Written evidence from Nigel Smith to the Commission on Parliamentary Reform - Edinburgh

Introduction

Summary

I share the view of the Commission's remit on the importance of checks and balances and the necessity for a distinct identity for parliament beyond government.

From the outset, the culture, the founding culture of the parliament, was not that recommended by the Constitutional steering group with its emphasis on consensual working. Instead a more adversarial practice was established from the beginning and then intensified by the onset of the referendum and now its aftermath.

The structure of parliament tends to over represent government in its affairs which might have mattered less in a more consensual parliament but given the founding culture, it has weakened the parliamentarians and reduced their effectiveness. Reforming procedures while obviously desirable may not be possible so adverse is the current culture.

The result is the Scottish Parliament has been only a partial success, certainly less successful than we campaigners hoped for at the outset in 1997. It can do better.

As Adam Ferguson said in *1782, 'Nations stumble upon their establishments, which are indeed the result of human action, but not the execution of any human design'.* Looking back at the experience of establishing the Scottish Parliament, I see all too clearly what he meant. There are many stumbles in the story that follows.

The political climate in Scotland is difficult at the moment so the risk of being completely misrepresented is high. Nevertheless, I have resisted the temptation to write a 'milk and water' assessment. Instead, I have tried to be even handed at least to the extent that my friend, the late, great nationalist, Sir Neil MacCormick would not have chided me too much.

Finally, I am not an ideologue about devolution. We make these constitutional

changes because we believe they make life better for people. If they don't, we need to own up which is what I have tried to do here.

About me

Mine is a long perspective beginning almost fifty years ago, in 1970, when I read the Kilbrandon report on decentralisation in post-war Britain. I had been drawn into the subject by the adverse effects of centralism in England. The report with its recommendations and dissenters, opened the modern phase of constitutional devolution. From that day to this, I have contributed to the debate on devolution within the United Kingdom.

Although brought up in Scotland, the first twenty years of my business career were spent in England. I returned in 1976 to rescue and invest in an engineering business in Glasgow which led to membership of the Scottish Engineering Employers council and the Bank of England's Scottish Consultative panel.

My involvement in the campaign for a Scottish Parliament started before 1992 and lasted for twelve years or so. My part in the 1995 *Broadcasting for Scotland* campaign, followed by *Scotland Forward* in the 1997 referendum, both cross party campaigns which I chaired, meant I was trusted with confidences from politicians on all sides and on the strength of these shared experiences, the confidences continued into the first two Scottish Parliaments. I have used these to provide insight and context for the Commission.

I was a member of the *Scottish Constitutional Commission,* a member *of Fairshare*, the campaign for reform of the local government electoral system and supported the campaign for the parliament in many smaller ways

After the 1997 referendum, I became involved in seven other referendums in Britain and an observer of another dozen or so in Europe and the United States. I consider myself a referendum expert giving evidence to Holyrood and Westminster among other places. I also correctly forecast the results of the 2014 and 2016 referendums.

From 2001 onward, my focus shifted to London and opposition to joining the euro, a position which I knew would make me *persona non-grata* in some quarters and rule out any prospect of serving Scotland further on its public boards. From then on, I became an interested outsider and my points here become more impressionistic and less evidential.

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1 - Before the first parliament

The emergence of new politics

The Scottish Constitutional Convention's scheme for a devolved parliament, *Scotland's Parliament: Scotland's Right* was signed on St Andrews Day, 30 November 1995.

No modern convention would be organised in the way this was; there being no Tories, no SNP and no voters involved. It had inched towards agreement in a very old politics way but thanks to Canon Kenyon Wright's rhetoric, it sounded pretty good as well as being substantive. We didn't know it then but there would be less than two years to the referendum that would decide its fate.

As the convention completed its work, Esther Roberton was appointed to promote the scheme to civic and business groups across Scotland.

The rest of us turned to talking about the way the parliament might work and the policies that could emerge. There were many such conferences as a wider public began to engage with the potential of the parliament. George Robertson, as shadow secretary of state for Scotland, often attended them and though I suspect him an instinctive centralist, he was much exposed to the aspiration for the 'new politics'.

When Donald Dewar replaced George after the general election all this hinterland was lost in an instant. Donald had been totally committed as chief whip in Westminster to defeating the government and ensuring there would be no repeat of Major's surprising general election win in 1992. The result was Donald had less first hand exposure to the developing aspirations. Instead the 'new politics' job was given to Henry McLeish who, although his deputy, was reputed not to command Donald's respect. This change of individuals and partial demotion of the 'new politics' portfolio were important stumbles in the story.

The elements of new politics that emerged included women's representation, reform of public appointments and exploiting Scotland's size to join up government. My own contribution on the telematics committee, one of the most productive committees I have ever served on, was the forerunner of the digital parliament. UCLA produced a comprehensive constitutional proposal written by Graham Leicester.

The universal desire was for a more co-operative less adversarial parliament than Westminster. Bernard Crick and David Millar, both with a lifetime of relevant experience, wrote model standing orders for the parliament. Significantly, some in the Labour party thought the model empowered parliamentarians and their committees too much.

At this stage most of this 'new politics' debate was confined to campaigners and a few columnists. Only later in the referendum did it become a wider aspiration of the public. After the referendum, there was criticism that we had raised expectations too high. Not a criticism I accept then or now for I sensed the establishment reacting.

This was how I put the aspiration in front of our leading politicians in a speech in new parliament house (RHS) four days before the referendum in September 1997.

> "I have been in a privileged position in the last few months campaigning across parties and across Scotland.
>
> I have taken heart from our opponents campaign of fear. It means the logic of making the secondary business of Westminster; the primary business of Edinburgh, is too powerful for them to take head on.
>
> Perhaps the moment when the argument finally slipped away from them was the historic decision to adopt proportional representation. Then we knew for certain this would be a modern parliament for all parties and parts of Scotland.
>
> I have taken heart in the number of people from all walks of life who recognise this and have confided to me that they too would like to serve in such a parliament.
>
> It is beyond doubt that new blood will flow into our politics. There will be competition for places from which will spring a new vitality in our affairs and a parliament we can trust.
>
> I have witnessed in many parts of Scotland the co-operation of the three parties at the top and at the grassroots.
>
> This community of interest gives me hope that a *more consensual style* can be brought into our public life".

Settled will gives way to a referendum

Tony Blair's decision to make the Scottish Parliament subject to popular approval in a referendum came like a bolt from the blue in June 1996. The storm arose partly because of the rigged referendum in 1979 and lasted a full six months absorbing a tremendous amount of political energy in the Scottish Labour party that would have been far better spent preparing for the new parliament.

I recognised that a putative government claiming to be 'new Labour' could not back down without a damaging loss of credibility so I accepted the decision and started planning the referendum campaign. I had watched the 1979 referendum and remembered Tam Dalyell's brilliant one man effort, the heavyweight business opposition campaign and the disunited yes campaigns.

By August 1996, the Convention including George Robertson, the Shadow Scottish Secretary, had accepted my proposal for a cross-party campaign that would include the SNP. I did not reveal there would have to be clear blue water between the convention and the cross-party campaign if there was to be any realistic chance of the political initiative succeeding. That difficulty lay ahead.

The following week, telling nobody and well aware of the political risks posed by the impending general election, I met the SNP Chief Executive, Mike Russell (and Alex Salmond at the end of a phone) to explain the proposal. It was intended and accepted as a confidence building gesture. I told one other nationalist, my friend Sir Neil McCormick, and asked him to keep us all honest. Several months later Donald Dewar, in one of his quaint phrases, asked me if I had 'lines open' to the SNP. He was pleased to hear my answer.

A year later the cross party campaign came to pass delivering a resounding consensus of 74% for the Scottish Parliament and winning in all 32 local authorities.

The vacuum in Scotland after the referendum

The optimism after the 1997 May general election soon fused with that aroused in the September referendum to create a nervous and excited public mood in Scotland.

The SNP who had a 'good' referendum, were the principal beneficiaries. Well over 70 per cent of Scots thought Scotland would be independent 'within ten years' (that is independent by 2008) even though the majority didn't support the idea. The public mood looked set to boost the SNP in the first elections to the Scottish Parliament.

Although Labour could rightly say they were delivering the *Scotland Act,* they somehow failed to catch the public mood. There was also a feeling they were creating a body for which they hadn't any policies.

Another undercurrent in the Labour party and shared among social and business elites was the belief that 'it is only going to be regional government'. When a Labour minister leaned over me at a conference to tell the chairman of a public body sitting beside me that he need not to worry about the Scottish Parliament as he wouldn't be affected. The nod and a wink advice suggested a minimalist view of the new body. d.

Constitutional steering group

In was in this atmosphere of heightened enthusiasm and contradictory under currents that the Consultative steering group (CSG) on the Scottish Parliament began its work. It had been set up after the referendum, to turn the spirit of 'new politics' into a more comprehensive expression of guiding principles and rules of procedure for the new parliament.

