HOW CAN THE SCOTTISH PARLIAMENT BE IMPROVED AS A LEGISLATURE?

Dr. Paul Cairney[*]

Introduction

The prospect of independence or further constitutional change in Scotland might prompt us to reconsider the role and influence of the Scottish Parliament as a legislature. Thirteen years of devolution has also given us plenty of experience on which to make our assessment of the limitations of the new Scottish political system. Yet, the title of this article also has the potential to mislead, because it suggests that the Scottish Parliament is in *particular* need of improvement. While it is common to hear criticisms of the Scottish legislative process, they do not seem to be more vocal or strong than in other legislatures. For example, there are no particularly strong concerns about the quality of the legislation passed by the Scottish Parliament. Nor do we find relatively strong concerns about the Scottish Parliament's ability and willingness to scrutinise and help modify legislation introduced by the Scottish Government. Rather, the agenda is set by relatively high expectations for the Scottish Parliament to be a powerful legislature, producing relatively high levels of attention and disenchantment with the results. The first part of this article sets out the reasons for such heightened expectations and disenchantment.

A second part of this agenda relates to the assumptions we employ when we make value judgements about the Scottish

[*] The author is Professor of Politics and Public Policy, Division of History and Politics, University of Stirling.

Parliament and consider how it can be improved. For example, are we worried about the *quality* of the legislation produced by the Scottish Parliament, or the *origins* of the legislation? In other words, we may tend to frame the problem in terms of the imbalance of power between executive and legislature rather than the specific policy outcomes. Or, we may worried about the quality of the legislation, not from a technical drafting point of view, but in terms of the ability of the legislature to provide meaningful scrutiny and make substantial changes to the draft bill. Such an agenda might prompt us to consider, for example, our willingness to trade 'technical perfection', based on legislation produced by a well resourced and unchallenged executive, for a technically flawed piece of legislation based on considerable scrutiny, debate and last-minute consensus in Parliament.

It is in this context that the main part of the article considers some common current concerns about the Scottish Parliament as a legislature, derived from discussions with practitioners and extrapolated from debates on the Scottish Parliament since devolution: it does not scrutinise government legislation sufficiently; it does not have a sufficiently large professionally trained staff dedicated to their activities; its independent scrutiny is undermined by the party whip; it is particularly peripheral to the policy process when opposition parties do not engage with Scottish Government legislation; and, it would benefit from an upper chamber. In most cases, the concern is that the executive is not sufficiently challenged by a Parliament able to scrutinise and suggest key revisions – not necessarily a comment on the technical quality of the legislation, or the level of popular consent that underpins it, but rather on the checks and balances within the Scottish system. In other words, our focus on ideas regarding democracy may be more prominent than our focus on particular legislative processes or outcomes.

The conclusion of the article considers the implications of this discussion for a further-devolved or independent Scotland, since the prospect of more constitutional powers may prompt us to wonder about the adequacy of Scottish legislative powers. For example, if the Scottish Parliament has more responsibilities, should (and could) it have more resources? Or, should we be focusing on more fundamental or principled discussions regarding, for example, the need for a written Scottish constitution? Much will depend on the type of further constitutional change Scotland chooses, since only Scottish independence provides the 'window of opportunity' for major institutional change.

1. The Scottish Parliament did not live up to expectations

The Scottish Parliament was allegedly designed to be a powerful and effective legislature with committees at the heart of its work. This aim was sketched out briefly in the final report of the Scottish Constitutional Convention[1] 1995,[2] which expected a 'parliament to operate through a system of powerful committees which are able to initiate legislation as well as to scrutinise and amend government proposals, and which have wide-ranging investigative functions'. According to the Consultative Steering Group - the organisation set up to design the Scottish Parliament's standing orders - it was designed to 'embody and reflect the sharing of power

