

LOCAL GOVERNMENT AND A SCOTTISH PARLIAMENT

Douglas Sinclair

'The creation of Scotland's Parliament will mark a distinct change of approach by placing a culture of stability at the heart of the relationship between the Parliament and local authorities.'

(Scotland's Parliament. Scotland's Right)

The Constitutional Convention's goal would be warmly endorsed by many councillors and officers working in Scottish local government. The history of the relationship between central and local government over the last two decades has been one of continuous weakening of local government (community care is the one notable exception) coupled with the centralisation of power. The relationship has been one-sided - exclusively defined by central government on the basis of local government being regarded as little more than a subordinate piece of administrative machinery rather than a key partner in the system of government.

The issue at the heart of the central/local relationship is ultimately one of trust. The recent report of the Select Committee on Relations between Central and Local Government 'Rebuilding Trust' (the Hunt report) was a powerful and important analysis of the faultlines in the current relationship. Hunt argued for symbolic changes to enhance the status of local government and to restore trust, for real reforms to strengthen its position in relation to central government, and for the need to change the financial arrangements for local government. But ultimately local government cannot demand a better relationship as of right. To secure that better relationship, I would argue, it needs to embrace three challenges. First, to accept that it cannot isolate itself from public expenditure constraints; second, to accept that the

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legitimacy of local government derives as much from influencing the actions of other bodies at the local level as it does from direct service provision; and third that it recognises the need to strengthen its links with its communities. Democracy must not be a once-every-three-years exercise, but a continuing dialogue between council and community; the electoral turnout of 40% in the UK is the lowest of EU countries, which simply underlines the weakness of our local democracy. If local government can embrace these challenges then it will help its case to be trusted, and it will be easier for it to convince central government that it is not making the best use of a key resource and that it needs to share more power with local government in the knowledge that many of the problems facing society are now so complex that they cannot be solved by government alone. It will be a real challenge for the Scottish Parliament to create a capacity for integration between the two levels of government and for continuing inter-action between them to resolve these kinds of problems.

What then are the factors which might contribute towards the development of this new climate of trust and what are the factors which might militate against it? The rest of this article analyses these issues.

The Constitutional Convention states that the Act will include clauses committing the Scottish Parliament to secure and maintain a strong and effective system of local government and will embody the principle of subsidiarity for local government. The Parliament will also be committed to embodying the principles contained in the European Charter of Local Self-Government, in particular article 4 which grants local authorities a power of general competence. (If local government is to have a power of general competence, should the Scottish Parliament have a similar power?)

The inclusion of the commitment to secure a strong and effective system of local government in the Act and the signing of the European Charter would, as the Constitution Unit has observed, be important - if symbolic - statements by a Parliament that it recognises the value of local government.

The Constitution Unit has also argued that in relation to subsidiarity the principle might be best enshrined in a Concordat between Parliament and local government. There is an interesting analogy with the Hunt Report which has called for the development of a formal Concordat between central government and each of the local authority associations. The areas include the following:

- the importance of building and maintaining trust as a basis for the central/local relationship

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- the constitutional place of local government
- the role of local government
- the financial base for local government
- a requirement for central government to consult local government about any changes to the above.

This could form the basis of a Concordat between local government and the Parliament. One interesting recommendation made by Hunt (which was not accepted by Government) was for a Parliamentary Committee to oversee central/local relations. It envisaged the Committee having the responsibility to keep under review the relationship between central and local government and the constitutional place of local government, to scrutinise during its passage primary and secondary legislation on local government, and to report in particular on its impact on central/local relations as well as to receive evidence on, and review the operation of, the Concordat between central and local government. The idea of a permanent Committee within a new Parliament with this range of responsibilities suggested by Hunt would well be attractive to the local government community; indeed, there might well be benefit in co-opting representatives from local government onto such a Committee. This, the establishment of both a Concordat and a Parliamentary Committee, would be important building blocks in the development of a new relationship between Parliament and local government. Indeed, the Labour Party have committed themselves to an independent review of the relationship between local government and a Parliament (in advance of the establishment of the Parliament).

The review will look at a number of other issues including 'the proper distribution of responsibility for the control and financing of public services in Scotland between the Scottish Parliament, local government and quangos'; the electoral cycle (I suspect it would be difficult to resist the case for the review of the electoral *system* in local government; if a Scottish Parliament is elected on proportional representation, why should this not be extended to local government?); eligibility to stand at local government elections; and, finally, ways in which turnout accountability and involvement in local elections can be increased.

