

**POLITICAL LOBBYING AND THE UNITARY STATE:
THE CASE OF SCOTTISH HOMELESSNESS
LEGISLATION**

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INTRODUCTION

Do the formal rules of a constitution adequately describe the degree of independence or dependence which is possible within the society or territory in question? This central question in current debates about devolution in the UK is answered positively by those who claim that the Scotland Act 1998 provides for a more autonomous Scotland than in the past. Certainly the constitutional arrangements applying to Scotland in the half century up to 1999 have eluded 'the standard conceptual categories of political science' (Kellas 1989, p. 2) which see 'nation-state' as unambiguous and 'unitary state' and 'federalism' as mutually incompatible. Yet, as Paterson (1994) argues, a distinctively Scottish politics has co-existed throughout the years of the 'unitary' welfare state. Will it be easy to see where decision-making takes place within the new United Kingdom? This article uses a recent example of distinctiveness in the Scottish policy process - the retention of homelessness legislation as it was repealed in England and Wales - to explore this question and the issue of the relationship between formal constitutional rules and autonomy.

Broadly, accounts of Scottish government differ in emphasis between those that stress the separation of Scottish politics within the UK, those that assert the unitary political unit that is the United Kingdom and those that see a continued remaking of the Union first created in 1707. Amongst the unitary state theorists, the Cabinet and UK Parliament are seen as symbols of a unitary state. Midwinter, Keating and Mitchell, for example, suggest the

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British 'system' is dominant with concessions made to Scottish pressure groups through distinctive Scottish institutions to secure the survival of the British system (1991, chapter 1).

Amongst the 'separatist' theorists, the Scottish policy process is conceived as the product of a political 'constitution' (Brown et al 1996) or 'system', since only this 'does justice to the scale and nature of the phenomena which are found in Scottish politics' (Kellas 1989, p. 4). This account emphasises Scottish institutions such as the press, the legal system, the office of Secretary of State for Scotland, the Scottish Office and Scottish Committees of the House of Commons.

Paterson's analysis follows this broad approach in pointing to the significance of Scottish institutions, but is more dynamic, exploring the contingent nature of autonomy in the history of Scotland since 1707. He refers to the frequent claim in Scottish political rhetoric that Scotland's traditions are under threat and sees this as a recurrent assertion of autonomy: 'what one generation might regard as autonomy might be felt by their successors to be dependency'. The Union constitutes a 'bargain', 'in which Scotland continued to have some genuinely free choice' (1994, p. 15). What is meant by 'Scotland' here is usually a combination of the state bureaucracy, in the Scottish Office, 'which has grown to embrace most domestic policy', pressure groups, said to be 'increasingly Scottish', and the middle class professions, either 'wholly Scottish or with an autonomous Scottish component' (p. 17).

These three approaches lead to different accounts of the factors said to influence the extent of autonomy in Scottish affairs. Paterson's long historical view of autonomy through the separate legal system, civil society and state institutions, for example, sees the legal state of the nineteenth century give way to the technocratic welfare state of the twentieth century. The outcome is different policy trajectories in fields such as education and housing, as the Union partners renegotiated their bargain. In contrast, Midwinter et al, while agreeing that autonomy is more likely to occur where complete administrative responsibility for a function is combined with a long history of Scottish Office involvement, see the crucial relationship as that between Scotland and the UK Government, with Scotland subservient to the unitary state. The autonomy of a curiously quiescent Scottish Office is therefore constrained when the UK government fears there may be unacceptable political or other effects on the implementation of economic and social policy in different parts of the United Kingdom. In specialised areas, of interest mainly to professional bodies and interest groups, Cabinet may allow different arrangements in Scotland and England; but on high profile political

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issues governments will be sensitive to apparent contradictions in their policies.' (Midwinter et al 1991, p. 80). They do not recognise, as Paterson does, the possibility of negotiation or that when Scotland falls into line with UK domestic policy this may be because 'Scotland' wanted to: 'some of the nationalist assertion has even been for assimilation of Scotland to England' (Paterson, p. 4).