[1] The SCC was a collection of political parties (primarily Labour, Liberal Democrat and Green), the Scottish Trades Union Congress, Scottish Council for Voluntary Organizations, religious leaders, local authorities and civic organizations – which formed in 1989 .Its most famous phrase was: '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'.
[2] N. McGarvey and Paul Cairney, *Scottish Politics* (Basingstoke: Palgrave, 2008), 11-12; and Paul Cairney and N. McGarvey, *Scottish Politics 2ⁿᵈ edition* (Basingstoke: Palgrave, 2013).

between the people of Scotland, the legislators and the Scottish Executive' (Scottish Office 1998: 6).[3]

As such, it was invested with a range of powers and functions that we associate with relatively strong legislatures. It has combined standing and select committee functions, to help develop expertise within the committees responsible for scrutinising legislation. Most committees are permanent and not subject to government dissolution. They have relatively few members, to allow them to develop a 'businesslike', not partisan, culture. The number of convenors (chairs) is proportional by party and they are selected by each committee. Committee deliberation takes place before the initial and final plenary stages. Committees can invite witnesses and demand government documents. They have an unusual role which involves the monitoring of the Scottish Government's pre-legislative consultation (although its power, to oblige the removal of legislative sections based on insufficient consultation, is used rarely). Further, if all else fails, they have the ability to initiate their own bills (as can individual MSPs, in a much more straightforward way than in Westminster). These are all indicators of unusually high committee strength according to Mattson and Strøm's[4] criteria. As Arter[5] suggests, the Scottish committee system was designed to be the 'motor of a new politics' and, 'extraordinarily deliberative, rationalistic, open and consensual'.

[3] The term 'Scottish Executive' was replaced by 'Scottish Government' in September 2007. The Scotland Act 1998 uses the term 'Scottish Administration'.

[4] I. Mattson and K. Strøm, "Committee Effects on Legislation," in Patterns of Parliamentary Behaviour, eds. H. Döring, and M. Hallerberg (Aldershot: Ashgate, 2004) 100-1.

[5] D. Arter, "On Assessing Strength and Weakness in Parliamentary Committee Systems: Some Preliminary Observations on the New Scottish Parliament," Journal of Legislative Studies (2002): 99.

The Scottish Parliament also has an electoral system that tends to produce coalition or minority government that need for parties to cooperate (the 2011 election result notwithstanding) and, potentially, the basis. Further, the 'architects of devolution' introduced a series of measures, such as the initiation of a regular new petitions process, to allow the Scottish Parliament and operate as a hub for popular participation. Overall, the institutions and organisations became associated with heightened hopes for a powerful legislature at the heart of Scottish politics. Consequently, they became associated with heightened disillusionment when it became clear that no legislature could live up to those hopes.

However, it is clear that the Scottish Parliament was not designed to be a powerful legislature in the way that we associate with political systems such as the US. Crucially, there are not the same divisions of powers, and checks and balances, between executive, legislature and judiciary. Instead, the executive operates at the heart of the legislature and, when enjoying a single or coalition party majority, has the ability to control its procedures (the judiciary is more difficult to judge; it plays an often-important role, particularly in relation to its interpretation of Scotland's ECHR commitments – see Tierney[6] and Murdoch[7]). Further, there is a clear expectation that the Scottish Parliament will not 'share power' in the way we would understand that phrase in the US. Rather, this is a traditional Westminster-style relationship in which the Scottish Government is expected to produce most policy

[6] S. Tierney, "Constitutionalising the Role of the Judge: Scotland and the New Order," *Edinburgh Law Review* 5 (2001); 49-72.
[7] J. Murdoch, "The Binding Effect of the ECHR in the United Kingdom – Views from Scotland," in *Ius Gentium: Comparative Perspectives on Law and Justice*, ed. A. Rayner 16 (Springer/Link, 2012) 209-221; <http://www.springerlink.com/content/t4543p8835v3u74v/>.