Henry McLeish chaired the strong board that was exceptionally well resourced and supported by a committed civil service team. The Report, '*Shaping Scotland's Parliament',* was presented to the Secretary of State for Scotland in December 1998. It is an outstanding report that reads as well today as it did then.

Ken Mackintosh is correct to say the commission need not revisit the report in the sense of revision. What needs revisited is the failure to implement it fully in the first parliament. Part of what follows is one explanation of what happened.

The Scotland Act and its omissions

Meanwhile, Jim Wallace wrote to me in July 1997 to say there was no evidence of new politics at Westminster. Tam Dalyell, who on referendum night as the result became obvious, gracefully promised to get us the best possible *Scotland Act*, said much the same thing. The Bill was being rammed through parliament; all political debate was confined to the new Labour ministers. With the Tories crushed by the landslide, parliamentary scrutiny barely existed.

Nevertheless the *Scotland Act* that received the Royal assent late in 1998 was a triumph of legal drafting and Dewar's political efforts. He had brought the convention scheme into being overcoming opposition within the Labour government.

Despite his achievement, I saw omissions and larger problems which led me to write to the London *Times* and Glasgow *Herald* in November. 1998. The last para says it all.

> Ruth Wishart explains the informal way members of the Government have made their preferences on the *Six O'clock News* known to the BBC. The Government could have legitimately instructed the BBC under the terms of the present Royal Charter to take full account of devolution in its home services. That it chose not to exercise its power has a wider significance for devolution.
>
> By dealing with the BBC, the archetypal British organisation, in this way the Government has sent a very public signal to several hundred British bodies, largely representing the powers retained in London, that are considering what form their response to the Scotland Act should take. They are as diverse as the Bank of England, the Equal Opportunity Commission, Royal Mail, central governments departments to obscure but important British scientific committees. The message is simple. In the face of radical constitutional reform, a conservative and minimal response from them is quite acceptable to the UK Government.
>
> This apparent reaffirmation of the British status quo will be greeted with dismay by all those struggling to uphold the Scottish end of these institutions. John Smith understood the never ending nature of their difficulties which he expected to be eased by devolution. It is a pity his friends now in Government have allowed the impression to grow by this and other recent decisions that they are swithering between a *broad and narrow view of devolution*.
>
> Scottish members of Cabinet who have spent a life time arguing that devolution and

> decentralisation would revitalise Scotland *and strengthen the UK*, need to rededicate themselves to the latter part of the proposition. For the Scotland Act is not just something done to Scotland, its proper context is Britain. It will strengthen Britain if the institutions by which we define Britain and share that element of our multiple identity, take full account of the reform.

First, there was no British context for the reform. I saw then what is now obvious. The British state created a devolution enclave north of the border then rolled on as before as if nothing significant had happened. Twenty years later there is still no reform at the centre of Britain. In the intervening years, the UK has poured more powers into the 'enclave' and now wonders why it behaves like a quasi-sovereign state.

Blair failed to understand what was being done or to take any interest in it subsequently. Only recently, in a long interview with Charles Clarke, did he admit that he should have done more to hold Britain together. That is something of an understatement.

If Blair's mistake was a refusal to take ownership of devolution, Brown's was an unwillingness to let go. It is no surprise that his fingerprints are all over the early years. Brown is now a ferment of ideas that he would have disowned as 'going down the nationalist route' back then. He could, twenty years ago, with a stroke of the Chancellor's pen, have implemented one of his current ideas to rename Britain's central bank - the Bank of Britain.

Second, there was a clear mismatch between the older generation of Labour leaders like Brown, Blair and even to some extent Dewar who seemed to think they were creating a grander version of Strathclyde council (which they could control) and a younger generation in the Scottish Labour Action group like McConnell and Alexander who saw the need for a fuller, more free standing parliament. The gap between the two visions was concealed in the Dewar's elegiac address at the opening of the Scottish Parliament. It would be five or more years before the older group conceded their mistake and let go but in the interim they did some damage to the new parliament and their party.

Third, they took insufficient steps to improve inter-governmental relations or reform the territorial offices presumably a reflection of the lowly vessel they thought they had created. Only when the governments in London and Edinburgh came from different parties after 2007 would the omission become obvious. At the outset, most powers devolved were discrete and thus only lightly 'impinged' on central powers.

Now and especially following exit from the EU, most new powers are no longer discrete, no longer just 'impinge' on each other but are in effect shared or new central powers about to re-patriated from Brussels for which there was no constitutional provision in the Act. The situation has completely outgrown the Joint Ministerial Council and its cobbled together concordats.

The failure to give British coherence to devolution was the great omission of 1998. It falls to the current Conservative Government to correct Labour's error. To describe this as an attack on the Scottish Parliament couldn't be further from the truth.

The possibility that leaving the EU will correct the 1998 omission and strengthen Britain may be the silver lining of Brexit. This is how I put the opportunity immediately after the 2016 referendum

> Brussels now has exclusive or explicit competence for trade, customs, competition, agriculture, fisheries, environment, consumer protection, transport, trans-European networks, energy, the areas of freedom, security and justice, and new powers over culture, tourism, education and youth. And considerable powers to set indirect taxation across 28 members.
>
> Leaving the EU will therefore bring the biggest accession of powers to Westminster in my lifetime that has otherwise seen decolonisation, denationalisation, devolution and decentralisation as well as power shared with the EU and Ireland.
>
> Some powers will flow or be devolved to Edinburgh. But the focus shouldn't be on immediately sending more powers to Scotland but on how the UK absorbs these powers, how British institutions work and the overall coherence of devolution and decentralisation. Only once this is settled should powers be devolved onwards.

The Selection panels

With the Scotland Bill underway at Westminster and the CSG at work in Edinburgh, the parties started selecting candidates early in 1998. The 'new politics' to be recommended by the CSG, would depend on the MSPs, each of whom would come with a hinterland. The resulting interaction between aspiration and experience would decide the outcome. I therefore took a great interest in the party selection process.

The Tories, likely to be the biggest beneficiaries of the proportional voting system for the parliament they had long opposed, took the opportunity to bring in fresh blood. David Mundell was one, Ben Wallace (now an MP) another and Mary Scallion.

I already knew enough about the other parties panels to judge the SNP had the most thorough selection process and the Liberal Democrat though smaller, were pretty well organised too though subject to personal rivalries.

Although I was not a member of the Labour party (or any other party) Donald Dewar asked me if I would be one the independent observers for the Labour party selection panels. As the Labour party had the biggest task with over *six hundred applicants* and would send the most MSPs to the new parliament, I agreed earning a rap across the knuckles from the SNP for doing so.

There were several different adverse currents in the Labour panel process worthy of a separate paper but I was not prepared how London centric the process was. It was basically not devolved. Panel members from England explained to me that Scotland was a rather small Labour branch compared to some in the rest of the UK. The office certainly felt small and poorly resourced. There was a great emphasis in the interviews on 'loyalty'; too little on what a Labour led new parliament could 'do'. No job spec beyond loyalty and no general recruitment strategy.

Many local council applicants simply listed their committee memberships without explanation as if of right. These were mainly weeded out. Still there was no way of avoiding a tranche of local council experience going to the parliament and an over

emphasis on loyalty. This was in spite of many applicants volunteering that they expecting the parliament to work 'in new ways'. Minds were more open to leadership then than it looks in retrospect. On top of that and regrettably, there was a 'hand of god' in the late stages that simply excised more independent minded or politically awkward candidates from the list.

The process wasn't really up to the task and had many minor injustices that would have been accepted had the final rank unfairness not been imposed from elsewhere.

In the media storm after the list was published which we had neither seen nor approved, Donald Dewar asked why there was such a fuss about the omission of Esther Roberton, only 'a housewife from Fife'. Leaving aside the misogyny in his remark, it showed once again that Donald was not aware of the new politics debate in which she had been a leading light.

The candidate process was further complicated by the constituency twinning arrangement for gender balance and a few more independent minds were lost. The upshot was the biggest contingent in the new parliament came from local council backgrounds.

Labour list had been shorn of some talent but the group eventually elected were, despite the hostile media commentary, not without talent. It contained for example Johann Lamont and Ken Mackintosh. Both were to make their mark in parliament and both had distinct careers outside politics vindicating the claim to 'new blood'.

Nevertheless there was no avoiding the fact that 41% had local council backgrounds and another 20% came from trade unions. Taken together it meant 2/3rds of the Labour group had prior experience that placed high value on loyalty and solidarity..

I have dwelt at length on this process because it is a core element in the story.

Warnings from the 1997 referendum

Immediately after the 1997 referendum, several senior politicians from all three parties told me how much they enjoyed the cross-party experience. While their response was gratifying, there were two lessons in the referendum campaign that were less encouraging, had I the wit to see their significance at the time.

Scotland Forward had formed successful cross-party campaigns in more than 80 per cent of constituencies. But in a minority, the level of partisanship was so high that no cross-party campaigning proved possible.

In one constituency, despite interventions from senior people on both sides, no compromise could be found such was the gulf between Labour and the SNP. These were noticeably the big central Scotland Labour constituencies.