The concept that councils and a Scottish Parliament should have a power of general competence has been overtaken by the Conservative Government's acceptance of the spirit of the Hunt Committee's recommendation that councils be given a restricted power of local competence. Perhaps of more

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significance was the Government's acceptance that an important role of local government was community leadership. This is an important point. The last 20 years have seen the fragmentation of local government at the local level through the transfer of functions to appointed public bodies; the effect is that local governance is a world with nobody in charge. The best kind of local government is committed to partnership, recognising that in this fragmented world influencing the actions of others can be as important as direct service delivery by the council. But partnership also requires leadership. The only body that can provide democratic leadership in this fragmented world is the council; thus CoSLA would want to argue to a Scottish Parliament that councils should be given a duty of community planning which would extend the concept of the old Regional reports and would require all local agencies, such as the Local Enterprise Company, Health Boards, and the Scottish Homes office to submit their annual plans to their local council. The emphasis should be on partnership and consensual working. Following consultation with these bodies the local council would be required to prepare a community plan for its area. This would incorporate not only the council's own proposals, including a statement of the standards and quality of service it would provide to the local community, but also the plans of the local appointed bodies and how these plans would contribute to the overall well-being of the community rather than, as at present, being developed and published in isolation. In the spirit of the point made earlier about the need for democracy to be continuously renewed between a council and its community, there may well be a case for the plan to be subject to an annual referendum. This would be a powerful tool in re-energising local government and strengthening its link with the local community - a new role as the community leader. An important role for Parliament in securing the accountability of appointed bodies would be to scrutinise their commitment to the development of these community plans; one could envisage the allocation of resources to such bodies (and, indeed, councils) being made dependent by the Parliament to partnership working.

There is also the opportunity for the Scottish Parliament - in light of the report by the proposed Independent Commission - to look afresh at what is defined as 'local'. This should not mean a knee-jerk reaction by local government to argue that what has been removed from local government should be returned simply on the basis that because the power was once exercised by local government it should be returned to it. The litmus test is that a function should only be returned (or transferred) to local government where there is demonstrable added value to the public in terms of service planning and delivery. One case in point might well be the community health

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trusts, given the extent of overlap with the community care function of councils. Again, I would argue that a duty of community planning and the influence which that would bring to bear would re-establish local government in a much more effective way than the return of powers.

Thus far I've painted a positive picture, but it would be naive and short-sighted not to address the areas where difficulties might arise. Four can be readily identified: membership; the pressure for uniformity; fiscal arrangements; and responsibility for strategic services.

MEMBERSHIP

The Constitutional Convention's proposals envisage that the Devolution Act will explicitly rule out dual mandates for the Parliament and any other elected body including local government. The Constitution Unit's criticism of this proposal is a telling one - namely, that it should be for the electorate to decide who they want to represent them at either level and if the electorate feel the burden is too onerous or too powerful for one person they can reject him/her at the ballot box. I would argue that the one single thing which would undermine the development of the culture of co-operation would be to deny councillors the right to be also members of a Scottish Parliament. That would not only weaken and diminish local government by the loss of many highly talented councillors; it would build in from the outset a distancing between Parliament and local government. The interest of a Parliament in defending the powers of local government would be clearly lesser without a dual mandate in place. If the 'brightest and best' of local government could serve only in a Parliament, would there not be, over time, an inevitable tendency for power to be accrued to the Parliament at the expense of local government?

UNIFORMITY

One of the items which local government will wish to see incorporated in a Concordat is that Parliament should accept local government's view of the value of diversity and pluralism rather than uniformity. CoSLA would argue that the task of a Parliament should be to set the framework in which local government operates and, where appropriate, to specify national standards which it expects councils to meet, for example staffing standards in schools. But within that framework it is a matter for each council to determine its own organisational arrangements, its own service delivery arrangements, and to make political choices about the standards of service to be delivered. The question can be posed, 'will there be a desire within a Parliament to seek to

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extend the range of national standards to increase uniformity so that there is a much greater degree of consistency in the standards of public service across Scotland which councils are obliged to meet?'. That obviously raises the question, 'what is to be the right balance between national standards on the one hand and local choice and discretion - the essence of local government - on the other?'. A number of points can be made. There is a powerful argument in favour of only a relatively small number of national standards (which should not be confused with performance indicators which are benchmarks of performance rather than prescribed standards to be met). The more national standards, the more local government is reduced to local administration. Second, there is always the danger that minimum standards become, in reality, imposed maximum standards which, again, neutralises and minimises the essence of local choice and discretion.