This paper asks which of these accounts is more convincing in understanding the case of homelessness policy which had the same legislative origins in all three parts of Britain in the Housing (Homeless Persons) Act 1977 yet in 1996 diverged as the rights of homeless people in England and Wales were substantially reduced. Homelessness was a highly visible manifestation of social policy failures in the mid-1990s and the Government might have been expected to be 'sensitive to apparent contradictions in their policies' (Midwinter, Keating and Mitchell, p. 80) as legislation diverged. On the other hand, the strong party political opposition to the Government in Scotland, combined with the unpopularity of the policy of reducing homeless people's rights, created a situation where Scottish institutions seized on the issue to channel their opposition to government policies. In the post-war period, Governments have usually introduced roughly equivalent housing Bills in quick succession for Scotland and England. But the policy instruments have differed, apparently acknowledging the distinctive tenure balance, history and geography of Scottish and English housing. For example, the Housing Acts of 1980 and 1988 were similar, in their intentions though not their detailed effects, to the Tenants Rights Etc. (Scotland) Act 1980 and the Housing Act (Scotland) Act 1988. Following Midwinter et al, the question is then whether the unitary state conceded a distinctive Scottish policy. Following Kellas, there is nothing to explain about a distinctive outcome, following the 'traditional' course of housing policy in Scotland. Following Paterson, however, the issue is whether homelessness policy making in the mid-1990s represented a reaffirmation or remaking of the Union bargain.

The policy process in the period 1994 to 1997 therefore requires to be explored and the account that follows is based on a desk study of official and other documents and on interviews with actors (not named at the request of some) including pressure group officers, civil servants and housing professionals.

HOMELESSNESS

Before describing the events of 1994-97, we should note how Scotland got the homelessness legislation twenty years before. In a highly unusual sequence of events, Scotland was included in the Housing (Homeless Persons) Act 1977 after being omitted initially from the Bill. The avoidance of a cross-border anomaly was said to justify its inclusion (Midwinter et al 1991, p. 81). However, Gibson's analysis stresses the role of pressure groups, the influence of the Liberal Party in the Lib-Lab pact of the 1974-79 government and the use of a Private Member's Bill to achieve government objectives (1979).

The 1977 legislation arose from a long-standing desire in social work circles to see the housing of homeless people become a responsibility of housing authorities rather than social work authorities. It was also supported by groups speaking on behalf of homeless people, formed into the Scottish Homeless Group, who claimed that many housing authorities were not taking responsibility for homelessness, leaving some 'receiving homeless families from adjacent authorities' (Gibson 1979, p. 37). Despite the (English) Housing Minister's stated intention of introducing a reforming bill, the Queen's speech of 1976 failed to mention it, even though it was known that a Bill had been prepared.

Amidst outcry from charities and voluntary organisations, the Minister, Reg Freeson, indicated support for a Private Member's Bill promoted by the Liberal MP, Stephen Ross. The Scottish Office remained opposed to the idea of statutory enforcement, having promised the Convention of Scottish Local Authorities (COSLA) that a voluntary code would be tried (Gibson 1979, p. 41). But Scottish charities and voluntary organisations, soon to form the Scottish Homeless Group, lobbied Stephen Ross whose resolve to include Scotland was stiffened by the influence of his party leader, David Steel, who was not only a former chair of Shelter Scotland but, more important, soon to be the Liberal Leader of the Lib-Lab pact agreed in March 1977 to help sustain the Labour Party in power. The enactment of homelessness legislation which included Scotland was a condition of the first phase of the Lib-Lab pact (Gibson 1979, p. 43). Gibson argues that equally important in securing the Bill's passage was the sustained lobbying of the pressure groups, within the Scottish Homeless Group and in England, during what proved to be a controversial Parliamentary process, in which the Bill was amended to include a series of qualifying criteria which restricted rights to accommodation.

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The legislation was eventually consolidated into the Housing (Scotland) Act 1987 and, separately, into the Housing Act 1985 (for England and Wales). Although the legislation itself has been described as providing no more than 'a moral exhortation wrapped up in legalistic provisions' (Cullingworth 1979, p. 9), it imposed new duties on local authorities to investigate and decide on the entitlement of people applying to the council as homeless. In order to qualify for rehousing, applicants had to satisfy the local authority that they were 'unintentionally homeless' (they had not deliberately created their own homelessness); and that their household fell into a 'priority need' group such as family with children, pregnant mother, or 'vulnerability', due to illness or similar cause. Applicants with no 'local connection' may be refused. The degree of discretion was constrained by the Act's requirement that local authorities must 'have regard to' guidance issued by the Secretary of State which the Scottish Office eventually provided in 1980. This Code of Guidance was criticised by Shelter and other groups and was amended in 1991 in ways which generally brought it more into line with the longer English and Welsh Code (The Scottish Office 1991), following research carried out in 1988 (Duguid 1990) which showed wide variations in the practices of local authorities in implementing the legislation. In 1993, the Scottish Office carried out further research into local authorities' practices. This was able to report that 'authorities are now more consistent in their application of the Code of Guidance than they were in 1988' (Evans et al 1994, p. 127). However, it was expected that a number of the remaining variations would 'be addressed when the Code is revised' (p. 135).