In another insight, a Labour councillor, subsequently a member of the Scottish Parliament, told me the best thing about the cross-party campaign was the normal Labour group rules *against fraternisation* had been suspended; she could go for a drink with her SNP opposite number after council meetings *without risk of reprimand.* It was a pretty shocking indictment of the political culture.

With hindsight, we were too focused on the dangers of importing the worst practice of Westminster when we should have been more alive to the worst practice of (mainly Labour) local government to the 'new politics'.

It had been a standard criticism that the new parliament would just be a version of local government. Ross Martin, himself a former councillor, had warned that 'the mind set required for local government lacks the big picture skills of the next level up and was always be going to be a challenge'.

On the importance of culture

Some commentators point to the last ten years as seeing a marked decline in the

performance of parliament and a rise in tribalism. Even the remit points back to the parliament's '*roots in being open, transparent and participative*'. It may or may not have been better then but there was no golden age. The aspirations were never truly met from the outset because the CSG report was never fully implemented.

All organisations need rules but if they have too many, they become rule bound and bureaucratic. Instead rules normally exist in a culture, a set of values, that decide how to behave when no rules exist.

In my industrial experience, it is far easier, to set the *founding culture* of a new organisation than reform an existing culture. It is why the first parliament was a unique opportunity. Looking back and to be blunt, we blew the opportunity.

Most others take a different line. Give the parliament time they said. My experience is quite the reverse - the first decisions, the initial tone and style of leadership, the character of the inter-relationships set precedents when minds are most open to leadership and to change. That should have been the first parliament and it wasn't.

Did that first Scottish government recognise and encourage the identity of parliamentarians? In my view it did not. It curtailed the independence of members and asserted the primacy of party as far as it could. Given that government in a smaller parliament inevitably has a proportionally larger presence than at Westminster, we should have been more careful.

The founding culture was wrong from the outset. What that has happened since has intensified the initial error. Ultimately only members can decide to accept a new culture for their role as parliamentarians and make it work regardless whether their party is in or out of office. What I don't think we are looking at here is just an MOT.

2- Culture in the early parliaments

CSG report is presented to Parliament

On the 12 May 1999, Winnie Ewing opened the new parliament with the historic phrase "The Scottish parliament, adjourned on the 25th day of March, 1707, is hereby reconvened." Less remembered was her accompanying hope that "that we all try to follow the more consensual style of the European Parliament and say goodbye to the badgering and backbiting one associates with Westminster." She had served in both these Parliaments.

One month later on the afternoon of the 9th of June 1999, the CSG report, setting out how the consensual Scottish parliament should work, was presented to parliament

I joined Campbell Christie and Kenyon Wright in the Royal Box at the Assembly Hall to watch the debate. To my astonishment, as Henry McLeish rose to present his report, Donald Dewar, the First Minister, strolled out of the chamber. When he returned some time later, with McLeish still speaking, Donald lingered at the back of the chamber talking to another member. Imagine a prime minster leaving the Commons as his chancellor rose to present the budget and the signal it would send.

It wasn't just careless leadership; it told me that Donald had no interest in the subject. He wouldn't oppose it but he wasn't likely to nurture it either and certainly not see it as anything as pretentious as a 'founding culture'. He was a Commons man through and through. John Pollock, when General Secretary of EIS, had confided to me that he had turned down numerous invitations to stand as an MP because he didn't like the adversarial style of Westminster. Here was someone who thrived on it.

The presiding officer

The presiding officer has the key role in drawing the border between government and parliament and setting the culture for the new institution.

For that reason, I wanted George Reid to be the first presiding officer because his successful career outside politics running a substantial organisation seemed more valuable in the creation of the new parliament than David Steel's, who, although serving with distinction at Westminster, had been in opposition throughout his life.

I persuaded the *Herald* and *Observer* to run editorials supporting George but found the *Scotsman* already committed to David Steel. But it was too late to start a debate and any way George's origins in the Labour party may have counted against him. John Pollock, a former chair of the Scottish Labour party, had warned me how unforgiving the party could be to those who left it (a tendency he disapproved of). The parliament voted in favour of David Steel by a substantial majority.

George Reid nearly didn't become a *deputy* presiding officer; only Dewar's clear support won him the place. A section of the Labour group decided to try and 'dish the Nats' by doing a deal with the Tories to put a Tory in place. It was very old politics.

In retrospect, I was proved right about the choice of presiding officer. David Steel cut Donald Dewar and his government too much slack. It was months before the First Minister was ruled out of order. The relationship was not in any way collusive; perhaps a mix of personal character and long association but it didn't help the new parliamentarians stand their ground.

The chief whip

The third key role is the chief whip (named at the outset - chief whip and Government business manager) filled at the time by Tom McCabe.

Tom, to quote the journalist Douglas Fraser, was “one whose demeanour was not given to indulgence of those colleagues with rebellious spirits. He came from a municipalist experience, where the practice is of councillor groups reaching common lines collectively and binding every member, unlike the Westminster tradition where ministers agree a common line and expect back-benchers to follow it, while leaving room for dissent.”

I soon got a flavour of what he meant. Labour MSPs told me they had received formal warning letters from Tom, others had informal but unmistakable warnings including the threat of re-selection problems. Some had been removed from committees as member or convenor as a demonstration of power by McCabe, or, for the same motive, forced to return, quite unnecessarily to Edinburgh to vote after supporting government business in their constituency an hour and a half from Edinburgh. Several former MPs told me party control was stricter than at Westminster.

An email to me dated 21 January 2000 describes McCabe’s essentially bullying response to Sir David presumably in the business committee. There was more than one comment of Steel being weak. Helen Eadie in a note dated 27 November 2000 railed against group whipping. Members may have been simply letting off steam to me but it left me in no doubt of his methods.

McCabe was drawing, as we all do, on his own experience. In his case as a senior shop steward for 20 years at Hoover, one of the most ‘organised’ engineering business in Scotland. As an engineering employer myself, I knew something about this world. For the generation younger than me, those days have passed into history but they were about discipline and solidarity. The experience also made him a successful leader of his local council.

Tom McCabe was efficient and hard working. Unfortunately his experience was exactly the wrong culture for that proposed in the CSG report.

In response to the tough Labour group whipping practice, the SNP soon did the same. Much of the vigorous policy debate moved from the floor of the chamber to the group leaders meeting rooms. What came back out was less public dissent by members and less vigorous debate.

The CSG's consensual working recommendation had sunk in a Bermuda triangle between an overworked and on this issue, disinterested First Minister, a hesitant presiding officer and a disciplinarian chief whip. The chief whip, from the outset, got a grip of his party, the presiding officer, the procedures and thus the parliament that has never since been sufficiently dislodged.

The parliament was moving away from the ideals set out in the CSG report not towards them.

It wasn't just in the chamber that old ways were prevailing. I was told by Mike Russell even then a senior SNP member that there was precious little evidence of 'new politics' in the business committee from day one even though the SNP had come to the business committee prepared for co-operation. I had no reason to disbelieve him for the SNP had bust a gut to make the referendum campaign work and taken political risks with their fundamentalists to do so. The CSG recommendation is this

> 'The business committee, chaired by the Presiding officer, comprising representatives of the political groups, to develop in a transparent, *and, insofar as possible consensual way* proposals for the programme of business of the Parliament'.

It was clear the SNP thought the recommendation a dead letter under McCabe.

George Reid - Calls for CSG audit of parliament - 11 October 1999

Just four months after the CSG was presented to Parliament, George Reid, suggested to a conference in Stirling that the CSG be reconvened to audit the Scottish Parliament. He gave a clear signal that there had already been a departure from those *principles of consensus, openness and accessibility.* He described 'cantankerous rather than consensual days on the Mound'.

An important part of the CSG report had been lost within those few initial months. In theory, the parliamentarians could *en masse* have rescued the CSG ideals but that was a big ask given the group loyalties of the leading party where more than 60 per cent of the members came from council or trade union backgrounds where discipline and solidarity were principles set in stone. It was not to be.

But it would be completely misleading to say all was lost. Much of the CSG report was implemented and continues to this day. Within a year, I had met several professionals who had given evidence to committees and felt the process worthwhile.

The identity and role of parliamentarians separate from government is a core principle of the CSG report and the consensual democracy it recommended. Both had been compromised from the start and eventually corroded the committees and the chamber too with the help of other factors.

The Scottish Parliament was intended to be a trailblazer. Instead Westminster has innovated with more assertive committees and more dissent from governing party members leaving Holyrood the laggard, preserving by accident, a part of the old Westminster adversarial system.

Henry McLeish as FM fails to revive CSG principles

After the tragic death of Donald, there was renewed hope that Henry McLeish, the man who had held the ‘new politics’ portfolio, chaired the CSG and had most claim to own it, would act to implement it fully and be supportive of a different culture for the parliamentarians. But it was not to be, McCabe continued as before serving though McLeish’s year of office unchecked.

McLeish’s indiscriminate use of the word, ‘consensus’, showed he didn’t really understand the idea, a central tenet of his own CSG report. His flagrant over use of it simply debased its value to no more than a warm word.

