

Paul Cairney, Professor of Politics and Public Policy, University of Stirling  
[p.a.cairney@stir.ac.uk](mailto:p.a.cairney@stir.ac.uk)

Dr Jim Johnston, Clerk Team Leader, Scottish Parliament  
[James.Johnston@scottish.parliament.uk](mailto:James.Johnston@scottish.parliament.uk)

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## **What is the Role of the Scottish Parliament?**

### **Summary**

The article examines the intended, current and future role of the Scottish Parliament. First, it examines the intended role of the Scottish Parliament, as described initially by the Scottish Constitutional Convention (which put forward a vision for the Scottish political system), the UK Government (responsible for the White Paper on devolution and the Scotland Act 1998) and the Consultative Steering Group (which designed the Scottish Parliament's principles and procedures). It suggests that the current operation of the Scottish Parliament has been influenced more by the UK Government's design, which stresses the traditional role of parliament to provide scrutiny and accountability, even though the SCC set the agenda for the devolution movement in Scotland. Second, it emphasises that while the campaign for devolution sought to construct Holyrood in opposition to Westminster, the Scottish Parliament is in reality part of the 'Westminster family' (Mitchell, 2010) of parliaments. The main functions of Westminster parliaments are to make laws, hold the government to account and to represent the interests of the people. Third, it summarises the experience so far, identifying the interplay between high expectations for a new form of political practice in Scotland and the factors, common to the 'Westminster family', that limit such divergence (such as the important role of parties and the limited resources available to parliaments). Fourth, it compares briefly the Scottish experience with 'Nordic' experiences because the so called 'consensus democracies' were often an important reference point for political reformers in Scotland. It examines the extent to which the Scottish Parliament can, and should, emulate the Swedish experience, arguing that the adoption of Swedish practices may be inconsistent with the Scottish Parliament's Westminster-family design. Finally, it considers the recent parliamentary reforms in both the House of Commons and the Scottish Parliament and concludes that there is a willingness within both institutions to learn from each other.

### **What is the stated role of the Scottish Parliament? UK and Scottish Narratives**

A key theme in the early media representation of devolution and the Scottish Parliament is that they did not live up to expectations (a problem made worse by the unexpectedly large cost of the Scottish Parliament building - McGarvey and Cairney, 2008: 242; Cairney, 2011: 7-13). The much heralded departure from the old-fashioned ways of Westminster, towards the 'new politics' of the Scottish Parliament, was not realised. In this section, we argue that a sole focus on 'new politics', as described by the devolution movement in Scotland, ignores the key driver of devolution: the UK Government, which was responsible for the legislation

introducing devolution and the initial design of its institutions. While the debate in Scotland often focuses on new relationships and forms of participation, the UK Government's focus was on decentralisation and *traditional* forms of accountability. Consequently, as Bogdanor (2009: 143) argues, there is a 'considerable' tension:

between two models of government: the top-down model inherited from Westminster and treated as an example to be followed in the White Paper, *Scotland's Parliament*; and the drive to ensure wider participation both from parliamentarians and the public.

This tension has not been resolved; it continues to influence how the Parliament works. To demonstrate its origins, we compare UK (Labour) Government papers (including the Scotland Act 1998 and the White Paper on Scotland's Parliament) with reports by the Scottish Constitutional Convention (an organisation comprised of political parties (primarily Labour, Liberal Democrat and Green), the Scottish Trade Union Congress, Scottish Council for Voluntary Organizations, religious leaders, local authorities and civic organizations – see McGarvey and Cairney, 2008: 34).

The Convention represented a wide coalition of organisations across Scottish civic society and emphasised the need for a more pluralistic and participative politics than existed at Westminster. The aim was not simply to devolve power from one level of government to another but, somehow, to empower a disenfranchised people. The UK Government, on the other hand, introduced proposals for a Scottish Parliament as part of a wider programme of constitutional reform aimed at decentralising power. The emphasis was on making government more accountable through parliament rather than delivering a participative democracy. Viewed from the centre, devolution is part of a wider programme of constitutional reform aimed at modernising the British state. It is a top down process with an emphasis on democratising government (compare with Flinders, 2010). Viewed from some parts of Scotland, the new parliament embodies the will of the Scottish people. It is a bottom up process with an emphasis on the sovereignty of the people. These aims may not necessarily be mutually exclusive, but they will not work simply by combining the aims of two separate bodies.

#### *New Labour's Programme of Constitutional Reform*

The Scottish Parliament was established in response to a perceived crisis of democracy both within Scotland itself and within the UK as a whole. New Labour came to power in May 1997 with a commitment to clean up and modernise British politics in direct response to an increasing distrust of politicians and government. In his introduction to the party's 1997 manifesto Tony Blair stated:

Over-centralisation of government and lack of accountability was a problem in governments of both left and right. Labour is committed to the democratic renewal of our country through decentralisation and the elimination of excessive government secrecy (Labour Party, 1997).

One of New Labour's solutions to this crisis of democracy was to make government more accountable by devolving power to territorial governments. Within a Scottish context, power in a number of devolved areas would shift from London to Edinburgh. The UK Government's White Paper (a consultation document presenting firm policy intent), *Scotland's Parliament*, defined the role of the new Scottish Parliament as 'to make laws in relation to devolved matters in Scotland' (Cm3685, 1997). In his foreword, Scottish Secretary Donald Dewar states: 'The Scottish Parliament will strengthen democratic control and make government more accountable to the people of Scotland' (1997: 7). The parliament was also expected to 'be accessible, open and responsive to the needs of the public', while 'participation by organisations and individuals in decision making will be encouraged' (1997: 30). At the same time, *Scotland's Parliament* proposed that, 'The relationship between the Scottish Executive and the Scottish Parliament will be similar to the relationships between the UK Government and the UK Parliament (1997: 7). The Scottish Executive would exercise executive responsibility for devolved matters and be accountable to the Scottish Parliament. As Page (2005: 12) points out: "Amidst talk of a Parliament that is different it is important to bear in mind that the devolved system of government is modelled on the Westminster system."