(including legislation) and the Scottish Parliament performs a scrutiny role (with a small number of important exceptions, such as Tommy Sheridan MSP's bill on abolishing poindings and warrant sales to settle debts to the government)[8]. Or, as the CSG puts it, we must 'recognise the need for the Executive to govern, including enacting primary and subordinate legislation'[9]

On this basis, it is difficult to recommend anything other than the possession of realistic expectations about, and a mature understanding of, the role the Scottish Parliament performs. Put broadly, the Scottish Government derives its legitimacy from the Scottish Parliament (see Judge)[10], allowing it to partly solve the perceived democratic deficit of Scottish politics. Few question the accountability and legitimacy of the outputs of government in Scotland, in the way that they did before devolution, largely because of the existence of the Scottish Parliament.[11] As Mitchell et al note,[12] 'the Executive has been scrutinised in a manner and to an extent unknown before in Scottish history'. Scottish policymaking is more 'visible and transparent'[13] and committees have played their part in ensuring more

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[8] A. Henderson, "Forging a new political culture: Plenary behaviour in the Scottish Parliament," *The Journal of Legislative Studies* 11(2) (2005) 275-301, 280.

[9] Scottish Office, *Shaping Scotland's Parliament: Report of the Consultative Steering Group on the Scottish Parliament* (Edinburgh: Scottish Office, 1998) 9.

[10] D. Judge, *The Parliamentary State* (London: Sage, 1993).

[11] Cairney and McGarvey, *Scottish Politics..*

[12] J. Mitchell, "Minority governments, constitutional change and institutional cultures in Scotland" in *No Overall Control? The impact of a 'hung parliament' on British politics*, eds. A. Brazier and S. Kalitowski (eds.) (London: Hansard Society, 2008), 50; *see also*, B. Winetrobe, *Realising the Vision: a Parliament with a Purpose. An audit of the first year of the Scottish Parliament* (London: The Constitution Unit, 2001), 66.

[13] N. Bonney, "The Scottish Parliament and Participatory Democracy: Vision and Reality," *Political Quarterly*, 74 (2003): 460.

consultation with affected interests[14] (although the 'Scottish Policy Style' would still be open and consultative in the absence of this committee role).[15]

2. The Scottish Parliament does not scrutinise government legislation sufficiently

Of course, the rise in Scottish scrutiny was from a very low base. There is good reason to suggest that it is still insufficient and that this lack of scrutiny undermines the perceived legitimacy of Scottish Government outputs. This scrutiny gap can be divided into four main areas. First, from 1999-2007, the Scottish Executive coalition dominated the legislative process. It presided over a punishing legislative schedule, producing the sense in which committees became part of a 'legislative sausage machine".[16] Various accounts by Shephard[17] suggest that 'Parliament has had very little time to consider anything else but Executive bills' and it became a 'conveyor belt for passing legislation . . . at the expense of quality scrutiny and influence'.[18] The same sentiment was expressed by several 'legacy' reports of committees 'bemoaning the lack of time for inquiries because of the amount of legislation'.[18] While there is *some* evidence of parliamentary influence during the scrutiny of government legislation', the Scottish Executive produced and amended

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[14] L. Paterson, "Scottish democracy and Scottish utopias: the first year of the Scottish Parliament," *Scottish Affairs* 33 Autumn (2000): 45-61.

[15] P. Cairney, *The Scottish Political System Since Devolution: From New Politics to the New Scottish Government* (Exeter: Imprint Academic, 2011).

[16] Arter, *Journal of Legislative Studies* 105.

[17] Cairney, *The Scottish Political System* 45.

[18] Ibid at 45.

[19] M. Shephard and P. Cairney, "The Impact of the Scottish Parliament in Amending Government Legislation," *Political Studies* 53(2) (2005) 303-319; *see also* P. Cairney, "The Analysis of Scottish Parliament Committees: Beyond Capacity and Structure in Comparing West

the majority of bills[20], reinforcing the rule of thumb by Olson[21] that executives initiate 90% of legislation and get 90% of what they want. The minority Scottish Government from 2007-11 produced fewer bills but the 90% rule still applied, largely because most bills were innocuous and received cross-party support (with key exceptions: the bills to enable a referendum on independence and to introduce a local income tax, both of which were not introduced when it became clear that they had insufficient parliamentary support; and some provisions within bills, such as the minimum price on a unit of alcohol).