I had been doubtful about his appointment as First Minister as he had already failed as Enterprise Minister to reform *Scottish Enterprise.*

In despair at his leadership, I sought the opinion of some of my fellow campaigners of 1997 on the progress of the parliament. All felt their organisations were consulted to death by the Scottish Government but somehow their views never were taken into account. All wanted to give the parliament more time 'to mature' whereas I felt the horse had already bolted.

Before I had finished consulting my colleagues, *Officegate* forced McLeish to resign, a personal tragedy as he was one of those few MPs who chose to leave Westminster for Holyrood for something he believed in.

As Jack McConnell took over, in a vain attempt to revive 'consensus' and promote its role in parliament, I wrote the following explanation of consensus to all members.

> As 'new politics' have taken a battering recently, I write before the party battle resumes restating their value to Parliament.
>
> David McLetchie's [Leader of Scottish Conservatives] view that **Consensus is a false God** leading to false compromise is far from the whole story. The fact is consensus, accurately defined and properly used, is one of the most powerful motivating forces in business and politics.
>
> The verbs reveal the difference: one cuts a compromise and builds a consensus - above all one does not appeal for one. Henry McLeish by appealing for consensus at every opportunity has contributed to the confusion about the word. At its best, it is a way of moving a radical idea from the fringes of opinion into the mainstream without losing its force.
>
> Compromise does exactly the opposite, cutting off all the bits that are radical. So consensus and compromise are polar opposites not, as many people think, versions of each other.
>
> Building a consensus takes time because people have to be won over by good argument and points have to be conceded. And because it takes time, it sits ill at ease with a political culture that needs an initiative every day and insists *on absolute party discipline over all policy.*
>
> But the rewards for patience and freer voting remain tremendous. Not only is the problem likely to be better defined but the solution having won so much commitment is likely to stick and work, making the technique of value in complex problems or where no one party has a monopoly of knowledge.
>
> There is a third way of settling policy and that is simply to impose it with the power of conviction. All three - *compromise* - *consensus* - *conviction* ought to be at work in parliament

many times over. I urge Parliament to find a way of unlocking the power of consensus and putting it to work for change in Scotland.

Having to argue constructively with opponents requires a more tolerant political language in Scotland both for people and their ideas**.** While Parliament has already ceased to use the language of the snake oil merchant for individuals, the tendency still remains to sneer collectively at Tories for daring to be Tories, the SNP for holding to their founding idea of Independence or Labour for having a full complement of women MSPs. It is surely time to move the language on again.

Stop strangling ideas at birth simply because they come from the wrong party. For too many decades in Scotland we have tolerated a highly polarised political culture which coalition government has unwittingly perpetuated. So SNP ideas on PFI are rubbished before the ink is dry and Scottish Executive policy on roads gets similar treatment. The practice spreads beyond Parliament.

A progressive newspaper, having dismissed outright the contribution on economic development from a right wing think-tank, has the nerve to call for a "debate" of its own on the subject. This sort of partisan culture does not encourage Scots to be self confident and bring forward ideas. If Parliament wants a clash of ideas in order to find the best, it must first allow them onto the playing field.

Finally, I ask the new First Minister to use the goodwill likely to be accorded to him in his first weeks in office to infuse the robust language of party debate with a new tone and encourage a more confident parliamentary treatment of new ideas from any source. It would be a clear sign to all that our Parliament is continuing to grow.

My insider pessimism

Within the first three years of the first parliament there had been four First Ministers if Jim Wallace's serial deputising is included. Alex Salmond, leader of the opposition, had resigned and returned to Westminster just months before Donald died so only Wallace of the triumvirate who had campaigned so successfully for the parliament was left.

Besides the parliament feeling unstable, I saw the establishment closing over it. Not only had Scottish Enterprise escaped reform but when some of us tried to reform the public appointments process in 2001, the permanent secretary was sent down to committee to squash the idea.

There were self-inflicted wounds like Section 2A arising from the relative inexperience of young ministers. A cabinet insider told me that Donald also felt conflicted by his loyalties to colleagues, now his ministers, when he had to

disappoint one of them in favour of another.

I agonised over the thought that Donald, this engaging man who had paid me a spontaneous public tribute at a Lothian lecture he gave with Bertie Ahern, was too self-effacing to give the public leadership the new parliament needed and that perhaps we might have been better off with George Robertson though a centralist perhaps a more pragmatic politician than Donald who could be thrawn.

My pessimism is caught in this note to a friend

> …You are right to point out to Scotland the village. Before devolution we all thought it was one asset that could be turned to Scotland's advantage. But turned it hasn't been, not even challenged. You call it village Scotland vibrant while I think it moribund. It is the dinner table leadership of Scotland, a place for insiders and the institutions of the managed society to exchange their inertias.
>
> Some of us were naïve enough to think we were opening all this up to a blast of fresh air, so it worries me that you appear to give it a clean bill of health. Do you really sense the CBI or Scottish Enterprise are one whit different since devolution? Apart from laying a few more places at the dinner table for MSPs, all goes on as before.
>
> While doing things in a stylish new way, I have this nagging sense that underneath we are still too close to the old system with too many people supporting it and too few challenging it…

On the other hand, I continued to meet professionals who had engaged with the parliamentary committees and had found the procedures and access better than London so mine was an insider pessimism.

George Reid new presiding officer

When David Steel retired, George became presiding officer in the second parliament. Although he was not able to impose CSG ideals, he may have been able to soften some of the earlier practice. He himself says he did a 'little re-jigging of business - more time for speeches, more encouragement to take interventions, fair shares for the Greens and others'.

However his reach didn't extend to the now well established party group whipping.

George was also brought the building costs of the new parliament building under control as they rose from £50m to £415m, and then planning its opening in September 2004.

At the reception after the opening of the first parliament in 1999, I found myself standing beside two newspaper editors boasting of the rough time they had given the SNP during the first Scottish general election. How, in their words, the SNP 'didn't like it up em'. This destructive mood soon turned on the new parliament as the costs rose tenfold. The pressure on George and the parliament became enormous. I am sure you will take evidence from George who is obviously pivotal in understanding how the CSG ideals were developed or abandoned.

When parliament finally moved from the Mound in 2004 five years had elapsed since Winnie Ewing's opening words by which time the consensual layout of the impressive new chamber was more of a fashion statement than a reality.

McConnell as FM and the second parliament

Jack McConnell as First Minister although he started with a good old fashioned purge of the cabinet, eventually brought some stability, some flashes of radicalism and crucially, with the help of the Liberal Democrats, proportional voting for local government. Today with 40 percent of members still coming from councils that reform may, in due course, feed back into parliament.

It was received wisdom before the first parliament that coalition government was both inevitable and to be preferred to a Labour minority government. With the benefit of hindsight, coalition rather tamed the Liberal Democrats' interest in 'new politics'. Jim Wallace had been party to the 'new politics' debate before the parliament and a senior member of the CSG but he didn't put much effort in defending its principles. However without coalition in the second parliament, proportional voting for local government wouldn't have happened.

Alex Salmond returns

John Swinney resigned as leader of the SNP in June 2004 and Alex was elected leader for a second time early in September 2004. As he was at the time an MP and not a member of the Scottish Parliament, Sturgeon deputised for him in the Scottish Parliament.

The BBC network seriously distorted our politics for the next two and half years until the 2007 Scottish General election. Throughout this time, Alex Salmond was always on news and chat shows networked from London while Jack McConnell although First Minister was confined to the Scottish regional network. It is probably the nearest the structural problems of BBC broadcasting have come to influencing an election because the Alex beat Jack by one seat. It is hard to believe the differential exposure wasn't worth one seat though it wouldn't have done more than delay this longer narrative.

3- Referendums in the later parliaments

The adoption of the referendum

Independence was kept out of the 1997 referendum by an understanding between us that we would concentrate on devolution - the issue on the ballot paper. Alex Salmond, having secured the backing of his party, would wave away any questions on independence 'for another day'. In the *Scotland Act,* the UK retained control of its own dismemberment by reserving the power to hold a referendum on 'another day'.

At the end of the first parliament, in April 2003, the SNP for the first time ever, promised a referendum before independence. It was a major policy change, the full significance of which was missed by many in the SNP and Labour. I welcomed the decision in a letter to the *Herald* explaining the probable effects.

> It is wrong to criticise the SNP for giving a cast iron guarantee that a decision on Independence would be put to the people in a referendum. The SNP is following a growing trend that important constitutional decisions need the specific approval of voters. It is hard to argue such decisions should be left to politicians though some in your columns still do.
>
> The promise of a referendum on a controversial issue goes a long way to remove it from immediate party politics. Tony Blair did this very effectively when he removed the Scottish Parliament and its controversial tax powers from the 1997 General election and again in the 2001 General election when he removed the issue of euro membership from the campaign. By this twice repeated tactic, Tony Blair ensured both elections concentrated on normal domestic issues.
>
> So the SNP promise of a referendum makes possible a similar normalisation of Scottish politics. Instead of the Scottish election being overshadowed for a second time by a shrill debate about the merits and demerits of Independence, we can talk about our schools and businesses.
>
> But it doesn't stop there. The SNP, by making clear to voters of a unionist inclination that they can lend their vote to the SNP in a General election in support of their domestic policies and take their vote back in a referendum on Independence, opens up a more competitive political landscape for Scotland where clash of ideas might lead to the best policies being put into practice.
>
> The SNP still need to clarify how long a no vote would stand for if they failed to win a referendum and what sort of material change would have to occur before they felt another was justified. But leaving these important questions and the legalities aside, I have little doubt that their commitment to a referendum is an important democratic safeguard and by normalising politics will help make the Scottish Parliament work.