This emphasis is evident in the report of the CSG (Scottish Office, 1998). It recognised, that 'the majority of legislation will originate from the Executive' (1998: 65) and 'the need for the Executive to govern, including enacting primary and subordinate legislation and obtaining approval of its expenditure proposals' (1998: 4). The Scottish Executive, in the first session of the Parliament, agreed:

The Executive's first and foremost duty is to deliver the programme for government on which it was elected. That has involved, and will continue to involve, an ambitious and substantial legislative programme (Minister for Parliamentary Business, quoted in Page, 2005: 13).

Page (2005: 13) notes that this view is little different from what we would expect from a UK government and that, 'For the Scottish Executive no less than for the UK Government, law-making is an aspect of majority rule'.

For the UK Government, the simple act of shifting power downwards from one level to another would make government more accountable. The Scottish Government would be more accountable to the Scottish people both by being physically located in Edinburgh and by being directly elected by the Scottish electorate. The same basic executive-legislature relationship would remain; Holyrood would be based on the Westminster model.

### *The Campaign for a Scottish Parliament*

Within Scotland, the campaign for a Scottish Parliament gained momentum throughout the late 1980s and 1990s in conjunction with an increasing hostility towards 'Thatcherism' (for background reading on the reaction to Thatcherism in Scotland see Cairney, 2013). Scottish voters had decidedly rejected Conservative Governments at the polls and this led to an

increasing clamour about the Scots having a government imposed upon them. The so-called 'democratic deficit', when a population votes for one party of government and receives another, continued from 1979-97. A sense of injustice was magnified by the extent of the power which the Conservative government exerted as a consequence of having a massive majority in Westminster. This top-down, impositional, approach to policymaking was often contrasted with historical myths of Scottish consensualism (McGarvey and Cairney, 2008: 12).

However, home rule campaigners were careful not to make the case for a Scottish Parliament in party political terms. Among elites, devolution was presented not as an antidote to Thatcherism but as a rejection of the Westminster model of democracy. The untrammelled power of the Thatcher governments was presented as evidence of the failure of the Westminster model. The British constitutional tradition of the absolute sovereignty of parliament meant that any government with a substantial majority within the House of Commons amounted to an 'elective dictatorship'. For example, one of the leading figures in the campaign for a Scottish parliament argues:

we could never again rely on the British state or live comfortably with its constitutional doctrines of the absolute authority of the crown in parliament...We realised that our real enemy was not a particular government whatever its colour, but a constitutional system (Canon Kenyon Wright, quoted in Tom Devine, 2000: 607).

The absolute sovereignty of the UK parliament was viewed as alien to Scotland's own constitutional tradition of popular sovereignty. The campaign for a Scottish Parliament was premised on the reassertion of this tradition in direct contrast to a failed and anachronistic Westminster. Within this narrative, devolution is delivered from the bottom up through the will of the Scottish people.

#### *The Scottish Constitutional Convention (SCC)*

The SCC, which met for the first time on 30 March 1989, adopted a declaration which 'acknowledged the sovereign right of the Scottish people to determine the form of government best suited to their needs' (see Scottish Constitutional Convention, 1995). This sovereign right was deemed to be rooted in a 'historic Scottish constitutional principle that power is limited, should be dispersed and is derived from the people'. The declaration was entitled *A Claim of Right for Scotland* which recalled the *Claim of Right Act 1689*. This Act states that James VII had violated Scotland's constitution and 'altered it from a legall limited monarchy To ane arbitrary despotick power'.<sup>1</sup> The *Claim of Right* was viewed by the SCC as part of a historical tradition of popular sovereignty stretching back to the Declaration of Arbroath (1320) and the works of George Buchanan in the 16<sup>th</sup> Century.

The myth of a historical constitutional tradition of popular sovereignty in Scotland is often difficult to demonstrate. For example, in the late 18<sup>th</sup> century only 0.2% of Scotland's

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<sup>1</sup> See <http://www.legislation.gov.uk/aosp/1689/28>

population had the right to vote and Devine (2000: 196) notes that, 'This tiny electoral elite was unique even by the pre-democratic standards of eighteenth-century Britain'. Nevertheless, it has a strong resonance within Scottish politics. McCrone (2005: 16) argues that while popular sovereignty, 'may be more of an aspiration than a legal principle...it gels with the view that politics, and the Parliament, isn't everything. The people are paramount'. Similarly, MacCormick (1995: 8) argues that the idea of popular sovereignty:

has played a powerful role in Scottish constitutional history, from Arbroath through Buchanan to ancient and more modern Claims of Right. Its appeal is to the principle that all political and legal power ought to rest upon the will and consent of those among or over whom power is exercised.

This myth of popular sovereignty is integral to the creation of the new parliament, including the building itself. Ex-Presiding Officer, George Reid (2005: 1), writes:

In 1998, Donald Dewar wanted a legislature appropriate to the twenty-first century. A building which reflected the participative work of the Scottish Constitutional Convention, and paid more than a passing nod to the older traditions, north of the Border, of the sovereignty of the people.

The emphasis on popular sovereignty had a dual purpose. It was intended primarily as an argument for establishing a Scottish Parliament and that there should be Scottish solutions to Scottish problems. It was also intended as a basis for how the parliament should work in practice (Brown, 2000). Devolution was not just about where political power should be located but also about how it should be practiced. However, while bringing power closer to the people was easily understood it was less obvious how much of a role the people would have in exercising that power. There was an obvious tension from the outset between the abstract principle of popular sovereignty and the concrete reality of a representative parliament.

This tension is evident in the Convention's first report, *Towards Scotland's Parliament* (Scottish Constitutional Convention, 1989). There are elements of direct democracy, representative democracy and participatory democracy. The report begins by arguing that power has become too centralised in Whitehall and that a Scottish Parliament would provide 'responsive and direct government to the Scottish people' (1989: 7), but it then states that, 'responsibility will rest with politicians answerable to the people of Scotland' (1989: 9) before arguing for a 'participatory democracy which will bring Parliament and people close together in determining what is best for Scotland' (1989: 12). The document concludes with statement from Kenyon Wright in which he locates the work of the Convention within the 'mainstream of Scotland's constitutional history' with its emphasis on sovereign power emanating from the people 'and as being, in its exercise, limited and dispersed' (1989: 18). The intention was to develop 'a new form of democracy, which is fully participative, and not just representative' (1989: 18).