This Scottish Office research seems to have been conceived and carried out on the assumption that the policy process would move from review to revision of the existing Code - an assumption shared by members of the advisory committee for the research, one of whom thought that the policy process was going 'swimmingly' as it moved towards publication. However, by the time of publication, the legislation was under review and the introductory chapter of the report ends with a disclaimer: 'It is not the purpose of this research to consider whether the homelessness legislation to which the Code relates should be amended.' (Evans et al 1994, p. 4). By now it was apparently the Government's view that the homelessness legislation should be repealed, at least in England.

The context for policy innovation was partly the dramatic growth in homelessness that had occurred in the 1980s and early 1990s, arising from social and economic trends as well as from social policy changes such as reductions in benefits for young people. In 1993, at the annual conference of the Conservative and Unionist Party, the (English) housing minister, Sir

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George Young, expressed dismay at not knowing what to say to the young childless couple confronted with an allegedly endless wait for council housing while pregnant young women overtook them by using homelessness legislation to secure a council let. This sentiment matched the mood of the conference, of the Prime Minister, who had expressed the desire to return to the moral precepts of earlier times - 'back to basics' and of the right-wing press. The headline that followed in the **Daily Mail** was 'Single Mothers lose right to leap housing queue' and in **The Sun** 'Single Mums lose right to a house' (Grender 1996, p. 11). In January a consultation paper from the Department of the Environment (1994) proposed reform, saying that existing legislation created 'a perverse incentive for people to have themselves accepted by a local authority as homeless ...' (Department of the Environment 1994, p. 4).

Despite a large volume of protest, reported as virtually all of 10,000 responses (Burns 1994, p. 8), in 1995 a White Paper, **Our Future Homes** (DoE and Welsh Office), confirmed proposals for replacing the indefinite right to accommodation of unintentionally homeless applicants in priority need with a new time-limited duty to provide temporary accommodation. In addition, the duty of local authorities to give 'reasonable preference' to homeless households in the allocation of secure tenancies was to be abolished and homeless households were to take their place on a single waiting list for council housing or nomination to housing association housing. Several interviewees saw the source of the problem perceived by the Minister as lying in London and the South East, where the proportion of new lets of council housing made to homeless applicants sometimes exceeded 50 per cent, far greater than the proportion in the North of England and in Scotland.

In fear that the Scottish Office might produce similar proposals, several organisations started to campaign against any restrictions to the rights of homeless people in Scotland. Shelter Scotland sought support for its views from local authorities, with particular efforts devoted to those who had not always supported Shelter's defence of homeless people's rights in the past. In addition, they sought to influence politicians and political party members, for example through their regular fringe meeting at the annual conference of the Scottish Conservative and Unionist Party in spring 1994. This was attended by the Housing Minister in the Scottish Office, Lord James Douglas Hamilton, and Dr James Mitchell, a Politics lecturer who spoke about the electoral dangers for Scottish Conservatives of following the English agenda on homelessness while opposing devolution. In March 1994, the Chartered Institute of Housing, with Shelter, carried out a survey of local authorities (published in August). The results allowed them to claim that nine out of ten

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authorities rejected the notion that homeless applicants should be offered only temporary accommodation.

In May 1994, a consultation paper, **Tackling Homelessness**, was published by the Scottish Office. This was markedly different in tone and content from the Department of the Environment paper of January, as Fitzpatrick and Stephens commented: 'while the DoE's plans are proposals, this paper lists the same ideas as 'questions for discussion' ... Gone are the unsubstantiated assertions and the implication that applicants routinely manipulate the homelessness legislation to jump the housing queue.' (1994, p. 10). Several organisations worked to secure strong support for the status quo in responses to **Tackling Homelessness**, and Shelter briefed a number of MPs to ensure they knew how Shelter saw the issues.