Decoupling independence from the rest of the SNP manifesto meant voters could lend their vote to the SNP and take it back in any independence referendum.

Although the referendum promise spelt the certain end of perpetual Labour-Liberal Democrat coalitions, the Scottish Labour party were slow to spot the threat and undertake the necessary party and policy reform - at least on sufficient scale to register with the voters.

The policy was adopted too close to the second Scottish General election in 2003 to have any effect. By third in 2007 and buoyed by Alex Salmond's return, the SNP became the first minority government in the third parliament.

The media now focused on the possibility of an independence referendum though, despite Salmond's teasing, it seemed unlikely to happen. Nevertheless there was a sense of policy being adjusted in its favour with awkward issues side lined.

The real value of the referendum policy came in the 2011 Scottish General election when it provided a safe way for voters, now disillusioned by Labour, to react positively to the '*SNP stronger for Scotland*' campaign. The landslide catapulted the SNP into an absolute majority and the referendum could no longer be avoided. The Scottish Parliament voted unanimously to ask Westminster to grant a referendum.

There began more than three years of understandable division up to 2014. As independence polarised parliament, primary legislation became less controversial, and the volume of secondary legislation dropped by 20 per cent. It was the longest referendum campaign in the world by some considerable margin. There is no doubt the adversarial founding culture was intensified by the divisive nature of the referendum. Several longstanding members told me how tribal the parliament had become.

The referendum result - almost 11% on an 85% turnout - looked decisive by world standards.

Lessons in the aftermath of the independence referendum

Three Scottish referendums, 1979, 1997 and 2014 let a generation pass between them – the first 18 years, the second 17 years. All too briefly, it looked as if the issue would be settled once again for a generation and that life would return to normal. But it was not to be. Instead a fourth referendum is possible in the next 3 to 4 years given the politics and logistics of organising one.

It is not the right way to use referendums. There are at least four risks in abandoning the 'once in a generation' promise with immediate effects bearing on the remit and beyond to the economy and society.

-on the legitimacy of the referendum

The First Minister, by not accepting a 10 point defeat, has licenced her opponents to do the same. She has created a zone of contested decision. It means that Independence must win 'big' next time. Anything less than 10 points would likely bring a *third* independence referendum into play as her opponents forced a re-run or ratification referendum. The worst case instability from 2011 to 2023 could amount to two thirds of the briefly promised generation.

The First Minister will find that 52 per cent may renew an old state but it will not build a new one. For that a consensus is needed. Since the war, most states have become independent with upwards of 70% support. The First Minister's target of 60% is a modest start in the right direction.

-on the parliamentarians and democracy

The tribal division within parliament has been perpetuated beyond the 2014 referendum. There are now 79 members first elected in 2011 or 2016 - that is 62% of the current parliament - who have known only a parliament riven by referendum - already for six years - and now with a prospect of ten or more years.

The refusal to accept the result has already inflicted collateral damage on the parliament the SNP did so much to secure. A National leader now speaks for only half

Scotland, the effectiveness of parliament is reduced as business is shaped and debated through the referendum prism. It will stall the commission reforms, polarise voters in three elections, distracting the focus from the big failing domestic issues. If this came from any other quarter, it would be roundly condemned as an attack on parliament

-on business and the economy

It warns investors to beware of investing in Scotland. All social democrats need to understand the chilling effect. It is not just a typical scary warning from business too often crying wolf.

This how it works. First those investors, like me forty years ago, faced with taking a new financial risk - don't take it. Then the stock of existing businesses, make the easy decision to postpone investment. Finally, existing businesses if they can, take flight. Anyone with links in business knows even this latter option is already stirring. A decade of instability will be enormously damaging to the economy that already has zero growth.

-on Society

We had all consented to three years of civilised division. Despite the success, it was not stress free. Many now dread the prospect of reigniting old hostilities. The clash as irritation at the prematurity meets the urgency of those on their last chance, will be fierce and more stressful than the last referendum.

The journey from consensual CSG report through McCabe's adversarialism to the intensification by referendums is complete. The Parliament has polarised, is tribal or however the culture is to be described.

I want look at the structure of the Parliament that this culture inhabits.

4 - Structure & Balance in the Parliament

The structural problem

The remit makes the important distinction between government and parliamentarians. All government ministers except law officers are parliamentarians so the terms are not sufficiently distinct Nor are the terms backbenchers or non-executive members sufficiently inclusive.

For this paper, I have used the less glamorous distinction of *payroll members* and *non-payroll members* of the Scottish Parliament to explain my thoughts about structure and balance in this symbiotic relationship.

The payroll members are the Scottish Government less its law officers plus the parliamentary liaison officers. The rest, adjusted for presiding officers, whether backbench or front bench, are non-payroll members of the Scottish parliament and for the purpose of this paper are my - '*parliamentarians'.*

The parliament voted into existence in 1997 is quite large compared with federal provinces of Canada or German Lander or other UK assemblies. The size came from the refusal by Labour to consider a fundamental reform of the voting system.

The Scottish Constitutional Commission, chaired by Joyce McMillan, tried but failed to settle the matter. The options ranged from 145 members down to 110 members giving - more or less proportionality - to the *additional member voting system,* the only system Labour were prepared to consider . The party thought it would preserve their FPTP seats. AMS is, in essence*,* a corrective overlay on the (then Labour) FPTP party fiefdom*.*

The final size of 129 members was a political compromise between George Robertson (wanting it as small as possible) and Jim Wallace (wanting as big a corrective as possible) closeted together in Ming Campbell's Edinburgh home.

It was wrongly assumed that AMS would not only preserve the Labour heartland but

would deliver only minority government, itself an important modifier of political behaviour. In fact, since 2011, even minority government has barely been the case though democracy will no doubt restore a better balance in time.

Perhaps exhausted by the long debate about the voting system and the size of the parliament, no thought was given to the size of government. Among all my constitutional commission papers (I was member for a short time at the outset) I find no reference to the size of government. I certainly never heard anyone express the thought that the Scottish Government would be as big as - 25 ministers - or that with parliamentary liaison officers the parliament would have a payroll vote of 36.

If anything the assumption was that in a consensual, more European style parliament there would be a greater overlap between the two spheres - government and parliamentarians - rendering the proportions of one to the other, somewhat less important. The understanding that it is a symbiotic relationship was absent or at least never expressed.

The size of the payroll vote means the Scottish Government is more dominant in the Scottish Parliament than the UK Government is at Westminster and the capacity for scrutiny by the parliamentarians inversely reduced. This is the fundamental structural problem that can only be partly eased by modifying procedures. It is obviously aggravated by the almost absolute majority and the more adversarial culture and referendum tribalism.

Parliamentary Liaison Officers (PLOs)

PLOs were established in 2007 when they replaced ministerial aides (MPA). They are analogous to the PPS at Westminster though nominally different. Besides assisting their minister, their formal role is to improve the links between parliamentarians and government. There are 13 of them, all from the governing party, a ratio of *one to six parliamentarians* which is lot of 'liaising' compared to Westminster where the ratio is *one to ten*. This cannot be a desirable balance.

In theory, PLOs are not bound by collective responsibility but it is hard to see them voting against their government given human nature and political ambition. Despite being unpaid, they count as part of the payroll vote just as at Westminster.