Although the report lacks consistency in terms of the style of democracy being advocated, a constant theme throughout is the need to be radically different from the House of Commons.

The new parliament should ‘not be a pale imitation of Westminster’ (1989: 18). For example, the report recommends that the ‘relationship between the executive and the legislature should be examined and safeguards built in’ including ‘new forms of scrutiny which make sure that elected members are no longer seen simply as lobby-fodder’ (1989: 18).

This emphasis on constructing the new parliament in opposition to Westminster was continued in the convention’s final report, *Scotland’s Parliament. Scotland’s Right.*, which was published on St Andrew’s Day in 1995. In particular, the report contrasted its own consensual way of working with the confrontational politics of the House of Commons:

From this process we have emerged with the powerful hope that the coming of a Scottish parliament will usher in a way of politics that is radically different from the rituals of Westminster: more participative, more creative, less needlessly confrontational (SCC, 1995: 9).

The new legislature would be ‘very different from the Westminster model’ and ‘will take steps to ensure the greatest possible involvement by the people of Scotland’ including the introduction of an information strategy aimed at encouraging participation in the work of the parliament (1995: 24). The Report concluded: ‘For the Convention, this is the end of the beginning. For Britain’s archaic and undemocratic system of government this is the beginning of the end’ (1995: 31).

Bernard Crick and David Millar, who had been invited by a think tank, the John Wheatley Centre, to draft a set of standing orders for the new Parliament, also agreed that the starting point was to ‘break from the Westminster mould’. Although they cautioned against relying on ‘abstract concepts and historical myths of popular sovereignty’ they argued for the adoption of procedures and working practices in keeping with Scotland’s ‘more democratic civic traditions’ (1995: 3). Crick and Millar recognised that the Scottish Parliament would be based on the Westminster model of Executive-in-Parliament but emphasised that it would be much less Executive dominated. In particular, the government should not have ‘such total domination over the legislative process as has evolved at Westminster’.

Executive dominance would be curtailed by both ‘making it possible for much legislation to come from committees’ and through an ‘informal division of responsibilities’ between Ministers and committees ‘in agreeing on the need for and preparing legislation or sections of legislation’ (1995:6). In some cases they envisioned the legislative process as being collaborative:

It could be that on some measures a clear distinction between Government legislation and committee legislation may not arise. The Government might propose main clauses or broad outlines and leave the detailed implementation to a committee, or vice-versa (1995: 25).

Overall, we identify some tensions between the concrete proposals put forward by the UK Government, which introduced a traditional political system driven by the Scottish Government, and the broad hopes of devolution reformers for a more participative form of

politics in Scotland. Most importantly, the former was underpinned by legislation while the latter was often tied to broad, and not entirely consistent, *aspirations* for a new political culture. In that context, it should be no surprise that ‘old Westminster’ is more apparent in Scotland than ‘new politics’. Therefore, it seems misguided to gauge the success or failure of Scottish devolution, and the Scottish Parliament, in terms of new politics alone.

### **What is the role of the Scottish Parliament? Comparing Holyrood and Westminster**

The Scottish Parliament should be viewed as part of the ‘Westminster family’ of parliaments. Despite the emphasis which was placed by the SCC on being different from Westminster there was no attempt to propose a different parliamentary model. In particular, it was accepted without much discussion that Holyrood would follow the Executive-in-Parliament model in which there is a fusion between the powers of the Executive and the legislature. The power of the government to govern is largely dependent on the power of parliament to pass legislation including money Bills.

Within this model a parliament has three core functions:

- Legislative – considers and passes legislation and can also initiate Bills;
- Oversight – holds the Executive to account mainly through questions, debates and committee inquiries;
- Representative - represents the interests of the electorate.

These roles of Westminster and Holyrood, and the similarities between them, are demonstrated well by their respective websites (as a key way in which they describe their roles to the public).<sup>2</sup> In the former, ‘The government runs the country. It has responsibility for developing and implementing policy and for drafting laws’, while Parliament, ‘has responsibility for checking the work of government and examining, debating and approving new laws ... Parliament checks the work of the government on behalf of UK citizens through investigative select committees and by asking government ministers questions. The House of Commons also has to approve proposals for government taxes and spending’.<sup>3</sup> Scrutiny, or ‘checking the work of government’, is about asking written or oral questions to ministers, speaking and voting in debates, and taking part in committees to produce reports on government departments (select committee) or provide a venue for amending legislation (standing committee) (note that the Scottish Parliament has combined select and standing functions – a feature that Russell et al, 2013 recommend for Westminster). Legislation is introduced primarily by the government, with a limited initiating role for individual MPs and Lords.

When the Scottish Parliament describes itself (to the public) in relation to Westminster, the differences are mostly practical rather than fundamental, referring to their numbers of chambers (Westminster consists of the House of Commons and House of Lords; Holyrood is unicameral) and members (650 MPs, 790 Lords, 129 MSPs), and their electoral systems

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<sup>2</sup> ‘Parliament’s role’ <http://www.parliament.uk/about/how/role/> and ‘Comparing Our Parliaments: Overview’ <http://www.scottish.parliament.uk/visitandlearn/60193.aspx>

<sup>3</sup> ‘Parliament and Government’ <http://www.parliament.uk/about/how/role/parliament-government/>

(Westminster is first-past-the-post; the Lords is unelected; Holyrood is mixed-member-proportional). Most other aspects are almost identical, including the well-established expectation that laws are proposed by government and examined by parliament. These differences are expressed in a similar way by Cairney and McGarvey (2013: 88; drawing on Pakenham, 1970) when they discuss the functions of Parliament and consider the effect of a Scottish Parliament: adding a new law-making arena to increase the volume of legislation; shifting the scrutiny of the Scottish Government from Westminster to Holyrood; providing a new arena in which to legitimize government outputs; socialising, training and providing a new recruitment pool for ministers; and providing a new link between the government and ‘the people’. In other words, both parliaments largely play a wide societal role (as an arena for deliberation and debate) than take a detailed part in policymaking.

In both cases, there is no ambition to emulate the US model in which the legislature is a separate body with considerable resources and the routine ability to produce legislation and reject that of the executive. Rather, the executive resides in Parliament and is responsible for the production of the vast majority of legislation and other policy measures. Further, unlike in Sweden (discussed below), there is less of a sense of routine government-opposition party cooperation before policy reaches parliament. Rather, both Westminster and Holyrood operate on the assumption that the bulk of their business takes place when the government introduces legislation to parliament.