While the policy process moved to White Paper then Bill in 1995 in England and Wales, a long silence followed in Scotland apart from a continuing campaign by Shelter and others to keep the issue alive. At Shelter's fringe meeting at the 1995 Conservative Party conference the audience of around 40, including Lord James, appeared in support of the status quo and of the position expounded again by Dr Mitchell, rather than that of Phil Gallie MP who showed some sympathy for the 'back to basics' agenda. Shelter also sought to secure the support of opposition MPs through lobbying and invitations to speak at Shelter events so that they were confident a change of government would achieve the objectives they sought. Shelter also contributed a flattering article on Lord James to **Scotland on Sunday** and the same newspaper provided sympathetic coverage of the Secretary of State, Ian Lang's, distinctive approach to homelessness. In a written Parliamentary answer on 26 October 1994 Lord James reported 'strong' (97 per cent) support for the status quo - the right to permanent accommodation for unintentionally homeless people in priority need - amongst respondents to **Tackling Homelessness** (Hansard Written Answers, Vol. 248, col. 719).

The Cabinet reshuffle of 1995 led to Michael Forsyth MP succeeding Ian Lang as Secretary of State for Scotland and Raymond Robertson MP replacing Lord James Douglas Hamilton as Housing Minister. In March 1996, a draft revised Code was published by the Scottish Office, partly, it said, in response to a House of Lords judgement (*R v Brent LBC ex p. Awua* [1995] 1 A.C. 55) which was said to throw into doubt the duty of local authorities to provide permanent housing. Some aspects of the draft Code were widely welcomed, including the emphasis on prevention, advice and inter-agency working.

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Less welcome to local authorities, housing professionals, social workers, charities and voluntary organisations was the emphasis on a less liberal interpretation of the law. The Chartered Institute of Housing regretted the 'weakening of guidance on priority need status for young people and women suffering miscarriage' and 'the unhelpful emphasis on "collusive removals" (landlords/families helping someone falsely claim to be homeless) and, most alarmingly, a reduction in the right to permanent accommodation for unintentionally homeless households in priority need'. It was alleged that the 'opportunity' to take account of the 1994 research 'was not taken' (Ferguson 1996, p. 14).

Shelter Scotland felt a need to oppose the draft Code in a very public way since to do otherwise would, it was felt, allow the unwelcome parts to be left intact. Their decision - and the publicity it engendered - appears to have taken the Scottish Office by surprise. Shelter's campaign took a number of forms including asking supporters to write to the housing Minister, carrying out a survey of housing conveners for their magazine **Scottish Housing Monitor** and seeking press coverage of the issue. Shelter were keen to promote the idea that there was strong consensus about homelessness policy in Scotland.

Other organisations were active in lobbying, using their resources effectively. The Chartered Institute of Housing commissioned and publicised the opinion of a leading housing QC, Jonathan Mitchell, on the Awua case, who urged that the duty of housing authorities would not be discharged in most cases through the provision of temporary accommodation. **The Scotsman** conducted a debate in its columns and wrote three editorials broadly in support of the views of the pressure groups and housing professionals. However, what may have appeared to be a spontaneous outburst by readers of **The Scotsman** was in fact, in part, the result of direct approaches to journalists by Shelter staff and a request to supporters to write letters on the issue. No interest group appeared to be wholeheartedly in support of the draft Code and many expressed reservations about it.

The voluntary organisations feared that two Ministers who had opposed change had been replaced by two who were less likely to be sympathetic to their case and less likely to be influenced by civil servants' accounts of the volume of 'public opinion' against change. It is clear from the events that their fears were groundless - the new Ministers did not want to make homelessness an issue with Scottish pressure groups. Before the consultation period ended on 30 September 1996, the housing Minister, Raymond Robertson, 'was giving his assurances that any changes to the present code

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would reflect "Scottish needs and circumstances" and acknowledging that "a number of changes ... will be necessary" (Ferguson 1996, p. 14). At the end of the summer, Shelter and others were invited to the Scottish Office for the first of a short series of meetings to discuss possible revisions to the draft. These seemed to have no great priority and did not continue after January 1997. Although Shelter felt that great progress towards its objectives had been made, the loss of pace is puzzling and some interviewees suggested it may have arisen from a desire to postpone action until after the legislative changes had been introduced in England. In March, as John Major called the General Election, the normal business of Government ceased until 2 May.

On Friday 23 May 1997, in his first major speech, the new (Labour) Minister for housing in Scotland, Malcolm Chisholm MP, announced at a Shelter Scotland conference that the 1996 draft code should be consigned to the dustbin. A new Code was drafted in consultation with a number of groups, including COSLA and Shelter. This version was reported to vary little from the version produced for consultation with pressure groups at the end of 1996. The new Code was published in October 1997 to acclaim from the same pressure groups who by now were very familiar with its contents. In England and Wales the new housing Minister, Hilary Armstrong, moved quickly to confirm the Labour government's intention to restore the 1977 rights of homeless people at the next appropriate legislative opportunity while in the interim using a Statutory Instrument to restore the duty of local authorities to give 'reasonable preference' in their allocation process to certain categories of homeless households. The legal rights of 'priority' categories of homeless people were at the end of 1997 substantially greater in Scotland than in the rest of Britain.