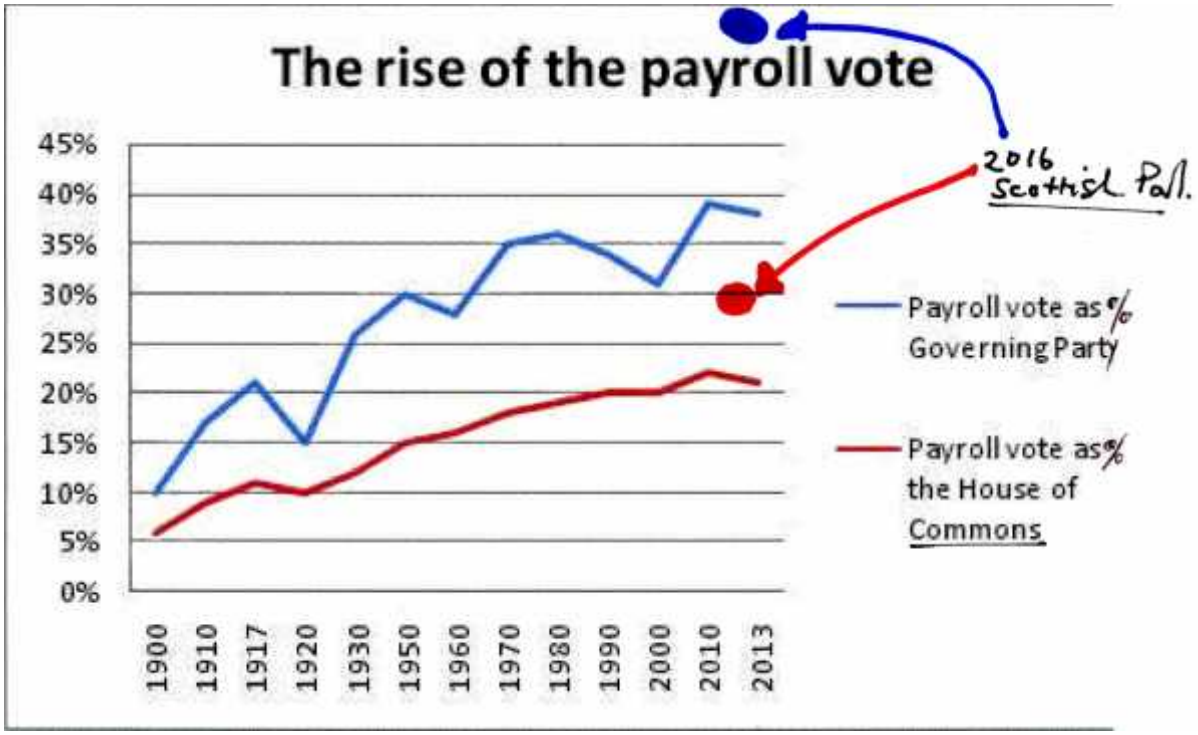
PLOs at one point could sit on the committee scrutinising their minister. This practice, if it still exists, should be stopped. Banning PLOs from any scrutiny committee let alone voting seems unanswerable.

Relative size of the payroll vote

The payroll vote in the House of Commons accounts for 22 per cent of the members of the House. A report by the *Public Administration Committee* in Westminster on 16 March 2010 found much evidence that the enlarged payroll vote at Westminster was 'clogging the system' so recommended substantial reductions to an upper limit of 15 per cent for the Commons.

At Holyrood, the payroll vote is 30 per cent, double the PAC recommended figure, making the Scottish Government more pervasive in Holyrood than the UK Government is at Westminster. Nobody anticipated this possibility.

The payroll vote also represents 60 per cent of the governing party compared to Westminster where it is 40 per cent. This gives business managers the upper hand when quelling dissent and constrains the independent minded members. It also means the pool of replacement ministers is smaller and disruption to committees more likely.



The comparison between Westminster and Holyrood payroll vote is shown in this table.

Special advisers and greater government

Government isn't just limited to the payroll vote of 36.

The practice of appointing unelected special advisers to ministers in addition to the advice they receive from the civil servants, was not recorded in the CSG report probably because they existed in such small numbers before 1997. But since then, the number of special advisers has exploded both in the British Government (18) and Scottish Government (13). The role has attracted a good deal of criticism but they seem to be here to stay.

The recent appointment of Stewart Maxwell, until the last election an SNP member of the Scottish Parliament, as a special adviser is a reminder of how political these advisers are. They have no vote, but they form an influential part of the greater government.

Having lobbied in both capitals, I see that special advisers in London operate in a much denser, more competitive environment with more push back than in Edinburgh. In comparison unelected advisers in Edinburgh can bear down on Scottish parliamentarians and the civil service to a greater degree than London and have a stronger say on policy formation than is desirable.

As well as the 13 powerful special advisers, the government commands the resources of the civil service, the ability to reach, prompt and co-opt supportive experts to give evidence to committees as well the daily exercise of discipline in the chamber and committee that derives too much from the ‘founding’ culture. This is especially so in a small country.

To counterbalance the weight of government are less than 90 parliamentarians. Thus the first ‘check and balance’ looks set too much in favour of government. It is evidently not an ideal balance if one judges by the outcomes.

The symbiotic relationship - government and parliament

In a parliamentary system, government is formed from parliament and requires the continued confidence of parliament to do its work. Any criticism of government carries an implicit criticism of parliament though this rarely becomes obvious. Parliamentarians have a key role in keeping policy and execution to the highest standard.

In practice much committee work is still be done by consensus; only the more difficult areas go tribal. But this is the boundary limit that governments observe. The policy they propose is what they judge they can get through if introduced. Thus the willingness of parliamentarians to dissent in a formal vote or more often by ‘making their views known’ informally, defines the boundary that government will observe and the quality of the policy outcomes.

There needs to be more occasions such as Kenny Gibson dissenting on his party policy, or Bruce Crawford's stinging letter on the budget process or the chamber's rejection of education policy. But the informal process, unseen by the rest of us, is crucial. More informal dissent would demand higher standards, better ideas and support cross-party ideas when justified by merit. The bar for government has to be made higher by the greater independence of members.

So given the unbalanced structure how well has parliament performed and how good the policy outcomes?

5- Success & Failure in Parliament

How well is Parliament doing?

1st Parliament 1999-2003 Dewar/McLeish/McConnell I - LibLab coalition - Presiding Officer: Sir David Steel
2nd Parliament 2003-2007 McConnell II - LibLab coalition - Transitional - Presiding Officer: George Reid
3rd Parliament 2007-2011 Salmond I - SNP minority - Presiding Officer: Alex Fergusson
4th Parliament 2011-2016 Salmond II Sturgeon I - SNP majority - Referendum - Presiding Officer:Tricia Marwick
5th Parliament 2016 to date Sturgeon II - SNP Minority Presiding Officer: Ken Mackintosh

The parliament over its life has made 260 Acts, reviewed 7,300 Statutory instruments, 150 or so Legislative consent motions and brought many polices before it. It has not been inactive - the question about performance looks more qualitative than quantitative - how well has life been improved by the Scottish Parliament?

Many areas of Scottish public life, probably numbered in the hundreds, have felt the benefit of policy properly taking into account circumstances specific to Scotland from marine conservation to mental health. Westminster would never have had time to legislate on these subjects in detail nor had the local input. While there are areas of failure like the administration of farm payments or rail problems any thorough balance sheet would show a clear win for voters in the policy outcomes in these tier 2 (my label) issues. I expect that to borne out in evidence from others.

The advantage brought by the parliament is less obvious in tier 1 issues.

These are complex issues with interacting sub-policy areas in which the full ramifications of the issue are not immediately obvious, usually costly, central to the majority of voters, often containing strong interest groups, requiring full evaluation of new ideas and great care in policy formulation, consent, execution and ultimately needing thorough and robust monitoring by parliament.

Health, social justice, education and the economy easily fit the definition.

If we take the economy, the Scottish Government has toyed with Scottish Enterprise for twenty years from the outset with Henry McLeish as Enterprise Minister to the

present day under a Junior Minister and a part time chief executive at the agency. Successive governments have never seemed quite sure what to do with the agency that is its own Industry department. Wealth creation and enterprise needs a higher priority; the economy is not getting the attention it deserves from the parliament.

Forty years ago, more than 100,000 people moved from the central belt and elsewhere into the North-East attracted by the rising job opportunities as oil was discovered. They now face a difficult future as oil runs out. Yet there no evidence the Scottish Government has any sense of the scale of the impending problem or any strategic response from government or concern in parliament.

The current Scottish Government will claim it lacks essential powers. Where that is true, it could show greater willingness to co-operate effectively with the UK Government. It lacks not power but the understanding that the most important power is already in its own hands. It could send out the message far and wide that the Scottish economy is open for business. Instead it signals the opposite; the freeze on fracking (right or wrong), land tax, income tax and sustained political instability over another referendum give no help to the 100,000. It is no adequate defence to list the benefits of living in Scotland while quietly ignoring the direction of travel on tax and stability that matters far more to entrepreneurs and investors.

The Scottish entrepreneurial deficit pre-dates parliament but as was one of the few business people to support publicly the establishment of the Parliament with an engineering business that traded internationally, I can say the existence of the Scottish Parliament has made matters absolutely worse.

It is in education where failure cannot be disguised or blamed solely on the current government and is more easily understood by everyone.

‘Scotland has taken part in every PISA study since 2000 [exactly coterminous with the life of the Scottish parliament]. In 2000, Scotland’s results were above the OECD average in all three subject areas. Its performance is not now above average in any subject area. It is no longer credible to describe Scotland’s education as world

leading'. Keir Bloomer, chairman of the commission of School reform.

Westminster has done somewhat better than Holyrood raising the embarrassing possibility that Scottish education, if it had remained under the Scottish Office, may have done better still. The criticism has naturally fallen on the current Scottish Government that has been in office for ten years but all three parties who campaigned for devolution have been in government at some point during this relative decline.

None of the campaigners in 1997, Salmond, Dewar or Wallace or we lesser fry, not one among us, remotely contemplated the possibility that the Scottish Parliament would lead to relatively worse education for the generation of children born in 1997 and since. We were dedicated to the idea the Scottish Parliament could do better for the 600,000 children in our schools - and it hasn't. One can't disguise it nor should we.

