Chapter 3

The Scottish Parliament and Scottish Government Does Minority Government Make a Difference?

This chapter explores the difference that minority government makes when compared to coalition government, focusing primarily on the relationship between the Scottish Parliament and Government. Chapter 1 demonstrates that the Parliament does not have the resources to do much more than perform a traditional parliamentary role, monitoring government departments and scrutinising legislation proposed by the Scottish Government. Chapter 2 identifies the continued importance of political parties and the government-versus-opposition culture inherited from Westminster. This chapter builds on these insights to show that the image of a 'consensus democracy' (Lijphart, 1999) is often misleading in Scotland. The first eight years of devolution were marked by a form of majoritarian (coalition) government that would not seem out of place in the UK. Labour and the Liberal Democrats formed a governing majority able, through a strong party whip, to command a majority in plenary and all committees. They used that power to pursue a demanding legislative programme, demonstrating that the government produces the vast majority of legislation and that the Parliament struggles to do more than scrutinise policy in these circumstances. The only significant 'brake' to that process was the negotiation required between the coalition parties within government. However, even then, the production of successive 'partnership

agreements' in 1999 and 2003 gave a good idea of the legislative programmes in each four-year term.

The advent of minority government was accompanied by renewed calls for the spirit of 'new politics'. The image that springs to mind regards cooperation and negotiation between parties: the minority government needs the support of other parties to pass legislation and to stay in government for a full term; opposition parties trade that support for policy influence. This practice did not progress in the way that it does in countries, like Denmark, with a long term history of cooperation. The minority government lasted a full four-year term, but largely because no party wanted to be responsible for an extra election. There was some evidence of cooperation on a small number of bills and, more systematically, between the SNP and Conservative parties. However, the Scottish Parliament plenary was used largely as an adversarial forum and committees were not particularly effective. Instead, the main parties generally disengaged from Parliament. Labour and the Liberal Democrats rarely engaged constructively with the SNP government and did not seem to value the role of committee work in opposition. While the SNP was not able to pursue legislation in a small number of areas (independence, council tax reform, aspects of alcohol policy), it was still able to pass and amend the majority of bills and pursue many of its objectives without passing new primary legislation.

Consequently, the imbalance of power between executive and legislature did not disappear in 2007 when the SNP formed a minority government. Rather, it demonstrated that governments could further most public policy without recourse to the Scottish Parliament and that the gulf in resources (including the number of people available to analyse policy issues and decisions) between the Government and Parliament helped undermine effective scrutiny. Further, there were no internal 'brakes' to policy because the SNP formed a rather cohesive single party government. This is the context for majority government in 2011. The SNP now enjoys the parliamentary majority enjoyed by the Scottish Executive coalition, and the coherence the SNP enjoyed as a single party minority government. However, while it can now pass legislation in a less encumbered way, we should not expect a radical difference in the executive-legislative relationship, because an imbalance of power already existed.

Coalition Government from 1999–2007

The use of mixed member proportional representation for Scottish Parliament elections suggests that parties will rarely gain majority

control. Yet, devolution in 1999 produced the closest thing to majority government: two four-year parliamentary sessions of coalition government formed by the largest party, Scottish Labour, and its junior partner, the Scottish Liberal Democrats. In 1999, Labour won 56 seats and the Liberal Democrats 17, producing a majority—73 (57%) of 129 seats (minus one seat held by Liberal Democrat Presiding Officer David Steel). This was followed in 2003 by a reduced but still significant majority—67 (52%) seats produced by Labour's 50 and the Liberal Democrats' 17 (the Presiding Officer was the SNP's George Reid). The Scottish Executive coalition also commanded a majority in every Scottish Parliament committee. This 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.