Second, Scottish Parliament committees rarely set the agenda for future Scottish Government action by, for example, identifying gaps in existing policy and prompting (successfully) further action. From 1999-2007 the usual reason given for this lack of influence was that committees were tied up in the scrutiny of legislation. However, from 2007 (until perhaps 2009) they did not use the opportunity to assert their position at a time of low Scottish Government legislative output.[22] Although they engaged in short and 'snappy' inquiries with the potential to provide timely advice to government, many inquiries were charged with partisanship and unlikely to produce meaningful advice and engagement with government (as, for example, when one committee simply tried to embarrass ministers for their role in the development of the Donald Trump golf course).[23] Third, the Scottish Government is able to pursue many of its policy aims without particular recourse to Parliament. For example, the minority Scottish Government pursued a

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European Legislatures," *European Journal of Political Research*, 45(2) (2006): 181-208.

[20] McGarvey and Cairney, *Scottish Politics* 106.

[21] D. Arter, "Introduction: Comparing the Legislative Performance of Legislatures," *Journal of Legislative Studies* 12(3) (2006): 250.

[22] Cairney, *The Scottish Political System* 50.

[23] Ibid at 51.

range of policies – such as introducing a new relationship with local authorities, pursuing a new model of public private capital finance projects and phasing out prescription charges – without the use of primary legislation. Finally, the Scottish Parliament does not enjoy a sufficiently good relationship with key public bodies such as local authorities, health boards and non-departmental public bodies. We can detect a general sense of parliamentary frustration with such relationships, particularly when public bodies appear to be unwilling to share information with committees – either because they feel accountable to their own electorates (local authorities), accountable to Parliament only indirectly through Scottish Government ministers, or they seek to maintain a 'hands off' relationship with ministers and Parliament to maintain a sense of independent legitimacy.

A realistic recommendation in this context is that committees should continue to seek short and timely inquiries on which most parties can cooperate. More realistic still is to suggest that they make recommendations that will find agreement within the Scottish Government, since the most effective pressure may be to encourage the Scottish Government to modify its *priorities* rather than its *policies.* Of course, such recommendations also remind us of the limits to parliamentary influence under the Scottish system.

3. The Scottish Parliament does not have a sufficiently large professionally trained staff

A further recommendation is that the Scottish Parliament should employ more staff with the ability to gather policy relevant information, or at least help committees oblige public bodies to provide it. However, one consequence of maintaining the current culture, in which the government governs, is that the vast majority of staffing and related

resources are devoted to the Scottish Government and the wider public sector. The Scottish Parliament employs relatively few relevant staff. MSPs employ 516 staff, but most activity is geared towards their constituency offices and elections. The Scottish Parliament employs 476 staff, but the vast majority are employed to run the Parliament rather than scrutinise public policy.[24] The research unit, Scottish Parliament Information Centre (SPIC), has 46 staff and the committee office has 46, which translates roughly into one clerk and two assistant clerks for each of the (currently) 15 committees. There is also a small number of relevant staff in other areas, such as 8 in the Presiding Officer's Office and 3 in the Office of the Solicitor to the Scottish Parliament. In turn, it oversees the work of a Scottish public sector with around half a million employees,[25] including a Scottish Government with 16,520 civil servants (including agencies but not the 10,460 in non-departmental public bodies/quangos) and a budget of around £30 billion (most of which is spent by local authorities, health authorities and Universities). Consequently, there is a marked imbalance of resources which undermines the idea of a strong legislature holding the executive to account.