After 20 years, across three different parties, five parliaments and seven leaders criticism can no longer be confined to the current and past *governments* but must extend to the Scottish parliament as a whole - in other words the *parliamentarians* have also fallen short.

Here is the clearest possible evidence that parliamentarians are not demanding sufficient quality in legislation or policy and are too easily brought to heel by strong government operating in a structure that favours control and are too easily neutralised by tribal loyalties. It is vital this deeper, more fundamental interpretation is not lost in the current party political clash over education.

The parliament has done well in the tier 2 areas that are numerically predominant. But in the bigger, more complex areas, few concrete examples of success exist. There is more often an illusion of competence than competence itself. I mark the Scottish Parliament 6/10 brought down by its tier 1 performance.

Judging by policy outcomes, the parliament has to offer a greater challenge to the Scottish Government on the quality of its ideas and the quality of its administration.

*Parliamentary system shares blame***.**

Why is parliament failing in tier 1? I have already suggested some reasons but to the points already made I add three more - political values, ideas and the ability to discuss public policy in ways that bring the best option to the fore.

Political heritage

Some will reach for the old criticism referenced earlier that Scottish Parliament is simply a glorified council. However tempting they are wrong.

The parliament has the standing, the infrastructure, the information service and the public support to do the job. It has members in all parties who would be a credit in any legislature. Much of what has been done well is beyond the competence of local government. It has successfully led in moral issues and in novel policies like renewables. Even tier 1 is not without its successes like NHS24 and digital records. I have already explained the contribution of municipal experience to the parliament's cultural DNA but the criticism need go no further. This is not a super council.

But there is a problem in the political complexion in another direction. The parliament was never the socialist figment of wilder critics and though some detect in the top down control, an element of democratic centralism, that too doesn't stick.

The parliament was undeniably born from the social democratic left somewhat like the Nordic countries. Only the voting system ensured there was a full spectrum of political opinion.

The parliament might have been a little more centrist had the CBI engaged with the Convention in 1992 but it turned away under the influence of the Conservatives.

Instead there seemed to be a subtle bargain - if business would stay out of devolution then devolution would stay out of business.

The parliament political value led directly to the next point.

Value for money - no premium on ideas

Soon after the 1997 referendum, I asked my fellow campaigner, Matt Smith, the leader of Unison, one the bigger public sector trade unions, why the Union had been so supportive of the Scottish Parliament when it was likely to be one of its first targets.

We both understood the parliament would need to look for value in the use of the public money. (Scotland spends a disproportionately large amount on its expensive geography and the social effects of its failing economy). He acknowledged the point but said the union had taken a wider view of the need for a parliament. It was an unselfish answer that reflected well on his members.

My question was premature; more than ten years premature. The parliament was born with a silver spoon in its mouth. From the outset the Parliament was flush with money as the Barnett formula automatically benefited Scotland from the greatly increased social spending of the second and third Labour government in London.

Social democratic politics could continue to hold at arms-length any need for value for money in the public sector and encouragement of wealth creation in the private.

Instead there developed, in a rather conservative middle class social democracy, a strong inbuilt bias to the less risky status-quo at least around the big tier 1 issues. Ideas and policy innovation were not at a premium out of necessity.

All that ought to have changed in the financial Crash of 2008. But the coincidence of the referendum and a fortunate lag in block grant flows combined to disguise much of this reality and what was left could be passed off as London austerity for a time.

Only now is financial reality being confronted with advent of tax powers. From now on the Scottish Parliament will out of necessity need to embrace ideas that its political culture has for too long been able to put off. There will have to be a different attitude to ideas and innovation.

Policy innovation for the big issues is becoming crucial.

Ideas and Scotland's public discourse

The parliament has made laws like the smoking ban and plastic bags that have been adopted by the rest of the UK. Sir Richard Wilson, who was Cabinet Secretary for HMG for the first four years of the Scottish parliament, told me in 2003 how much he welcomed the end of the idea that 'the man in Whitehall knows best'. Coming from the top man in Whitehall, I took it as an early endorsement of devolution. The devolution lab has continued by consent as Scotland, encouraged by the *UK Roads Liaison Group*, pioneers lower alcohol limits for drivers .

However while giving policy to other parts of the UK, the Scottish Government seems reluctant to reciprocate by taking up ideas from elsewhere especially Westminster. Not coming from Westminster seems more important than what is the best option for Scotland. Perhaps a sign of political immaturity or political machismo but it is a weakness. Scotland, with the same population as Yorkshire, can't afford to replicate the nexus of think tanks in London so it needs to cast widely for policy and be more receptive to ideas.

Although the response from the think tanks in Scotland after 1997 was slow there gradually appeared the International Futures Forum, Reform Scotland, Carnegie Institute, Centre for Scottish Public Policy and others.

Public discourse is too managed or self-censored

It is not enough to have ideas. They have to be discussed in a manner likely to bring the best option and the obstacles to the fore. This raises another problem.

For most of my lifetime there has been too narrow a public discourse in Scotland. Once the post war consensus represented by the Scottish Council and the Toothill report, was abandoned, Scotland entered a partisan world dominated by the Scottish Secretaries. Ideas were in or they were out.

All this pre-dated the parliament which I expected to break the binary pattern and usher in a new more diverse, tolerant public discourse. Instead Scottish Governments, from the outset, simply utilised the big tent mono-culture adding special advisers as gatekeepers who would decide what is permissible and what ideas are beyond the pale. There is a risk in a small country that the government is the one big player able to dominate the debate and all else is side-lined. This is neither healthy nor builds the confidence to tackle the big issues well.

The Parliament's existence has coincided with a quickening, coarsening and fragmentation of media making public discourse harder still.

So although the policy community have tried to serve, the Scottish Parliament has not made it easier. The parliamentarians need to open a new channel for ideas in Scotland and give them a longer less partisan airing beyond the reach of the special advisers and the government big tent.

6 - Parliamentarians – the key to success

Symbiosis again

I have laid bare the current weakness of the symbiotic relationship. Parliamentarians are not demanding high enough standards of government and could cure this overnight. But that leaves out the politics.

There are some other reforms the first two probably beyond the remit but I include them anyway.

Re-balance the structure

After removing the payroll members and adjusting for the presiding and law officers there are less than 90 parliamentarians. If, in a strict interpretation, the eight convenorships that fall to the governing party are also subtracted, the total falls nearer 80 members.

Either way, the monitoring and scrutiny capacity of the Scottish Parliament fills a double decker bus with a tribe on each deck. Each tribe is broadly the size of the government's payroll vote. The lack of consensus hands government yet another advantage in its management of affairs.

It may seem radical but the structure needs reformed. I would reduce the government payroll vote in two ways.

Government should be limited to a maximum of 18 ministers. The Lander governments in Germany and other sub-national governments work with fewer ministers, certainly fewer than the 18 - the lowest number ever appointed to the Scottish Government.

Secondly, the number of PLOs should be reduced to 9, (the same proportion as at Westminster). Together these two changes would add 11 members to the number of parliamentarians - more than a 10% increase as well as reduce government control and re-balance the structure in favour of parliamentarians.

Size and the electoral system

I have explained the political deal that settled on 129 members. We can be sure there is no appetite from any quarter to increase this number but there are other ways to give greater capacity and independence to members.

The most obvious way would be to abandon AMS for a better electoral system. Its greatest weakness is the control the political parties gain over their MSPs by deciding their rank on the list. Andrew Wilson, the chairman of the SNP Growth Commission, was himself 'demoted' in the SNP list. AMS then ended his career after one parliament. With a different electoral system, he would have spent the last 10 years inside government probably instrumental in rescuing the economy instead of outside belatedly advising upon it.

The only party supporting AMS in 1996 was Labour, the incumbent beneficiaries of FPTP constituencies. The SNP as the new beneficiaries, may now be less keen on change. Note in passing, the FPTP dis-proportionality at Westminster where the SNP hold 95% of the seats on 50% of the popular vote.

The Scottish Conservatives proposal to reduce the number of MSPs is a vestige of their original opposition to the parliament. It would only make sense if there was also a complete change to a more proportional electoral system that weakens the party role, strengthens the independence of individual politicians and limits the size of government proportionately.

There are more likely reforms.

The workload of parliamentarians

The CSG wanted committees to have a greater role in policy formation (a sort of green paper process), scrutiny of proposed legislation, scrutiny of the post legislative effects of newly made laws and even the power to propose their own legislation based on their own policy ideas and as well as to practice outreach.

In 2006, physiotherapists in Scotland found that an important part of their practice had been made illegal by a law badly made in the Scottish Parliament. The law, to regulate the body piercing risks of tattooists, failed to take of account of acupuncture practice in physiotherapists' clinics. Such an oversight would have been spotted by a revising chamber. Though it is an unfair example, having never been repeated, it reminds us that revising, the work of the Lords, also falls to the committees.

In practice, scrutiny of current legislation and policy has consumed most of the committees time leaving the other ideas either undeveloped or under practised.

There are 16 committees with 140 places which means parliamentarians serve at least two committees and with substitutes even more. Each with maybe 25 meetings a year.