The relationship between the executive and the legislature is, therefore, more alike that envisioned by the UK government than the model anticipated by the SCC. Indeed, it is significant that, while the remit of the CSG was to develop rules and procedures for the Scottish Parliament, it focused primarily on the role of *the Executive* in relation to the policy-making process (note: the executive was called ‘Scottish Executive’ from 1999-2007 and ‘Scottish Government’ from 2007). The CSG anticipated that Holyrood would have a limited role at the policy development stage and would be limited to monitoring the role of the Executive to ensure that it was conducting effective consultation on its legislative proposals.

The CSG’s proposals in this area were driven by concerns from ‘civic Scotland’ that ‘once detailed legislative proposals have been published, in whatever form, it is extremely difficult for outside organisations to influence changes to those proposals to any great extent’ (Scottish Office, 1998: 64). Its main solution was a recognised policy-development stage which would be led by the Executive and not the Parliament. This would involve the Executive working closely with external organisations and individuals in identifying issues for possible legislation, contributing to the policy-making process and being involved in the preparation of legislation. It argued that a more participative politics requires the Executive to provide meaningful opportunities for civic society to influence policy development and not just to comment on specific legislative proposals.

However, the limitations of its remit in looking at parliamentary procedure meant that it was restricted to recommending that the Standing Orders should require Executive Bills to complete a consultative process before being presented to Parliament. It was beyond the remit of the CSG to prescribe to the Executive how and when it should consult on legislative

proposals. The role of parliament in this policy-development stage would be limited to monitoring the Executive.

These recommendations are now enshrined in Scottish Parliament Standing Orders. Rule 9.3.3 requires each Government Bill to be accompanied by a Policy Memorandum (PM) which includes the policy objectives of the Bill and

the consultation, if any, which was undertaken on those objectives and the ways of meeting them or on the details of the Bill and a summary of the outcome of that consultation

Rule 9.6.3 requires the lead committee responsible for scrutinising the Bill to consider and report on the PM. The Guidance on Public Bills states that this could include consideration of “whether sufficient consultation was undertaken before introduction”<sup>4</sup>. The Guidance on Public Bills states that:

In many cases, there will be a public consultation process during the preparation of the Bill. This may involve the publication of an Executive consultation document and/or detailed proposals. The latter may include a consultation draft of the Bill.<sup>5</sup>

Although ‘sufficient consultation’ may be determined by the lead committee, the view of the Procedures Committee in 2004 was that: “it would go beyond the Parliament’s proper role to specify directly how the Executive is to consult on legislative proposals that have not yet entered the Parliamentary process.”<sup>6</sup>

Perhaps surprisingly, the Scottish Parliament appears to engage in *less* routine pre-legislative scrutiny than Westminster (Johnston, 2009: 31). In its first report in 1997, the Modernisation Committee in the House of Commons recommended an increasing role for Select Committees in pre-legislative scrutiny on the basis that it allows:

real input into the actual form of legislation which subsequently emerges, not least because ministers are likely to be far more receptive to suggestions for change before the bill is actually published.

More recently the Political and Constitutional Reform Committee published a report reviewing the impact of the *Wright reforms* in which it recommends: “Pre-legislative scrutiny must in future be an integral and mandatory part of the process of consideration for every public bill.”<sup>7</sup> Further, Flinders and Kelso (2011: 262; see also House of Commons Information Service, 2007) suggest that Westminster MPs and committees may enjoy a more

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<sup>4</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25685.aspx>

<sup>5</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25685.aspx>

<sup>6</sup> <http://archive.scottish.parliament.uk/business/committees/procedures/reports-04/prr04-07-vol01-03.htm>  
paragraph 111

<sup>7</sup> <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/82/82.pdf>

important degree of informal pre-legislative influence, particularly since more draft bills are now being produced to enable such scrutiny.

This process and culture is less apparent within the Scottish Parliament. For example, a report by the Procedures Committee in 2004 concluded that pre-legislative scrutiny should not be “expected as a normal part of the legislative process.” While the report recognised that the Executive was more likely to shift direction at this stage it also identified a number of potential drawbacks. In particular, a committee’s scrutiny role may be compromised if it also has a role in influencing the drafting of the legislation. The Conveners’ Group (CG) stated in its legacy paper at the end of Session 3 that committees have a limited role in pre-legislative scrutiny:

This is the stage at which the Government should consult with stakeholders and, if committees are to be effective in scrutiny of government policy, it is important that an arm’s length relationship is maintained.<sup>8</sup>

Instead, the Scottish system provides more opportunity for public engagement when the bill reaches Parliament. Committees often conduct very extensive consultations during their consideration of the “general principles” of a Bill (in a system where committees examine bills before they reach plenary). In 2004, the Procedures Committee described committees’ Stage 1 inquiries as:

crucial to the effectiveness of the Parliament’s whole legislative process. This is when a variety of interests can contribute to the formulation of a considered view both of the policy intention and of how it has been given detailed expression in legislation.<sup>9</sup>

Overall, the Scottish Parliament has adopted a traditional Westminster model of legislative scrutiny which recognises the central role of government in delivering its legislative programme. The role of parliament is primarily focused on scrutinising the policy aims and objectives of each Government Bill and seeking to improve the legislation which has been introduced.