Effective scrutiny requires the Scottish Parliament to have a sufficient number of staff able to devote their time and attention to the policy work and legislation of the Scottish Government. However, any recommendation to increase the resources of the Scottish Parliament is likely to fall on deaf ears. Members of the Scottish Parliament are acutely aware of the sensitivities associated with increasing parliamentary resources. It would be too difficult to make

[24] Scottish Parliament, *Scottish Parliament Statistics 2010 – 2011* (Edinburgh: Scottish Parliament, 2012) http://www.scottish.parliament. uk/Annualreportsandaccounts/SP_Stats_2010to2011.pdf: 125.
[25] Scottish Government, *Public Sector Employment In Scotland Statistics For 1st Quarter 2012* (Edinburgh: Scottish Government, 2012) http://www.scotland.gov.uk/Resource/0039/00395428.pdf: 6.

the argument, in the current economic and political climate, for two main reasons. First, successive expenses scandals have made MSPs sensitive to the charge that they are feathering their own nests; they may struggle to establish, in the minds of the public, the divide between resources devoted to committees and resources devoted to individual MSPs. Second, the economic climate has prompted public organisations to seek 'efficiency savings' and the Scottish Parliament has made a commitment to *reduce* its staff. Further, there will be voices inside the Scottish Parliament arguing that it would not know what to do with the additional staff, since it is designed to do little more than scrutinise legislation in which many MSPs are not particularly interested. Consequently, we have faced, for some time, a frustrating situation in which only academics and a small number of other sympathetic voices can call for an enhancement of Scottish Parliament resources.

4. The party whip undermines independent scrutiny, or parties do not engage with the legislative process

By far the most significant constraining factor to the 'independent' role of the Scottish Parliament is the centralising role of political parties. This was particularly the case during the coalition years. From 1999-2007, the Scottish Labour and Scottish Liberal Democrats governing coalition (backed by their 'partnership agreements' that tied both to a detailed programme of legislation) had enough MSPs to control the parliamentary business bureau and ensure a voting majority on all committees. Further, the lead member for Labour in each committee acted an informal party whip, with parties agreeing a line before the official meetings. The parties also appoint their own convenors (chairs) and decide which MSPs sit on which committees (also note that there is no Scottish equivalent to the relatively independent 'senior backbencher' with an

alternative career path in committees). Consequently, the coalition produced the closest thing possible in Scotland to majority government.[26] Further, although the main parties were not particularly divided on ideological lines,[27] the Scottish Parliament reproduced a form of Westminster government-versus-opposition politics[28] based, generally, on a mutual antagonism between the two largest parties (Labour and SNP). As described above, the governing coalition dominated the legislative process and most executive-legislative compromise was negotiated within the two governing parties rather than in the Scottish Parliament as a whole.

Although the party whip remained strong, this dominance of the Scottish Parliament was not possible during the SNP's minority government years (2007-11). However, 2007 did not mark the beginning of a new and consensual relationship based on the potential for new parliamentary influence and the need for the government to negotiate with other parties. Rather, the high levels of partisanship were played out in different ways. First, opposition MSPs used points of order to suggest that ministers were making untruthful and misleading statements to Parliament.[29] Second, few committees found enough common ground to make good use of their time. Third, and perhaps most importantly, the former governing parties (Labour and Liberal Democrats) appeared to disengage from the

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[26] See, Cairney 2006; Cairney 2011 at 29-30; McGarvey and Cairney 2008 at 85 and J. Mitchell *et al, Minority governments, constitutional change*, 77.

[27] L. Bennie and A. Clark, "Towards moderate pluralism: Scotland's post-devolution party system, 1999–2002," *British Elections & Parties Review* 13(1) (3003): 134-55.

[28] D. Arter, "The Scottish Committees and the Goal of a 'New Politics': A Verdict on the First Four Years of the Devolved Scottish Parliament," *Journal of Contemporary European Studies* 12(1) (2004): 83.

[29] Cairney, *The Scottish Political System*, 49.

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executive-legislative process, engaging minimally in pre-legislative activities and any inquiries on their own policies. Instead, most debates were played out in plenary discussions.