The first eight years of devolution proved that new powers and institutions were not effective on their own. Rather, the implementation of new politics also required a cultural change among MSPs and political parties (Cairney, 2006). We know this now because no profound cultural change took place. Rather, we witnessed a curious mix of 'consensus democracy' institutions operated by politicians in the Westminster tradition. Although the parties were not particularly divided on ideological lines (Bennie and Clark, 2003), they reproduced a form of government-versus-opposition politics that Westminster parties would be proud of. In particular, the Labour-SNP relationship in the Scottish Parliament reflected a 'reactionary mentality' in which 'some Labour MPs were so paranoid about the Nationalists that any idea emanating from the SNP was immediately rejected because of its source' (Dennis Canavan MSP in Arter, 2004: 83). Similarly, the opposition parties were quick to exploit government weaknesses on issues such as 'Lobbygate' (see chapter 8), the cost of the Scottish Parliament building, and Scottish Executive coalition tensions regarding flagship policies such as free personal care and the abolition of student fees (McGarvey and Cairney, 2008: 40; 122; 205; 242).

The Scottish Parliament was driven primarily by parties rather than 'independent-minded MSPs' (Mitchell, 2008: 77). Most importantly, the coalition formed between Labour and the Liberal Democrats only provided 'superficial evidence of "new politics"' and undermined the more meaningful political style envisaged by its architects: 'a minority single-party Labour cabinet obliged to work in the Scandinavian manner with the opposition parties to get legislation through, would have vested parliament with significant policy influence and constituted 'new politics' in a real sense' (Arter, 2004: 83). Instead, the

parties formed a governing majority. This gave Labour the sense of control that they feared would be lost if they were forced to cooperate on a regular basis with the SNP: 'We have to have a settled programme rather than a programme where we could be ambushed every time' (Maureen Macmillan, Labour MSP, in Arter, 2004: 83). Further, the parties produced partnership agreements that tied both to a detailed programme of legislation and towards supporting the Scottish Executive line (and collective cabinet responsibility) throughout.

The effect of the strong party role was impressive. The coalition controlled the voting process in both committees and plenary, with Labour demonstrating a particularly strong whip in both parliamentary sessions—caused in part because their MSPs were screened rigorously before their selection (chapter 2; McGarvey and Cairney, 2008: 85; Mitchell, 2008: 77) and because Labour ministers held regular meetings with Labour MSPs before any committee meeting in which a significant vote or decision was likely to take place (although this can occasionally be used to exert committee power—see Cairney, 2007a: 79). There were similarly few instances of Liberal Democrat dissent, and none which threatened the coalition's *Partnership Agreement*. The parties were also able to dictate which of their members became conveners of committees (although the numbers of conveners are allocated proportionately) and even which MSPs sat on particular committees. As a result, the independent role of committees was undermined as MSPs were appointed and then whipped, while committee turnover was too high to allow a meaningful level of MSP subject expertise (McGarvey and Cairney, 2008: 99; Scottish Council Foundation, 2002; Arter, 2003: 31–2).

The experience from 1999–2007 suggests that it would be wrong to equate the formal capacity of legislatures with their power or influence over policy outcomes (Arter, 2006; Cairney, 2006; McGarvey and Cairney, 2008). From 1999–2007, the Scottish Executive coalition dominated the legislative process, passing so many bills that they undermined the ability of Parliament to set the policy agenda through inquiries. It presided over a punishing legislative schedule, producing the sense in which committees became part of a 'legislative sausage machine' rather than powerful bodies able to set the agenda through the inquiry process (Arter, 2002: 105). While there is *some* evidence of parliamentary influence during the scrutiny of government legislation (Shephard and Cairney, 2005; Cairney, 2006), the Scottish Executive produced and amended the majority of bills (McGarvey and Cairney, 2008: 106), reinforcing the rule of thumb by Olson (in Arter, 2006: 250) that executives initiate 90% of legislation and get 90% of what they want. There was also a trend from 2003 towards increased Scottish

Executive dominance, perhaps following the honeymoon period of the first session (and despite the new makeup of the Parliament in which more small parties were represented).