Consequently, when we consider the well-established typologies or classifications of parliaments, Westminster and Holyrood generally fall within the same categories (the categories are outlined briefly in Leston-Bandeiras and Norton, 2005: 5-7; see also Arter’s, 2006 discussion of the ‘Olson rule’ that governments initiate 90% of legislation and get 90% of what they want). The Scottish Parliament is not necessarily more of a ‘strong’ (Mezey, 1979) legislature in terms of its ability to amend or reject government proposals. Indeed, the ‘wrecking amendment’, designed to undermine a bill, is accepted in Westminster, not Holyrood. The Scottish Parliament is more of a ‘transformative’ than ‘arena’ legislature (Polsby, 1975) in one sense (there is a clearer role for Scottish Parliament committees to

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<sup>8</sup> [http://www.scottish.parliament.uk/Committeeconvenersgroup/Conveners\\_Group\\_legacy\\_paper\\_-\\_Session\\_3.pdf](http://www.scottish.parliament.uk/Committeeconvenersgroup/Conveners_Group_legacy_paper_-_Session_3.pdf)

<sup>9</sup> <http://archive.scottish.parliament.uk/business/committees/procedures/reports-04/prr04-07-vol01-03.htm>  
Para 112.

consider the principles of government bills (and then amend them) before they go to plenary) but generally not the other (the extent to which committee work produces consensual decision making that has an effect on the tone and substance of the bill). It perhaps has the potential to be more of a ‘policy-making legislature’ (Norton, 1990; 1994), particularly since committees can propose bills and MSPs are not subject to the random nature of Member’s Bills in Westminster (where an MP’s best chance to pursue a bill is through a ballot; in Holyrood the bill needs support of 18 other MSPs and ‘half of the political groups on the Parliamentary Bureau’<sup>10</sup>). However, the evidence since 1999 suggests that its willingness and/ or ability to make policy is no higher than in Westminster – they have produced a similar proportion of overall bills with a similarly limited content (Cairney and McGarvey, 2013: 96-7). Finally, Holyrood may provide little more ‘viscosity’ (Blondel, 1970) which refers to the speed and ease with which a government takes a bill through Parliament.

Such comparisons come with one important qualification: the proportional electoral system in Scotland generally increases the lack of a single party majority and, therefore, the potential for minority government (the results in the UK in 2010 and Scottish Parliament in 2011 notwithstanding). So, from 2007-11, the Scottish Government did not introduce all of its preferred bills (including a bill on a referendum on independence and on local income tax) and certain bills (such as the Alcohol (Scotland) Bill) demonstrated the ‘policy-influencing’ and highly ‘viscous’ nature of the Scottish Parliament in a small number of circumstances (Cairney and McGarvey, 2013: 102). Nonetheless, as we discuss below, this falls well short of the aspirations of much of ‘civic Scotland’ in campaigning for a Scottish parliament.

### *The Scottish Parliament’s Role as a Hub for Popular Participation*

We can detect a similar sense of a modest, rather than radical, departure from the Westminster design in measures to foster popular participation. For example, the idea of regular US or Switzerland-style referendums was discussed rarely before devolution and not introduced (McGarvey and Cairney, 2008: 222-3). A Scottish Civic Forum, designed to promote a form of ‘deliberative’ democracy among a self-selecting population, ran only from 1999-2006 before it discontinued (when it lost Scottish Government funding – 2008: 232-3). Other initiatives such as citizen-juries were actually more apparent in the UK (when Gordon Brown was PM) than Scotland (McGarvey and Cairney, 2008: 219). Instead, the Scottish Parliament is the recognised hub for public participation.

There is some concern that this process continues to be dominated by well-established actors such as representatives of government, business and influential interest groups. Indeed, Cairney, Halpin and Jordan (2009) suggest that Holyrood may “accentuate the bias towards the ‘usual suspects’ as much as representing an alternative venue for excluded groups.” This is a view shared by Paterson (2009) who argues that public engagement with Holyrood is dominated by the same professional class who administered the State within Scotland from the 1930s onwards:

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<sup>10</sup> See ‘Understanding the Legislative Process’ <http://www.scottish.parliament.uk/visitandlearn/12422.aspx>

A few more unestablished interests may be intervening in consultations, although not many. But generally what we have had is a vindication of the power of ancient networks. (2009: 118)

The evidence presented by Halpin, MacLeod and McLaverty (2012) suggests that consultation in Scotland follows familiar patterns that have already been identified in countries such as the US and the UK. They looked at who gave oral evidence to Stage 1 and other committee inquiries during the first two sessions of the parliament (1999-2007). As the table below demonstrates, the most frequent participants represent central and local government, government agencies, the legal profession and major unions.

Participant	Appearances
Scottish Executive/ Government	337
Convention of Scottish Local Authorities (COSLA)	196
Law Society of Scotland	104
Glasgow City Council	87
City of Edinburgh Council	78
UNISON Scotland (trade union)	76
Scottish Trades Union Congress	74
Highlands and Islands Enterprise (government agency)	74
Association of Chief Police Officers in Scotland	74
Scottish Enterprise (government agency)	68

Source: adapted from Halpin, MacLeod and McLaverty (2012)

The authors conclude that: “our data does seem to lend weight to the empirical case that there is a concentration of usual suspects, and that they tend to engage heavily across a large minority of issues debated in committee hearings.”<sup>11</sup>

At the same time, there has been a genuine willingness by the committees to encourage and facilitate public engagement through more informal methods than oral and recorded evidence. Indeed, a formal committee meeting may not always be the most useful environment to hear from witnesses who may have no previous experience of giving evidence. In particular, there is a heavy emphasis on fact-finding visits and hearing directly from service users and individuals directly affected by legislative proposals. This is now a well-established aspect of the approach which committees take to evidence gathering as part of Stage 1 and other committee inquiries. Recent examples include the visits of the Equal Opportunities

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<sup>11</sup> Ibid. p 9.

Committee to a number of Gypsy/Traveller sites provided by local authorities as part of its recent inquiry looking into the living conditions of Gypsy/Travellers.<sup>12</sup> The Health and Sport Committee recently held two informal meetings with young parents as part of its teenage pregnancy inquiry<sup>13</sup>. The Education and Culture Committee also held a number of fact-finding visits as part of its on-going inquiry into decision making on whether to take children into care. These included a visit to meet with a number of young people who had been in care.<sup>14</sup> The Justice Committee “was keen to hear from victims of crime about their individual experiences of the criminal justice system” as part of its stage 1 inquiry into the Victims and Witnesses (Scotland) Bill.<sup>15</sup>

Overall, it is in committee work that we can see the most evidence of a combination of continuity and reform. As Cairney (2013) argues, the Scottish Parliament ‘was invested with a range of powers and functions that we associate with relatively strong legislatures’, including a select committee process designed to foster expertise and a ‘business like’ attitude to scrutinise the principles and details of legislation before plenary. Committees would also have the usual powers to ‘invite witnesses and demand government documents’ and the unusual power to initiate their own bills. As Cairney (2013) suggests, these are indicators of ‘unusually high committee strength’. On the other hand, a description of committees more powerful than their Westminster counterparts is not saying much. Arter (2002: 99) suggests that the Scottish committee system was designed to be the ‘motor of a new politics’ and, ‘extraordinarily deliberative, rationalistic, open and consensual’ (quoting a phrase used by Anton to describe the Swedish system), but these wider aims seem to be anchored to new politics aspirations not backed up by concrete measures to ensure their success. This is an aspiration towards new committees designed to function within an old system.