Consequently, in both periods, partisanship has effectively undermined the role and influence of the Scottish Parliament and its committees. In this context, it is difficult to make a meaningful recommendation, since political parties reserve the right to compete with each other in elections – which, in keeping with UK political culture, may also mean competing in parliament. A cultural change in this regard may take generations to achieve, if parties come to believe or accept that they should cooperate within a system containing so many institutions associated with 'consensus democracies'[30].

5. The Scottish Parliament would benefit from an upper chamber

There will always be concerns expressed about a unicameral political system without the ability of a second chamber to revise legislation over a relatively long period. This concern

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[30] See, A. Lijphart, *Patterns of Democracy* (New Haven, Conn: Yale University Press, 1999) and compare with the political cultures in Denmark and Germany in C. Green-Pedersen, "Minority Governments and Party Politics: The Political and Institutional Background to the 'Danish Miracle'," *Journal of Public Policy* 21(1) (2001): 53-70; P. Svensson, "Centre-Left Minority Coalition Government in Denmark," in *Comparative Minority and Coalition Government*, eds. I. Marsh and J. Wanna (ANU Press, 2013); K. Steinack, "Opposition in a consensual system: The case of Germany" in *Comparative Minority and Coalition Government*, eds. I. Marsh and J. Wanna (ANU Press, 2013).

was drowned out in Scotland by the argument that Scotland should not follow the UK in having an *unelected* second chamber (also note that Scotland had a unicameral system before 1707). The SCC's argument – 'Scotland's Parliament will be a single-chamber legislature. There will be no role in its legislative process for the House of Lords' – was questioned rarely and few attempts were made to argue that a second chamber need not be the Lords. Instead, the Scottish Parliament was designed at a time when politics was in crisis (although when is it not?) and there was no appetite for expensive new institutions beyond the introduction of a single legislature. Consequently, there is no potential for a 'ping pong' between chambers, in which the second chamber obliges the first to reconsider its proposals. Nor is there a direct sense of the checks and balances culture that we might associate with the diffusion of power between legislative arenas and institutions.

As the Constitution Unit[31] argued before devolution, a unicameral system can possess adequate checks and balances if designed accordingly. For example, a sense of power diffusion can be developed with: an electoral system that ensures no overall majority (Scotland uses the Mixed Member Proportional system); a bill of rights (the Scottish Parliament acts in accordance with the European Convention on Human Rights); and, perhaps even a supreme body overseeing Scottish institutions and their conduct (a role which *can* be performed by Westminster, although few UK politicians like to be seen to interfere in Scottish affairs). Further, the Scottish system has a range of ombudsman bodies and financial accountability arrangements (via the Accounts Commission, Auditor General and Audit Scotland). The Scottish Parliament's

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[31] Constitution Unit, *Checks and Balances in Single Chamber Parliaments: a Comparative Study* (London: UCL, 1998) http://www.ucl.ac.uk/spp/publications/unit-publications/24.pdf: 3.

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[32] Ibid at 4.

committee system is also 'comprehensive', allowing committees to scrutinise the work of departments, assess legislation at each stage before plenary and approve the Scottish Government's budget. Overall, 'The comprehensive range of checks present in the Scotland Bill obviate the need for a second chamber as part of the parliamentary design'[32].

Perhaps, based on the experience of Scottish devolution, we might envisage a 'perfect storm' of factors that undermines most of these checks on executive power: the move to an independent Scotland with no Westminster oversight; the repeat of the 2011 election which produced a majority single party government; and, the control of Scottish Parliament procedures by the majority party. However, Scotland is also likely to remain a member of the EU and Council of Europe, maintain its committee structure and maintain its systems for wider financial accountability. Consequently, it is sensible to recommend that an independent Scotland introduce some form of written constitution outlining the new roles and responsibilities of institutions, but it may be based on the revision of existing functions rather than the inevitable introduction of new bodies.