EXPLAINING OUTCOMES

In attempting to explain the different outcomes, it is necessary first to recognise that the legislative differences may obscure a similarity in practice in the treatment of homeless people by local authorities in England and Wales and in Scotland. Local authorities in England and Wales may administer their powers and duties in ways that are indistinguishable from the position before the legislative changes of 1996. The legal differences may be more symbolic than real. However, early evidence suggests that some significant diminution in homeless people's rights in practice has occurred in England and Wales in some authorities (Niner 1997).

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Second, it is possible but unlikely that the general election of May 1997 prevented Scottish reform in line with England and Wales. The documentary evidence and the interviews suggest that the process in Scotland was moving towards a revised Code rather than legislative change. The delay shows that the Code either was not given high priority or it was deliberately delayed to avoid embarrassing English policy makers. In time a new Code would have been published containing relatively little that was unwanted by Shelter Scotland, the Chartered Institute of Housing or COSLA.

In seeking to explain the distinctiveness of the outcome in Scotland it is helpful to consider how the policy process generally developed over issues in which the Scottish and Welsh Offices had a remit. Interviewees reported conventions that required civil servants in one part of the United Kingdom to consult colleagues in other parts before developing ministerial policy initiatives into detailed proposals, but suggested these were not always followed. However, they were said to be adhered to in this case so that the DoE asked, in effect, whether Scotland wanted to be included in a bill or to promote its own bill or to take an alternative view. In this case, space was allowed for the Scottish Office to argue for a different approach - there was no 'automatic' move to change the law for Scotland as well. It seems likely that the same approach would apply to education, health and social work and to the other areas of the welfare state where Scottish legislative and administrative autonomy existed: in asking if Scotland would be included, acknowledgement was provided that the answer may be no.

As the government's proposals developed, there were written exchanges between the two departments (Environment and Scottish Office), copied to senior members of the Cabinet, in which the Department of the Environment pointed to the anomalous position likely to develop as a result of not reforming the law in Scotland. These communications from the Department of the Environment were described as strongly worded. But neither junior nor senior ministers seem to have seen the anomalies as sufficiently serious to embarrass the Government or to justify challenging the consensus within Scotland about the appropriateness of the existing legislative framework. The tension between the Scottish dimension and the value of consistent, collective government was resolved in favour of Scottish distinctiveness. It is possible that Scottish Ministers would even have seen political advantage in pursuing a distinctive path.

Civil servants saw their role in this case as neutral in giving advice about the working of existing legislation and in bringing to the attention of Ministers evidence of public and expert opinion. Here there was evidence of Paterson's

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'self-consciously Scottish' civil servants (p. 24), who felt that the policy outcome - a distinctive one for Scotland - required no explanation. Pressure groups, however, saw the Scottish Office civil servants' role as more actively opposing change - they created the impression that they held a firm view themselves about the value of the present legislative position and the review process it was undergoing. It seems that relationships were so good that the Scottish Office kept in touch informally with some pressure groups, giving advice about how the campaign should be conducted and creating the strong impression that the Scottish Office was anxious to see it succeed. However, Ministers made their own judgement based, it might be hypothesised, partly on the lack of any significant support for radical reform amongst their back-benchers and party members. How far Ministers were influenced by any desire to subvert the campaign for devolution by demonstrating the advantages of administrative autonomy, or by fear of the electoral consequences of appearing to ride over highly vocal Scottish opinion, remains unclear.

The role of organised groups may have been of some importance in reinforcing Ministers' view of the appropriate outcome in Scotland as pressure from civil servants in England was exercised. Shelter's representations were seen by several interviewees as the most visible and the 'most penetrating' in being well informed and focused on the matters at issue. Shelter's efforts were primarily intended to achieve the policy outcome they desired and they saw the Scottish policy autonomy argument as a crucial way of achieving it over this issue. The Chartered Institute of Housing was also said to be effective in making a strong case. Their efforts to influence and represent public and professional opinion as a consensus have been outlined. Paterson's 'Scotland', made up of the Scottish Office, pressure groups and professionals, may have been particularly effective in the context of a weak Conservative Party in Scotland seeking to secure seats in the imminent General Election.