### **What does the Scottish Parliament experience since 1999 tell us about the relationship between its intended role and its actual practice?**

One feature of early academic and media assessments of devolution was that they were framed more in terms of the new politics aspirations (which tended to dominate discussion in the led up to devolution) than the traditional forms of representative democracy extended to Scotland. For example, an essay by a prominent advocate of new politics, Joyce McMillan (2009) argues that: ‘In terms of a rebalancing of powers between parliament and the executive, most observers would probably say that the outcome has been disappointing’; the committees, undermined by a high turnover of membership, have generally ‘proved weaker

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<sup>12</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/61579.aspx>

<sup>13</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/65047.aspx#a3>

<sup>14</sup>

[http://www.scottish.parliament.uk/S4\\_EducationandCultureCommittee/Inquiries/Meeting\\_with\\_Care\\_Leavers\\_note\\_of\\_meeting.pdf](http://www.scottish.parliament.uk/S4_EducationandCultureCommittee/Inquiries/Meeting_with_Care_Leavers_note_of_meeting.pdf)

<sup>15</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/64072.aspx>

than the architects of devolution originally hoped'. Further, a key theme of the early Scottish 'devolution monitoring programme' (summarised in Cairney, 2011: 10-11) is the extent to which the capabilities of the new Scottish Parliament were 'talked up' (Mitchell, 2004: 16) by devolution reformers. This produced an 'expectations gap' regarding devolution and its ability to be 'the panacea for Scotland's ills ... Parliament simply did not have the powers to meet the expectations that Scots had of it ...[producing] the largely negative media and public assessment of its initial performance' (Mitchell et al, 2001: 48).

Over time, the academic focus on unfulfilled and unrealistic expectations shifted towards the more general aim of gathering evidence on Scottish political practices and outcomes. Not surprisingly, these studies identified strong similarities between UK and Scottish politics. For example, McGarvey's review of the early literature (2001) identifies the similarities between Holyrood and Westminster institutions and practises, including a focus on the political theatre of First Minister's/ Prime Minister's Questions as the focal point for (limited) public attention (see also Mitchell, 2010 on the Scottish Parliament's 'narcissism of small differences'). Arter's (2004) review of the first 4 years of the Scottish Parliament concluded that this similarity extends to the idea of 'majority rule' following the formation of a coalition majority with a voting majority in committees and plenary. Further, Carman and Shephard (2009) argue that devolution reformers underestimated or ignored the role of political parties in parliament. The 'new politics' has been effectively suffocated by party whips whose priority has been to maintain tight party discipline rather than ensure effective parliamentary scrutiny. In a similar vein, Cairney (2011: 41) argues that the majority coalition's 'control of the parliamentary arithmetic, combined with a strong party whip (particularly within Labour), produced a form of majoritarian government that would not seem out of place in the UK'.

Overall, we witnessed an imbalance of power: (a) towards the Scottish Government which, through a coalition majority, controlled the parliamentary vote and produced the vast majority of legislation; and, (b) away from the Scottish Parliament which had a limited willingness or ability to challenge the Scottish Government policy agenda, find the time or resources to scrutinise policy effectively, or conduct its own agenda setting inquiries (it also struggled to develop expertise because MSP turnover on committees was high). In a wider sense, it became clear that the bulk of policymaking was being done outside of the Scottish Parliament arena with very limited parliamentary involvement. Policy was being made by Scottish Government civil servants (under some ministerial direction) in consultation with interest groups. Indeed, the latter provided an indirect measure of parliamentary involvement: most of their engagement was geared towards contact with the Scottish Government (Cairney et al, 2009); their contact with the Scottish Parliament was often at the Parliament's request or part of a generally unsuccessful attempt to change a decision made earlier in the process.

Minority government from 2007-11 made some difference to this arrangement, since the party whip could no longer be used to control the parliamentary vote (although note the extent to which the Scottish Government could fulfil its objectives without the need for primary legislation, including its decision to devolve powers to local authorities, which became further removed from Scottish Parliament scrutiny – 2011: 49-50). On the other hand, most conditions still applied: Scottish Parliament committees either did not have the

willingness or ability to conduct meaningful inquiries, set a new policy agenda, or scrutinise policy in a new way (2011: 54). There is a chicken and egg, or reinforcing, quality to this government-parliament relationship: MSPs or opposition parties feel that they do not have the resources (independence from government, staffing, expertise, time, etc.) necessary to engage with government beyond a traditional scrutiny role; and, MSPs eventually do not *need* those resources because they have disengaged from that process. Most notably, when in opposition, Scottish Labour did not place its front bench team on committees, preferring to engage with Scottish ministers in plenary (the Scottish Conservative party was much more likely to seek concessions in return for support). Further, while the Scottish Parliament committees once complained that they could not fulfil their wider remit (including their inquiry role) because they were overburdened with the scrutiny of Scottish Government legislation (a process they did not control), few committees exploited the early years of minority government in which an initial lack of Scottish Government legislation, and the absence of coalition control of parliamentary business, provided the space for independent policy work (Cairney, 2011: 45). This relationship has been reinforced by SNP majority government (from 2011) which has allowed some opposition parties to disengage and bemoan their lack of influence on a government with little incentive to negotiate.

Nor has there been much evidence of new forms of participation fostered by, or supplementing the activity of, the Scottish Parliament. This is reflected in the literature, which has produced very few accounts of new forms of democratic participation. For example, Cairney (2011: 13) devotes one page of a (258 page) book to a discussion of the Scottish Civic Forum and the petitions process because almost no devolution monitoring reports found any evidence of meaningful activity (or, for example, they simply reported the numbers of petitions, not their impact). Similarly, McGarvey and Cairney's (2008) first edition devotes a chapter outlining *hopes* for new forms of democracy, before their second edition (Cairney and McGarvey, 2013) finds nothing new to report.