I have already demonstrated there is a qualitative problem around the tier I issues but there is also a quantitative one. Members don't seem to have enough capacity despite the complaint of some Conservative members of a lack of new legislation.

Less legislation more leadership

Twenty years ago, Sir William Kerr Fraser, a supporter of devolution, posed the question to me - what are they [MSPs] going do all the time? As he had been for ten years permanent secretary to the Secretary of State for Scotland, I took his doubts seriously.

The question should be asked - is the government too focused on legislation? Does it really need to pass 15 Acts and 430 statutory instruments a year?

It also threatens more work by centralising power. Given Scotland has a plethora of institutions, including 32 local authorities, 23 NHS bodies, 20 universities, 43 colleges, and over 100 other non-departmental public bodies. The eight police forces have already been merged into one force. Sensible rationalisation could easily turn into more legislation or at least more administration.

To the powers coming from Westminster and now Brussels could be added powers from local government. There is a prospect of a rising tide of legislation and administration that threatens to drown the committees.

Sir William's question should be a reminder that government is not only about legislation. In a small country especially, government can lead even inspire, collaborate, licence and leverage its public quangos and spending to change society - without legislation and parliament.

However the non-legislative leadership of the Scottish government is another temporary casualty of the ongoing referendum debate.

Sitting for longer?

Before the parliament was established in 1999 there was some debate about how long it would sit for - would it be part time or full time? The idea sounds strange at first but not all representative bodies around the world are full time. The argument is that it keeps politicians rooted in everyday experience. We should not lose sight of this benefit despite the example of George Osborne.

I myself considered standing on a part-time basis as it would allow me to run my business and fulfil the parliamentary duty. But Alex Salmond soon put a stop to my

ambitions when he publicly insisted parliament should be a full time job. The irony is Alex Salmond was himself to hold dual mandates in the Scottish parliament not once but on two or three occasions. The SNP member who recently attacked Conservative members for going off to referee a football match and teach the next generation of students, should remember Alex's record and, more seriously, the wider value of current experience outside parliament.

The electoral system squeezed out Andrew Wilson's business experience. Mine is another example of unintended consequences - a loss of business experience (presuming voters had agreed to elect me) that has proved one area of continuing weakness in the parliament.

What is full time anyway? Jackson Carlaw's proposal that parliament should sit for longer - one obvious way of increasing capacity - should be considered firmly in the context I have just set out. He calculates that at the moment parliament sits - 36 weeks a year for 3 days per week at 7 hours a day - roughly equivalent to *ten full time weeks a year.*

But I would be cautious about a big increase in sitting days. We do not need a dogged parliament; a few more decisive interventions, a more regular pattern of dissent and more push back from parliamentarians will raise the quality of Scottish Government much more effectively.

Discipline & dissent

I have already recorded how discipline was exercised in the governing group in the first parliament including the ability to remove members from committees if not doing the whips will. I have no knowledge about the current situation though I believe the founding culture still extant in the fifth parliament.

There seem to be more dissenting voices and votes in the Commons especially since 2010 than at Holyrood. I can find no comprehensive figures to back my view but if correct, it suggests *dissent takes place and is resolved elsewhere* than the

chamber and committee pointing to a more tribal culture dominated by the government and its business manager.

Parliamentarians and their committees will have to be helped in other ways by revisiting the original CSG proposals for the increased use of reporters, non-voting co-opted committee members and the close support of the civic forum or other direct engagement of the public.

Procedures

The committees themselves have recommended many procedural reforms. For example, the Conveners Group *Legacy Reports* for the third and fourth Parliaments and the report of the Standards, Procedures and Public Appointments Committee on *Committee reform* published as SP Paper 882 in January 2016. Tricia Marwick and Jackson Carlaw have set out reform proposals. Though they don't always agree there is much common ground. Paul Cairney who is helping the Commission, has also written in detail about procedures without ever losing sight of the big picture.

There is no point in repeating their proposals here except to be broadly supportive. What is telling is there is not sufficient collective will among the parliamentarians to do the job themselves when they have such a good idea what must be done.

The committees vary in size from 12 down to 5 members. Nearly half have 11 or 12 members which seem too big to be effective. Their size is more suitable for occasional forums than frequent meetings, forensic questioning of witnesses and intense collaborative work. I note education (12) and the economy (11) two policy areas that are failing have the large format. Even nine may be too big as the Culture committee (9) didn't really get to the heart of the matter when interviewing the Director General of the BBC recently.

Apart from size, I would recommend that

- Members should elect convenors pushing government back from the parliamentarians and giving them more scope to be independent.

- Make permanent the exclusion of PLOs as members of committees

- Seek a reset on consensual working when a more propitious moment arrives..

Perhaps in a more consensual culture, party managers would be more relaxed about their representation on committees and the sizes could be reduced.

The Convenors Group is not a committee but an informal group made up of the chairs of the 16 committees. They said David Steel didn't do detail but he left a gem when he suggested this group It has gathered authority and standing which ought to be put to further use. It could promote policy ideas by asking committees or extra-parliamentary groups to examine ideas, to stimulate wider debate beyond the reach of government gatekeepers. Not replicating their committees' work or adding to its own workload but using their standing to encouraging tolerance and diversity in Scotland's policy discourse.

Training of new members

I went to South Africa soon after the 1997 referendum and knowing the new SA constitution had just been agreed, I phoned South Africa House to ask for a copy. It was a pleasure to talk to a mellifluous Zulu in a place that had once been the object of our anti-apartheid demonstrations and she could send me the post-apartheid constitution.

My interest was this. The South Africans were setting up not one parliament but ten. - one national and nine provincial - posing a massive training challenge. Of course

the circumstances couldn't be more different but I saw the value in the principle of training our new parliamentarians.

I was already involved in an initiative to establish what was rather too grandly described as *Scottish Parliamentary College* but would now be described as 'pop up induction training'. Initially there was sufficient time but the decision to bring forward the first elections to the Scottish Parliament by many months killed the idea. Another accident in a chapter of accidents.

There should be more training for our MSPs especially those elected for the first time of which there are now 79 since 2011. The training should be independent of party concentrating on their role as parliamentarians and founded on the idea that even the newest and youngest MSP is not there solely as a representative but has a role in keeping up the quality of government.

Public engagement means more work?

George Reid in his Stirling conference speech of November 1999 called for the new methods of public engagement recommended in the CSG report to be implemented including the *Civic Forum* and he hinted that Jack McConnell then the Finance Minister, was unwilling to spend money to establish the new framework.

Late in 2000, when I consulted some of my fellow campaigners, the new framework had not progressed. Although committees have since visited various part of the country and petitions seem to be working, some of the other ideas for engagement seem to have fallen by the wayside.

Martin Sime's criticism last year suggests the original CSG framework of which the *Civic Forum* was a big part, has never been implemented. His criticism that Commission is not ideal for the secondary task of public engagement may be fair but he does rather ignore the efforts various parliamentary committees have already made to engage with new media as well as more traditional methods.

Neither streaming of parliament and its committees nor social media existed in 1999. The latter has come play a big part of the lives of the younger generation. At the same time the traditional Scottish press has suffered a real decline and fragmentation as well a loss of resources for investigative journalism. I have no answers though I judge it important that parliament adapts. It might well be better to look at this separately.

Conclusion

I repeat Adam Ferguson's observation that 'Nations stumble upon their establishments which are indeed the result of human action but not the execution of any human design' for he got it right.

It is a warning to those of us, including me, who wish to leave the EU and to those who would make Scotland Independent that plans go wrong. In Ferguson's view inevitably go wrong.

The Scottish Parliament has been only a partial success failing too often on the bigger issues. I have suggested some reasons why this has happened and show most remedies are in the hands of parliamentarians - if only politics will allow.

But there is one bigger issue that needs confronted.

Almost since the 1998 and certainly for more than ten years, the consensus has been the parliament should acquire more powers. Both Calman and Smith added powers by consent. Now Brexit promises still more. But does it really make sense to add new powers let alone sovereign powers when there is such obvious failure to use existing powers for the benefit of the people?

There is a saying in business that companies get 'big by being good; not good by being big'. Would it not be better to pause new powers for a period of five years while parliament improves its performance? I adopt the idea from the First Minister who has recommended new social justice powers are paused in London for a few years as their premature transfer would be risky.

Of course the idea of a pause, however well merited, will not fly in this highly charged debate but it would be dishonest and timid of me not to challenge the consensus that so far been undisturbed by the failures.

Most of us are not ideologues. Most of us want to make life better for people - for the 100,000 oil workers and the 600,000 kids: Nothing more.

But for those absorbed by the constitutional debate, I reiterate my earlier warning that ‘more powers without UK reform’ is a policy of diminishing returns for unionists. More powers in isolation works fine for those whose ultimate destination is independence.

Finally, many will see this paper as a recantation. It is nothing of the sort. To a decentralist, there is no reason why Scotland cannot have a strong and effective parliament within the UK. It has one - if it would only use it properly. I wish it well.

Nigel Smith
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