This unequal executive-legislature relationship is reflected in the early reports (see also Jervis and Plowden, 2001: 9–10). On the one hand, the first report (November 1999: 5) suggests that 'there has been a heavy commitment to ensuring that everyone understands the importance of these committees', and Leicester (2000: 21) points to the need (not felt in the old Scottish Office) for ministers to engage seriously with the chamber as 'a vital arena in which to build or damage a political reputation'. On the other, Leicester (2000; 21; see also May 2000: 3; Shephard, February 2001: 17) identifies, almost immediately, 'a growing concern that there are insufficient staff and resources' in committees, particularly since MSPs sat on more than one committee and the skills of committee staff varied. Further, since few committees found an ability to set their own agenda (or initiate legislation), MSPs turned to cross-party groups less likely to be whipped (although see Shephard, August 2004: 8). This produced an additional workload on top of the punishing constituency/regional role and a strong impression of overload (Leicester, 2000: 22) which, coupled with high committee turnover and a new role for substitutes, undermined the ability of MSPs to become experts in their subject areas (Shephard, February 2001: 19; Cairney, January 2006: 25). The problem prompted the Parliamentary Bureau (which determines parliamentary business; it was controlled by Labour and the Liberal Democrats) to discuss an early restructuring of committees to ensure that they could deal with the imbalances of Scottish Executive policy priorities (the Justice Committee was under particular strain). Yet, problems of overload were still pronounced at the end of parliamentary sessions when some committees were obliged to process a large number of bills before the election recess (Cairney, September 2007: 14).

Problems of overload were often reinforced by the lack of information necessary to provide effective scrutiny. In the case of finance, the Financial Issues Advisory Group (FIAG, the sister of the Consultative Steering Group) was strong on the need for the Scottish Parliament to have reliable financial information to help the Parliament hold the Executive to account and therefore allow 'the people of Scotland [to] have a say in how money is spent' (February 2000: 15). Further, the first budget bill was preceded by a 'seemingly open consultation process' explaining how budgets have been allocated in the past and, according to Donald Dewar, giving '"people from across the whole spectrum of Scottish society a say in how the resources at the

Executive's disposal should be spent"' (May 2000: 11). Yet, the reports are sceptical about the effect this has on budgets, particularly since spending demands have to be met by reducing spending elsewhere. The May (2000: 12) report highlights the importance of incrementalism, particularly when existing recipients of resources resist change, and argues that even one of the most pressing issues (tuition fees) combined with a 'carefully considered and costed report' (the Cubie Report) resulted in finding the money from within the same department, suggesting that it would be difficult for the Finance Committee to influence anything but modest changes within existing and discrete budgets. The Finance Committee may have the potential to be the most powerful, but 'it has yet to make that influence felt' (May, 2000: 12).

Similarly, while the committee established its *right* to produce an 'alternative set of proposals' (effectively an 'alternative budget'— November 2000: 36), there is no evidence to suggest that it ever demonstrated that ability (indeed, Bell August 2003: 32 argues that a significant alternative supported by Parliament would oblige the Executive to resign). Instead, much of its time was devoted to trying, generally unsuccessfully, to get reliable figures from the Scottish Executive (Bell, August 2001: 36; Cairney, January 2006: 23). In some cases this issue is caused by the problems tracking money when it is spent locally in a discretionary way (Bell, August 2001: 35–6). In others, the problem is caused by incomplete information, or information which lacks comparisons with previous years (Bell, August 2001: 36). Further, the time for detailed scrutiny is curtailed once every four years by the 'electoral period of "purdah"' (Bell, August 2003: 32; Winetrobe, June 2003: 3; there is also a purdah of sorts during UK general elections, restricting the Scottish Executive to publicising 'worthy but dull' public policy announcements and parliamentary debates the month before— Winetrobe, August 2001: 8–10).