### **What lessons can we learn from the experience of parliaments in other political systems?**

In this light, the significance of a comparison with the Nordic democracies (Sweden, Norway and Denmark – as well as, in some descriptions, Finland and Iceland) is that several countries had a reputation for being 'consensus democracies' (Elder et al, 1982: 10-11) and therefore an important reference point for political reformers in Scotland seeking to move away from a 'majoritarian' political system (systems like Sweden were also unicameral, with 'front loaded' legislative systems) Devolution reformers perhaps envisaged new institutions and practices to foster a system that is 'extraordinarily deliberative, rationalistic, open and consensual' (although Arter, 2004: 20 suggests that this policy learning was 'rushed' and not 'evidence-based').

For example, Sweden often has a reputation for two main forms of behaviour: (1) consensus seeking between the governing and opposition parties in the legislative arena; and, (2) forms of relatively consensual and close-knit cooperation between the government and pressure participants such as interest groups. Further, the culture developed in one arena (parliament)

may influence the culture in another (group-government relations). In contrast, we may associate with majoritarian democracies the tendency to concentrate power within governments, to the exclusion of opposition parties and other participants.

Traditionally, this type of policymaking behaviour has been associated with norms developed to guide Swedish policymakers: ‘seek agreement among participants and avoid conflict; ... try to build large majorities for policies rather than force their standpoint on minorities; and compromise rather than cling rigidly to their own preferences’ (Ruin, 1982: 141). It is possible to identify (in the early post-war period) a ‘standard operating procedure’ in which the government sets up a commission of inquiry to make policy recommendations which form part of a draft government bill, which is considered and approved by a parliamentary committee before being ‘worked out within the administration’ – a process that can take six to eight years between the first referral and the implementation (1982: 142). This is much longer than we associate with the majoritarian UK which has much shorter periods of policy development and parliamentary scrutiny. Indeed, it is the continuous inclusion of parliament (or, at least, its political parties) in government deliberations (well before legislation is put to Parliament) and the time taken to ‘find solutions acceptable to all concerned’ that may mark Sweden out from countries such as the UK (including Scotland) (1982: 154; Elder et al, 1982: 159-91).

But *can* and *should* the Scottish Parliament learn from, and seek to emulate, the Swedish experience? We ask ‘can’ because there is no guarantee that this Swedish model of politics still continues in its famous form. Rather, it was linked closely to a long period of economic growth conducive to the narrative that the general population, or at least civil society and business groups, benefited from the political arrangement and its outputs (see Cairney and Widfeldt, 2013). Further, it was associated with a long period of Social Democratic Party rule, for which there is no equivalent in Scotland. Instead, Scotland has a multi-party system with two parties vying for control of government and 2-4 smaller parties, often with the ability to support a minority or coalition government. In that sense, Scotland may be closer in nature to Denmark, which shows that meaningful party cooperation, focused on stable relationships and fostering a policymaking role for parties inside and outside government, can take place under these circumstances but also that it may take decades to achieve. In Denmark, a norm of party political cooperation to make policy followed over 20 years of maladaptation to minority government from 1973-94 (see Green-Pedersen, 2001; Seyd, 2002: 128; Paun, 2009: 54).

We ask ‘should’ because ‘consensus building’ may be associated with stifling the type of debates, associated with Westminster systems, which serve to inform the public about key policy issues. It may also undermine the role of committees – or, at least, the type of committees set up to underpin the work of the Scottish Parliament. Like Scotland (or the Scottish *design*), Sweden has a committee-centric parliament in which government and opposition parties, working together, make meaningful attempts to produce legislative solutions to be passed in plenary. Sweden has a “‘working parliament’ served by a system of multi-functional, specialist committees” which are central to parliamentary decision-making (Arter, 2004: x). However, ‘compared to Anglo-Saxon systems, activity in the Parliament is

focused on political decision-making rather than on criticizing and controlling government' (Hinnfors, 1997: 161).

Further, much of this 'decision-making' takes place between governing and opposition parties *before* legislation reaches parliament. Such an approach has largely been rejected in Scotland, partly to maintain very clear 'lines of accountability' between the government introducing policy and the parliament scrutinising it (Arter, 2004: 260). Consequently, Swedish and Scottish committees perform rather different functions. For example, Scottish Parliament committees take on the bulk of the detailed legislative scrutiny (they invite witnesses (including ministers), co-opt external experts to aid scrutiny, and engage with ministers in line-by-line scrutiny of draft bills), with the plenary role designed to agree to final revisions following committee and government interaction. In Sweden, 'inter-party bargaining across the government-opposition divide' takes place elsewhere - in government commissions, the committees of the largest parties, and in informal regular discussions between parties - before bills reach Riksdag committees (Arter, 2004: 137; 160-8; 256; see also Heclø and Madsen, 1987: 11 - 'Parliament as an institution affirms or denies policies that have been initiated elsewhere'). This may not be a practice in the spirit of the existing Scottish Parliament with a Westminster culture of accountability based in part on a separation of government and parliamentary roles.

### **Parliamentary Reform**

Holyrood has developed more along the lines of the Westminster model than the Nordic (or at least Swedish) model. However, this should not necessarily be interpreted in negative terms. Mitchell (2010) points out that, contrary to the caricature of Westminster as backward and reluctant to modernise, there has been a considerable willingness within the House of Commons to reform itself in the period since devolution. Recent examples include the work of the Select Committee on Reform of the House of Commons (the *Wright Committee*) which was asked to consider and report on four specific matters:

- the appointment of members and chairmen of select committees;
- the appointment of the Chairman and Deputy Chairmen of Ways and Means;
- scheduling business in the House;
- enabling the public to initiate debates and proceedings in the House and closely connected matters.<sup>16</sup>

A number of the Committee's key recommendations were agreed by the House of Commons and have now been implemented, including the establishment of a Backbench Business Committee and the election of select committee chairs by secret ballot using the alternative vote system. The Political and Constitutional Reform Committee has also recently published a report examining the progress of the House of Commons in implementing the

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<sup>16</sup> <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmrefhoc/1117/111702.htm>

recommendations of the Wright Committee. It recommended the implementation of all the remaining Wright reforms including a House Business Committee and a reformed petitions system.