FISCAL POWERS

A Scottish Parliament does not negate the legislative supremacy of the United Kingdom Parliament; devolution to Scotland is down from the UK Parliament. Macro-economic policy will be determined in the UK Parliament and in practice the financial relationship between the UK Parliament and the Scottish Parliament will not be markedly different from the existing one - apart from the 3p tax raising powers (interestingly, the £450m raised by such a tax would - in a local government context - be little more than enough to reinstate the £400m worth of cuts projected for 1997/98). The reality is that the level of public spending in a devolved Scotland will be determined by Westminster, notwithstanding the benefit of much greater transparency in the debate as to the allocation of resources between the various blocks of expenditure which the Secretary of State currently controls and where decisions are taken behind closed doors. As Alan Alexander has observed (in a paper entitled 'Local government, devolution and regionalism: towards a federal constitution', published in the volume **The Renaissance of Local Government**), 'it is difficult to see how a set of relationships which imply continuous and multi-tier inter-governmental negotiation will bring to the central/local relationship the stability that it so urgently requires'. Contrastingly, as he observes, if a Scottish Parliament had the power to raise in Scotland the revenue to finance the grant settlement with local authorities, 'the possibility of achieving clarity and stability in the central/local relationship would be enhanced'. Again, the Labour Party is on record that it will proceed with the establishment of a Parliament even if the 'settled will' of the Scottish people is against the Parliament having a tax raising power. The end result would be to create a Parliament responsible for local

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government but with less tax raising power than the local government for which it is responsible. That is not a recipe for stability in the relationship.

CONTROL OF STRATEGIC SERVICES

This is the most important issue for local government and the new Parliament to resolve. There is a powerful argument which suggests that reorganisation, through the removal of the regional councils with their larger strategic capacity, will not prove to be in the interests of local government in its medium to longer term relationship with the Parliament. The abolition of the Regions strengthened the case for a Parliament by reducing the number of levels of government. (One argument that was put to me at the time of local government reorganisation was that if the government wished to undermine the case for devolution, a more appropriate response would have been (a) to leave the structure of local government alone apart from restructuring Strathclyde and (b) to grant additional powers to the Regional councils.)

The abolition of the Regional councils does not abolish the need for strategic capacity and co-ordination at a regional level in Scotland. This will not disappear. Wheatley argued that there were distinct parts of Scotland where the regional level was a reality and that within each region there was a common interest and self-containment of services - that people went about frequently within their region for employment, for shopping and for recreation and that they were not inclined to move outside it. Indeed, the network of public transport, goods and services illustrate the point that Wheatley made. At the time of the most recent reorganisation, the former Regional councils argued that the District councils were too small units to plan strategically or to deliver major local government services. It would be a rich irony if Parliament used precisely the same argument with local government.

The smaller size and resource base of a number of Scottish councils requires joint working either on a formal basis in the case of structural planning or on an informal basis, for example in relation to economic development or public transportation planning. If these joint arrangements are not made by local government to work effectively, particularly around the four cities, there is a real and obvious danger that Parliament, in light of such a failure, will assume direct responsibility for the planning of these services. Local government, by failing to make joint arrangements for strategic services to work effectively, would weaken itself and would abdicate its responsibilities

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to the Parliament; local government's role would be reduced to policy implementation and administration.

It is important to reiterate the point made earlier that the role of parliament should be to set the legislative framework in which local government operates but it is a matter for local government, within that framework, to determine, through the exercise of local choice, service design and delivery. Moreover, a key theme emerging from the Hunt report was that of accountability:

much of our evidence suggests that electoral accountability no longer provides a sufficient direct accountability for services provided to local people. The balance of power - and financial responsibility - within central/local relations has shifted so that accountability is no longer clear. The individual, whether as consumer of a local service, as a local citizen casting a vote, or as a local taxpayer, no longer knows who is responsible for what or whether to turn to central or local government when there is a problem'.

A Scottish Parliament assuming responsibility for the planning of strategic services would simply compound the problem of accountability. And there is a concern about the thinking of the political parties on this issue. George Robertson MP, in his Richard Stewart Memorial Lecture, said

It will be the prime task of the Scottish Parliament to take up the strategic outward looking thinking begun by Strathclyde and other Regional authorities. That planning and forethought brought great benefits to Scotland but now it has been crudely cast aside by the Tory dismembering of local government. The Scottish Parliament can fill that gap. (my emphasis)

But this suggested role for the Scottish Parliament ignores the fact that in Highland, Fife, Dumfries and Galloway, and Borders the strategic tier of government continues, a point underscored by the coterminosity with the boundaries of LECs, Health Boards, Tourist Board etc. Thus there is a prima facie case for a Parliament not assuming any such role for the planning of strategic services in relation to these areas of Scotland. In relation to the rest of Scotland, surely the role of a Parliament should be to help local government to ensure that joint arrangements do work. If they cannot be made to work effectively the logic is not for Parliament to assume responsibility for these services but for local government in these parts of Scotland to be restructured so it has the capacity to deliver the strategic

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services. This, of course, will not happen in the short to medium term. There is no stomach for yet another upheaval and there is no political advantage (not least for the Labour Party) in revisiting the boundaries of local government.

Thus, since local government under a Scottish Parliament will not enjoy the enshrined status of local government in other countries where a federal constitution applies, the Concordat between local government and Parliament will assume critical importance. If the Concordat is not effective or breaks down, and if the outcome is the further disempowering of local government, then one of the basic arguments for a Scottish Parliament - the case for the better government of Scotland - will be shot through.

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