In the case of the European Committee, MSPs were effectively kept in the dark because Scottish Executive discussions with the UK government (regarding the UK line in the EU) were kept confidential. Thus, its attempts to emulate Westminster and adopt a 'scrutiny reserve', in which a final position could not be made without parliamentary approval, were never successful (Wright, February 2002: 32). Instead, it began 'scrutinising the implementation of EU policies', conducting 'inquiries into issues that are of strategic interest' and making sure that Scottish ministers gave evidence at the start of each EU presidency (Wright, May 2002: 45–6; see Wright, August 2002: 30; Wright, November 2002: 25; Wright, November 2003: 36–7; Wright, May 2004: 44; Wright, August 2004: 34–5 and Wright, November 2004:

22 on its continued lack of influence despite its membership of the Network of Regional Parliamentary European Committees). For example, in 2007 it produced a strategic report, calling for earlier Scottish Executive engagement in the 'upstream' phase of policy development to address the problems with its obligations when EU policy comes 'downstream' (Cairney, April 2007: 8). In one case, both committees suffered the same problem, when the Finance and European committees could not convince the Scottish Secretary to attend their meetings to explain how EU structural funds would work. While this became a matter for the Presiding Officer (November 2000: 36–7), the issue was never resolved.

The reports quickly suggest that any initial hopes for non-executive legislation soon faded and 'Parliament has had very little time to consider anything else but Executive bills' (Shephard August 2001: 13). Shephard (November 2001: 17–18; August, 2002: 8–9; June 2003: 6) notes that Executive Bills receive priority over Members' Bills, reflecting (from 1999–2007) the dominance of the coalition-controlled Parliamentary Bureau and a concern expressed by the Procedures Committee that the Parliament is becoming 'a "conveyor belt for passing legislation" ... at the expense of quality scrutiny and influence' (Shephard, June 2003: 9). This view was reinforced by various 'legacy' reports of committees bemoaning the lack of time for inquiries because of the amount of legislation (Cairney, April 2007: 12–14; note the Conservative claim that Scottish Executive ministers admitted to suffering from 'legislationitis'—Cairney, January 2007: 22).

Members' Bills were used increasingly to set the agenda only (Shephard, November 2003: 7; Shephard, February 2004; Cairney, May 2006: 25; April 2007: 14). Further, this ability was constrained, following changes to the standing orders that undermined the ability of opposition and small parties to have bill proposals accepted (Shephard, August 2004: 7). Indeed, the strain on the Scottish Parliament's Non-Executive Bills Unit (NEBU) was used by the Procedures Committee and four main parties to justify reforming the rules on member's bills to make it harder to introduce them (Shephard, 2004: 7), producing some suspicion that this was designed to stop the smaller parties such as the SSP setting the agenda (Cairney, January 2006: 30; September 2006: 25; April 2007: 15; but note that there is still an issue of capacity—Maddox, 2009)

The coalition's control of the parliamentary arithmetic also undermined the independence of committees. It was used to pass a motion limiting the ability of committees to exercise their evidence-gathering powers, producing a Westminster-style relationship

associated with the term 'MacOsmotherly Rules' to ensure that civil service advice to ministers remains confidential ('Osmotherly Rules' refers to guidance to UK civil servants on how to give evidence to select committees—see Mitchell, 2001: 59; MacMillan, November, 2000: 13; Shephard, February 2001: 18; Winetrobe, February 2002: 9; see also Cairney, April 2007: 17 on non-disclosure during the McKie inquiry). There is little evidence of effective parliamentary scrutiny of the Scottish Executive's governance functions and 'it has no formal say either on the division of governmental business into particular portfolios, or the allocation of ministers to those portfolios' (Winetrobe, May 2001: 9–11). The introduction by First Minister Jack McConnell of Ministerial Party Aides (MSPs who support particular ministers and sit on committees) could also be interpreted as a further move to maintain a consistent party line in Parliament (Winetrobe, May 2002: 7; Mitchell et al, 2003: 130; see also Winetrobe, November 2002; 6; the Scottish Executive also failed to inform Parliament of two appointments in 2003, 'undermining its own open government policies' and obscuring 'their participation in plenary and committee proceedings'—Winetrobe, May 2004: 3). This, combined with the lack of career advancement opportunities outside of the Scottish Executive, unlike in Westminster where backbenchers can pursue senior committee roles, makes it difficult to find evidence of a strong independent parliament.