At Holyrood, the Standards, Procedures and Public Appointments (SPPA) Committee is currently conducting a series of inquiries looking at the reform of parliamentary business which it describes as amounting to “a thorough ‘MOT’ for the Parliament.”<sup>17</sup> The first phase of this work has resulted in substantial change to parliamentary business with committees now meeting on Tuesday, Wednesday and Thursday mornings and the Chamber meeting on those afternoons. There have also been a number of changes to other aspects of business in the Chamber including the introduction of “topical questions” and an increase in the number of Members’ debates. The SPPA Committee heard from the Chair of the Backbench Business Committee as part of this inquiry.

The second phase of the SPPA Committee inquiry is looking at the work of the committees and is intended to complement the reform agenda being pursued by the Scottish Parliament’s Conveners Group (CG). The CG has agreed a programme for change which aims to improve the performance of committees in holding the government to account and the scrutiny of policy and legislation. The CG’s equivalent at Westminster, the Liaison Committee (LC), has also recently looked at improving the effectiveness of Select Committees.

There is a considerable overlap between the recommendations of the LC and the programme for change which the CG is currently implementing to improve the performance of committees. In particular, there is an emphasis in both parliaments on the benefits of initial preparatory work so that committee inquiries are more focused and have clearer objectives regarding what the committee hopes to achieve. Both the LC and CG also emphasise the need to improve the impact of committee work including reviewing the format of committee reports.

The LC also emphasises that more effective scrutiny requires the co-operation of government. It recommends a review of the relationship between government and the select committees with a view to introducing a “new compact between Parliament and Government.” It also heard a number of concerns from Select Committees regarding the timeliness and content of government responses to committee reports and recommended that where a government response is inadequate “a committee can and should draw attention to this when it publishes the response.”

The Procedure Committee has also just completed “a trial exercise in monitoring unsatisfactory and late answers to written Parliamentary questions.” The Procedure Committee states that it has “obtained answers for Members on a number of occasions in circumstances where they would otherwise have found it difficult or impossible to follow up

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<sup>17</sup><http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/45516.aspx>

on an inadequate response.” It now intends to “put the exercise on a more permanent footing.”<sup>18</sup>

There does not appear to be much evidence of the Scottish parliament systematically raising similar concerns regarding the quality of information provided by the Scottish Government (although it is a regular feature of the annual budget scrutiny). The CG did, however, review the protocol between the parliament’s committees and the executive in 2009. This resulted in a much more substantial and detailed document than the original which was published in the first session of the parliament<sup>19</sup>.

It is also worth noting that there is a greater emphasis at Westminster in scrutinising other organisations. The LC notes that while the primary purpose of select committees is to scrutinise government it is sometimes in the public interest to scrutinise other organisations including from the private sector. Select committee reports will often contain recommendations “targeted at bodies outside government.” The LC has also produced a revised list of core tasks for select committees.

Overall, and contrary to the tendency to depict Holyrood as Westminster’s “other”, there is in reality a willingness within the two parliaments to learn from each other in seeking to modernise. This exists both formally, in terms of evidence gathering to support committee inquiries looking at reforms, and informally in terms of regular contacts at both political and official level. For example, the SPPA Committee took evidence from the Chair of the Backbench Business Committee as part of its inquiry on the reform of parliamentary business while the CG has recommended the introduction of a similar system for the election of Holyrood committee members and conveners as introduced at Westminster.<sup>20</sup>

## **Conclusion**

This paper has identified two devolution narratives. The first, mainly Scottish narrative, envisioned the Scottish parliament as an embodiment of popular sovereignty and leading to a much more participatory democracy. The second, mainly UK narrative, viewed the parliament as a means of enhancing the accountability of government. Despite the aspirations of ‘civic Scotland’ for a more participatory democracy, the role of the Scottish Parliament has developed along more traditional Westminster lines. This is evident in the recent report by Holyrood’s SPPA Committee on reforming parliamentary business which

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<sup>18</sup> <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmproced/1095/1095.pdf>

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[http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/Protocol\\_between\\_the\\_Scottish\\_Parliament\\_and\\_the\\_Scottish\\_Government\\_version\\_Oct\\_2009.pdf](http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/Protocol_between_the_Scottish_Parliament_and_the_Scottish_Government_version_Oct_2009.pdf)

<sup>20</sup> [http://www.scottish.parliament.uk/Committeeconvenersgroup/Conveners\\_Group\\_legacy\\_paper\\_-\\_Session\\_3.pdf](http://www.scottish.parliament.uk/Committeeconvenersgroup/Conveners_Group_legacy_paper_-_Session_3.pdf)

stated that the “priority for Parliament is holding the Scottish Government to account.”<sup>21</sup> It should therefore be evaluated in that context.

The emphasis on a new politics was always idealistic and is not an appropriate benchmark to judge the progress of Scottish devolution. The Scottish Parliament has become an arena used largely to legitimate the outputs of the Scottish Government. It provides a degree of governmental accountability to the public and an arena in which to publicise and debate policy issues. As Mitchell et al (2001: 50; see also Winetrobe, 2001: 66; Bonney 2003: 460) suggest, this is not a function to be dismissed: ‘the Executive has been scrutinised in a manner and to an extent unknown before in Scottish history’. Few question the accountability and legitimacy of the outputs of government in Scotland, in the way that they did before devolution.

Further, the Scottish Parliament and Government are relatively well supported in Scotland, compared to their UK counterparts, when people are asked if they ‘give ordinary people more say in how Scotland is governed’ or ‘listen to people’s views before making decisions’ (McCrone, 2009; although see also Paterson on high levels of variation in satisfaction). For Elder et al (1982: 10-11), this is one key aspect (low public opposition to the political system and its rule of law) of a ‘consensus democracy’.

The Scottish Parliament is the main avenue for participatory and deliberative democracy. It may provide a limited way for people to participate (and a tendency for the already mobilised groups to engage with both Government and Parliament) and limited time in which to deliberate. However, in the absence of radical reform in Scotland, it represents the most realistic focal point for further popular participation.

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<sup>21</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/45516.aspx#b>

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