationship between Scotland's Parliament and local government under five headings:

- The nature of the new institution;
- Financing the Parliament and the finance of local government;
- The working of the new institution;
- Patterns of recruitment to the Scottish Parliament;
- Policy, strategy and services in a devolved polity.

THE NATURE OF THE NEW INSTITUTION

The very widespread public support for the creation of a Parliament has limited debate on the key issue of what kind of institution it will be, particularly in relation to the reformed local government system. This is an urgent question which needs urgent consideration. In brief, there are two possibilities. First, the new Parliament might be a devolved quasi-federal legislature with extensive policy-making and law-making powers. A key element of the debate on the nature of the Parliament was effectively squeezed out by the exigencies of the pre-General Election atmosphere. This limited the consideration of the issue of revenue raising, to the extent of an attempt by Labour, in its commitment to a two-question referendum, to remove the issue of taxation from the centre of the electoral debate. A devolved Parliament must have a power of taxation because without such a power it is difficult to be certain that it will not become simply a super local authority within the United Kingdom context. A reformed three-tier political system in Scotland in which the top tier (Westminster) and the bottom tier (local government) had taxation powers and the intermediate tier did not would be both unique by international standards and unsustainable in practice.

The proposal of the Scottish Constitutional Convention (SCC 1995, pp.27-28) for a power to vary income tax would satisfy the minimal requirement for a devolved legislature of having a power of direct taxation. The more politicians distance themselves from the use of that power, the more difficult it is to be certain of the parliamentary, as distinct from the representative and

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consultative, status of the new institution. That uncertainty would be increased, and the viability of the entire devolution project compromised, if the two-question referendum promised by the Labour Party deprived the new institution of any power of taxation. Conversely, of course, a popular endorsement by referendum of the tax-varying power would have the effect of clearly defining the parliament as a quasi-federal legislature.

The alternative configuration for the new institution, and the one which must be avoided if Scotland's Parliament is to have a positive and productive relationship with local government, is that of a super local authority. This is the 'Caledonia Council' that was the frequent jibe of Michael Forsyth, before he turned his attention to the so-called 'Tartan Tax'. Despite the fact that there is little in the proposals of the SCC which would justify any serious argument that it will be difficult to distinguish the proposed Parliament from a super local authority, it remains true that if the relationship between the two levels of government in Scotland is not clear from the outset then the distinction may be more difficult to maintain in practice than in principle. There is a clear relationship here to the next question to be considered, that of the financing of the Parliament, but it should be noted here that even a super local authority serving the whole of Scotland and providing, in certain services, the kind of strategic overview that the abolition of the Regional Councils removes would be a valuable, if minor, improvement to the governance of Scotland.

FINANCING THE PARLIAMENT AND THE FINANCE OF LOCAL GOVERNMENT

In the event that the Parliament decides not to use its power to vary Income Tax and decides not to go to the people for approval for such use, the prospect is of a new central-local relationship which would be dominated by the uncertainties created by having a local government system that is funded almost entirely by grant-in-aid drawn from a Parliament which is funded entirely by grant-in-aid. History suggests that the prospects of either institution establishing and maintaining an independent political existence will, at the very least, be compromised by such a structure. The central-local relationship is currently dominated by increasingly acrimonious disputes over the allocation of central finance to the local authorities which, because of the decisions of successive central governments, are now dependent for over 85% of their revenue on government grant. There is no clear indication that that relationship will be changed under the new Parliament. There are

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clear alternatives to the financing of local government and they should be the subject of an independent investigation (of the kind suggested by the SCC (1995, p.17)) of local government finance and of the central-local financial relationship. But that, in the context of the establishment of a Parliament, will not be enough.

There is a danger that the acrimonious disputes between local and central government in Scotland will be replicated in acrimonious disputes between the Scottish Parliament and the UK government in the negotiation of the grant-in-aid. It is possible that the need to influence the annual public spending round will lead Scottish local government to lobby at Westminster and Whitehall as well as in Edinburgh. If that were to happen, the value and stability of devolution might be called in question. Many of those currently involved in local government finance negotiations will argue that if Scottish local government has not found it necessary to lobby the Treasury under present circumstances, there is no reason to expect that it will find it necessary to do so under devolution. This is not entirely plausible, for the existence of a new democratically elected institution changes the entire shape of the political system, and of the bidding, bargaining and allocative mechanisms within it. Lobbying for the use of the tax-varying power and on the distribution of the income generated by an upward variation would, on the other hand, be conducted entirely within the Scottish political system.

There are alternatives to present arrangements, particularly in relation to the direct financing of local government, but the stability of the relationship between the Scottish Parliament and Scottish local authorities may in the end depend on the possession and exercise by the Scottish Parliament of a power of direct taxation.

THE WORKING OF THE NEW INSTITUTION

It would be unfortunate and a great missed opportunity if, in its working, the new Parliament were simply to replicate the procedures of the House of Commons. In particular, if local government is going to have confidence that the Parliament's responsibility for it and oversight over it will be positive and productive, then local authorities, both individually and collectively through the Convention of Scottish Local Authorities and professional representative bodies, must have access to, and participation in, the legislative process. There is no insuperable difficulty in building into the Scottish legislative process something more akin to the American system of legislative hearings

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than to the Westminster system of standing committee scrutiny of proposed legislation. There is no doubt that this would extend the legislative process, but it is likely that it would lead to better laws, better policies and a better and more stable relationship between the legislature and Scotland's councils than is present in the current central-local relationship. If the new Parliament were to attempt entirely to monopolise the processes of policy formation and law making in relation to local government, it would jeopardise the chances of establishing that relationship.