Mitchell (2004: 35–36) argues that the 'myth of a strong legislature' was entertained by the Scottish Executive when it suited its interests, such as when it wanted to shuffle off responsibility for the cost of the Scottish Parliament building. Overall, the 'committees have worked well but there is a tendency towards self-satisfied myth-making and an exaggeration of success which has crowded out appreciation of failings' (Mitchell, 2005: 27). Much of this 'success' often merely relates to its ability to get better information from the Scottish Executive (see for example Cairney, January 2006: 23; January 2007: 26). There may also be a tendency to conflate the value of the Scottish Parliament with the opportunities afforded by *devolution*—such as when Shephard (August, 2001: 13–14) lauds the ability of the Parliament to process legislation that Westminster would not have had the time or the inclination for (before stating in November, 2001: 19 that there is minimal power-sharing between Executive and Parliament). In effect, we are left with a party-dominated Parliament that enjoys sporadic wins in the context of a fairly powerless position (for examples of its wins see: the election of the Deputy Presiding Officer—Mitchell, February 2002; 4; amendments regarding smacking children, Shephard, November 2002: 7; Winetrobe, November 2002: 34; fire service reform, Shephard, February 2003: 9;

and, the rejection of part 3 of the Protection of Vulnerable Groups (Scotland) Bill due to insufficient consultation, Cairney, January 2007: 27–8; Shephard, April 2005: 6).

Overall, the Scottish Parliament and its committees enjoyed neither the resources with which to scrutinise government policy effectively nor the stability nor independence necessary to assert their new powers. Further, although members and committees have the ability to initiate legislation, the same rules apply: members are constrained by party affiliation and limited resources, while committees rarely find the time or inclination to legislate (Bort, January 2006: 42–3). After a honeymoon period in the first parliamentary session, the Scottish Parliament produced non-executive legislation comparable in number and scope with Westminster (McGarvey and Cairney, 2008: 103). From 1999–2003, 50 Scottish Executive, 1 committee and 8 member's bills were passed while from 2003–7 the split was 53, 1, and 3. From 1999–2003 166 inquiries were conducted (Arter, 2004: 77), but this fell to 99 in 2003–07 (of which 11 were short or one-day inquiries). In short, 'while the Scottish Parliament's powers are extensive in comparison to most West European legislatures, it is much more difficult to demonstrate the effects of their powers in relation to the Government in the first two parliamentary sessions' (McGarvey and Cairney, 2008: 108). The evidence of new politics and the effects of the new institutions were thin on the ground.

Minority Government from 2007–11

In this context, it is understandable that May 2007 was seen by many as a new beginning. Newly-elected Presiding Officer Alex Fergusson used his acceptance speech to call for the return of new politics (Scottish Parliament Official Report 14.5.07 col. 13). However, the first thing to note is that minority government was not the SNP's first choice. Instead, it followed the combination of unusual parliamentary arithmetic and an inability of the SNP and Liberal Democrats to agree on the terms of a coalition.

In 2007 the potential for coalition was not straightforward. The SNP won 47 seats compared to Labour's 46 but, given the nature of the overall result (the Conservatives won 17, Liberal Democrats 16, Green 2 and Margo MacDonald 1) it could not form a majority coalition with one other party. Although there was some scope for cooperation between the SNP and the Greens (based on the same attitude to Scottish independence and an SNP commitment to certain environmental issues), its potential links to the other parties were problematic. Formal coalition between the SNP and Liberal Democrats

proved impossible when the latter insisted that the former drop its plans for an independence referendum (Lynch, September 2007: 66; 72). Further, a formal coalition with the Conservatives would be politically damaging for the SNP in the short term (the Conservatives are still tainted by 18 years of unpopular government in Scotland from 1979–97; the SNP is to some extent a left-wing social democratic party) and the long term (the SNP may campaign for independence by highlighting the re-emergence of a 'democratic deficit' in Scotland and minimal support for a Conservative government ruling Scotland).