Concluding Comments: The Future of the Scottish Parliament

As in the 1990s, the promotion and development of constitutional change is likely to influence the further development of legislative and institutional design. We can envision two main scenarios. The first is major change following a 'yes' vote on Scottish independence. Indeed, the prospect of Scottish independence has the potential to encourage the same sort of unrealistic expectations about Scottish policymaking institutions that we witnessed in the

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[32] Ibid at 4.

lead up to devolution in the 1990s. It is certainly likely to prompt debate on a fundamental redesign of Scottish institutions to reflect its new responsibilities for 'high politics', or the key economic, foreign and defence policy areas. This push for reform may be aided by the unlikely but realistic prospect of a majority governments in the future (perhaps unless Scotland introduces the single transferable vote or a more proportional version of MMP) and the image of the Scottish Parliament and its committees as ineffective, producing calls for more effective checks and balances in the new Scottish system and, perhaps, the prospect of a Scottish Parliament with more than 129 MSPs and better resourced committees.

So far, public and academic discussion of the prospect of a Scottish constitution has been rather limited.[33] This is perhaps because the likelihood of Scottish independence still seems low. Further, the most-discussed plans for a constitution contain measures that have been addressed, to some extent, by Scottish devolution (both are based on a rejection of the 'Westminster model').[34] In other words, the SNP's draft plans, developed before devolution by key figures such as Professor Neil MacCormick, should be viewed in a new context in which many recommendations have already been anticipated by the architects of devolution, including: a unicameral system with proportional elections (although the SNP has long recommended STV, not MMP), a legal separation between the 'Crown' and Scotland's governing body (the Scottish Government or Executive), fixed-term parliaments not subject to dissolution on the whims of the government, and a commitment to a bill of rights associated with the ECHR.[35]

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[33] W. Elliot Bulmer, "An Analysis of the Scottish National Party's Draft Constitution for Scotland," *Parliamentary Affairs* 64(4) (2011): 674-693.
[34] Ibid at 3; also, McGarvey and Cairney *Scottish Politics*, 23.
[35] Bulmer, An Analysis, 6.

[36] Alexandra Kelso, *Parliamentar*
University Press, 2009). *See also*
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Consequently, a new Scottish system may be very similar to the old. For example, the present SNP plans do not include the call for a second chamber. Rather, the passing of legislation could be subject to a rule in which a bill can be delayed for 12-18 months if the delay secures 40% of the vote. In such cases, the Scottish Government would have the option of introducing a referendum on the issue. However, such measures have been subject to such little public debate that their fate remains uncertain.

The second scenario is incremental constitutional change, with more powers devolved to the Scottish Parliament in the absence of Scottish independence. In this case it is unlikely that we will hear many serious calls for more parliamentary resources and the number of MSPs is likely to remain at 129 to reflect, broadly, the path dependent nature of politics and, more specifically, the sense in Scotland that its institutional design was broadly correct (perhaps in contrast to Westminster which is in the process of slow renewal and has introduced, for example, new rules on the election of committee chairs.[36] The resources available to committees are likely to continue to be limited. The balance of power between the Scottish Government and Scottish Parliament is likely to tip further, as the former takes on more resources and responsibilities while the latter is expected to provide more efficient scrutiny for the same cost.

As stated, these two scenarios might present legislative reformers, quite fond of devolution rather than independence, with a potential new dilemma: would they rather see an independent Scotland with the potential for a

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[36] Alexandra Kelso, *Parliamentary reform at Westminster* (Manchester University Press, 2009). *See also*, Alexandra Kelso, "The Public Good: Reforming Westminster after the Expenses Crisis," *Political Insight* 1(1) (2010): 8-10. *See also*, Meg Russell, "'Never Allow a Crisis Go To Waste': The Wright Committee Reforms to Strengthen the House of Commons," *Parliamentary Affairs* 64(4) (2011): 612-633.

new relationship between the executive and legislature; or, would they prefer the unusual checks and balances afforded by a quasi-federal system with a potentially weakened legislature? It would be reasonable to reject this binary narrative of executive-legislative relations and their links to constitutional change. However, it is harder to reject the argument that institutional change, like all public policy, involves hard choices based on personal preferences rather than a technical solution on which we can all agree. The reform of the legislature is as much a political issue as the reform of the constitution.