In the end, the Scottish Parliament will have to decide by majority vote on the content of law and the nature of policy. However, its decisions in these areas will be better informed and more likely to be acceptable if those engaged in the implementation of policy and the delivery of local public services have been actively involved in their development. There is nothing new in this. It is simply to argue that those engaged in implementation have much to contribute to the process of policy formation. In the current Westminster model, with the possible and partial exception of the work of the Select Committees in scrutinising departments (which is largely retrospective), that link is absent from the legislative process. The Scottish Parliament must not go down that road if it is to have the confidence of the new Scottish local authorities. In this context, the proposal by The Constitution Unit (1996, para. 476) for a 'concordat' between the two levels of Scottish government, which might include a commitment from the Parliament to co-opt to its committees non-voting members nominated by local government, merits serious consideration.

PATTERNS OF RECRUITMENT

The nature of the new Parliament will be strongly influenced in its early years by patterns of recruitment to it. To an extent, the commitment of the Scottish Constitutional Convention, as enshrined in the 'Electoral Agreement' between the Labour party and the Liberal Democrats, to seek gender balance in the new Parliament addresses some of the recruitment problems that might arise, because by selecting candidates with the intention of increasing the number of women in Parliament, these political parties will, at a stroke, greatly extend their recruitment pool. However, it is in the interests both of the new Parliament and of Scottish local authorities to go further and to ensure that membership of the new Parliament is not restricted to those who are currently politically active. In particular, it should not be dominated by

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those who currently hold or have recently held elected public office at local level.

There are two reasons why such domination would be dangerous. First, if senior local government figures immediately opt for election to the Parliament, a message will be sent out that the establishment of the new Parliament has created a hierarchy of political institutions in which the Parliament is more important than local government. A stable relationship between the two levels of government demands that they be seen as partners rather than as superior and subordinate. Second, and closely related, if the new Parliament were to be dominated, particularly at its leadership levels, by those whose previous political experience has been entirely in local government, it might become more difficult to ensure that the new Parliament is not, or is not regarded as, a super local authority (The Constitution Unit 1996, para. 453).

Both the Scottish Constitutional Convention (SCC 1995, p.25) and The Constitution Unit (The Constitution Unit, 1996, paras 479-482) considered the related question of 'dual mandates' - the possibility and desirability of Members of the Scottish Parliament simultaneously holding elective office at other levels of government including local government - and reached opposite conclusions. The SCC is opposed in principle to dual mandates, arguing that 'membership of Scotland's Parliament will be considered a full-time appointment' (SCC 1995, p.25). It concedes, however, that dual membership will be accepted during the lifetime of the first Parliament. The Constitution Unit (para. 482), in an argument that seems to be heavily influenced by the French system of *cumul des mandats*, asserts that dual mandates will be helpful in establishing a productive working relationship between the Parliament and the local authorities.

Given the arguments above about patterns of recruitment and their impact on the nature of the Parliament, the conclusion here must be that the SCC is more closely attuned to Scottish realities. It is difficult to contest the view of The Constitution Unit (para. 481) that international comparisons, which show that the number of annual sitting days for state legislatures in federal systems rarely exceed one hundred, suggest that the term 'full-time' in relation to membership of the Scottish Parliament may need to be very loosely interpreted. Nonetheless, the danger of creating confusion about the nature of the Parliament is more serious than the possibility of underemployment among its members.

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Clearly the message here is directed to those who control the selection process rather than the election process. The political parties, if they are committed not only to the establishment of a Scottish Parliament but to its success and to developing a strongly positive relationship with local authorities, should ensure that they influence the selection processes in ways that are conducive to achieving these ends. Such an approach to recruitment would be entirely consistent with the relationship between Scotland's Parliament and local authorities that is envisaged by the SCC (1995, pp.16-17).

POLICY, STRATEGY AND SERVICES IN A DEVOLVED POLITY

There is a need to be clear about the proper balance between Scotland's Parliament and Scotland's councils on issues of policy, strategy and service delivery. Part of the apprehensiveness in Scottish local government about the creation of a Parliament derives from the view that it may suck up powers from local government as well as drawing them down from Westminster. Although the reorganisation of Scottish local government, by reducing the number of tiers from two to one, makes the establishment of a Scottish Parliament easier to defend and to justify, the absence from the service delivery process of authorities large enough to provide strategic vision and to develop specialised services might be argued to lead towards the assumption of these responsibilities by the Scottish Parliament.

That would be to undermine the value of the Parliament and to jeopardise the development of a good relationship between the local authorities and the Parliament. If local authorities find that they are lacking in strategic capacity and the capacity to develop specialist services, they need to find ways of cooperating to provide that capacity. If they abdicate these responsibilities to a Scottish Parliament then the expectation that the Parliament will be responsible for the broad thrust of Scottish public policy while local authorities have control of the service design and service delivery process will be put at risk. In that case, the stability and credibility of both levels of government will be in question.

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