In contrast, in England, the Conservative Government had a clear agenda partly based on an anti-single parent crusade and was willing to use its political power to over-ride the opposition of many groups, including local authority associations, Shelter and many other charities which campaign for homeless people. Organised support was limited to a few organisations mainly in the South East, including some of the few remaining Conservative controlled local authorities. Although several significant concessions were made in the legislative process in London, in which pressure groups lobbied both Houses of Parliament with some success, the Government remained adamant that legislative change was required.

CONCLUSIONS

This article set out to examine the relationship between formal constitutional rules and autonomy within policy making for Scotland, using the case of homelessness policy in the mid-1990s. Conclusions can now be attempted about the case study and, more tentatively, about the wider issues of Scottish governance after 1999.

In seeking to explain the distinctiveness of the outcome in Scotland we may choose between accounts that stress the separation of Scottish politics within the UK, those that assert the unitary political unit that is the United Kingdom and Paterson's more nuanced account of continuing negotiation of the Union. In this case, the outcome was neither an example of a unitary state at work unimpeded, nor of a separate Scotland operating in isolated autonomy. There appears to be some evidence, however, to support the hypothesis that the policy outcome represents a concession by the unitary state to Scotland. English civil servants sought to achieve the same outcome in Scotland as in England but the Scottish Ministers' sense of what was right for Scotland prevailed, with support from pressure groups and professionals and, perhaps, in anticipation of the benefit a weak Conservative Party in Scotland might derive from a practical demonstration of administrative devolution. The Scottish case was made more easily because pressure on council house waiting lists was less than in the South East and, though an equally strong case was made for the North of England and other regions, in Scotland Scottish institutions provided the means through which opposition to government policies could be channelled. In addition, equity and cross-border anomalies do not seem to have been seen as an issue.

Yet the evidence suggests more strongly that this was an example of the continuing, dynamic bargaining that Paterson argues characterises the Union, with English civil servants asking whether Scotland should be included and Scottish civil servants and Ministers saying it should not, supported by a vocal lobby. Features of the formal constitution, such as the tradition of administrative and legislative autonomy in housing policy, played a part, as did other institutions, such as the separate Scottish offices of the professional association of housing managers and Shelter. In addition, Scottish Ministers may have had more explicitly political motives for asserting Scottish autonomy. First, the outcome avoided political odium for imposing unpopular social policies and, second, the distinctive outcome would help subvert the case for further devolution. But it is unclear whether these possible motives actually lay behind their actions.

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Finally, in looking to the future, home affairs policy making can be seen as a particularly interesting issue for the new Scotland as it moves into its new constitutional relationship with the rest of the United Kingdom. The provisions of the Scotland Act 1998, and the Parliament that is its main creation, will be potent symbols of autonomy. But their significance may be that they provide a new resource for those who want to argue for a different distribution of powers and rights within the United Kingdom or in Scotland.

Housing policy is a particularly interesting case here. It is apparently devolved but the key instruments of economic, monetary, fiscal and social security policy are retained at Westminster. Scottish politicians, civil servants, professionals and pressure groups seeking to secure a 'Scottish housing policy' may seek to impinge on the policy instruments for which Scotland's Parliament is not responsible, so asserting Scotland's autonomy in a devolved policy field in ways that challenge English and Welsh approaches. A recurrent negotiation of the 'bargain' that is the new Union may continue, in housing policy as in other areas of social policy. Indeed there is some evidence that the bargain is not yet clear in relation to Housing Benefit. As a Social Security function it is not devolved, but a sum in respect of public rented housing is to be attached to the Scottish block grant (Donald Dewar, Hansard Written Answers, 20 January 1998, col. 488) since the Scottish Parliament could otherwise use its housing powers to increase public spending by the Department of Social Security. The same could be said of the Parliament's capacity to influence rent allowance expenditure in relation to housing association tenants, and yet this sum is not mentioned.

The provisions in the Scotland Act for challenging a Bill or Act of the Scottish Parliament will be complemented by a set of conventions intended to avoid disputes and deal with non-legislative issues. These provisions will provide for the continuing negotiation of autonomy and there may be other spaces created for the recurrent debates between civil servants, pressure groups, professionals and all who seek to engage in making the 'intrinsically federal' society with its 'multiple sources of power and multiple claims for rights' (Paterson 1994, p. 20) that constitutes Scotland and the UK at the end of the twentieth century. In answer to this article's opening question, it is likely that the formal rules of the constitution will provide no more than a starting point or resource for renegotiating the degree of independence or dependence which is possible within the new Scotland.

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