Therefore, the SNP was initially reluctant, but effectively obliged, to form a single party minority. The rhetoric on the scope for 'new politics' under minority government was only spoken loudly *after* the options for coalition had been exhausted. The SNP subsequently made a 'virtue out of necessity' (Mitchell, 2008: 79) but was uncertain about its ability to make legislative progress (or at least present an image of governing competence—Paun, 2009) and was not confident about its ability, or the ability of any minority government, to stay in office for the four-year period. This reflects two main factors. First, despite Strøm's (1990) best efforts,[4] it reflects a strong 'conventional view' of minority government that 'associates it with instability, inefficiency, incoherence and a lack of accountability' (Mitchell, 2008: 73). There is a strong, longstanding culture or set of assumptions held by most parties in Scotland in favour of majority government (although there is some evidence that Labour studied minority government in 2006 and perhaps favoured it from 2007—Lynch, January 2007: 69). Minority equates with instability not opportunity; potential opposition and disarray, not opportunities for new politics. There is also the occasional charge, regarding the SNP's independence agenda, that minority government is unrepresentative (McIver and Gay, 2008). Second, the 'conventional view' has been reinforced in the UK by the very limited, unhappy experience of minority Westminster government in the mid and late 1970s (Mitchell, 2008: 74; Cairney, 2009).

In other words, the omens did not look good: minority government appeared to be a necessity rather than a choice. Scottish politics lacked a factor key to minority government success: a feeling that it is a desirable way to engage in politics. In this light, we witnessed a remarkable turnaround of the image of minority government in Scotland (for an 'insider view', see Harvie, 2008). It is striking how quickly minority government became the norm in Scotland in the sense

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[4] Strøm (1990: 237) argues that minority governments are common, not aberrations, and that they may result from rational strategic calculations rather than 'as a consequence of political instability, conflict and malaise'.

that, while the SNP Government was challenged regularly on its policies and governing record, its right to govern was not. Most importantly, the SNP Government served for a full four year term despite minimal evidence of the behaviour and attitudes we might associate with new politics. In fact, if anything, partisan tensions increased from 2007.

For example, one of the longest running sores in the 2007–11 session regarded the use by opposition MSPs of points of order to question the veracity of ministerial statements. While we may accept and even enjoy a degree of partisanship during the theatre of First Minister's Questions, this was taken to the extreme by allegations that ministers were making untruthful and misleading statements to Parliament (Cairney, 2009b). This prompted two key responses (as well as a revision to the Scottish Ministerial Code). First, Alex Salmond took the unprecedented step of referring complaints about his conduct to the new independent advisory panel consisting of the two former Presiding Officers David Steel and George Reid (which ruled in all three cases that he did not mislead Parliament—Cairney, May 2009: 32–3; Cairney, September 2009: 41; Scottish Government, 2010). Second, Alex Fergusson reiterated a belief, held variously by all Presiding Officers (and reflected in Standing Orders), that he should not become the arbiter of the truthfulness of comments made by any MSP in Parliament. Instead, he asked the Standards committee to investigate the use of points of order. In turn, the committee endorsed Fergusson's view, proposed new guidance on the party political use of points of order, and called for a joint protocol between the Scottish Government and Parliament on their respective roles (Cairney, May 2009: 32).

The perceived need to introduce new mechanisms in this way presents a counterintuitive conclusion: that partisanship increased and cooperation decreased during minority government. Yet, it did not seriously undermine the SNP's position, largely because: the opposition parties did not want to be held responsible for holding an extra election (a successful vote of no confidence would oblige the government to resign and prompt an election if a new First Minister could not be found in 28 days); few parties could afford to finance an extra election; and, the opposition parties could not hope to improve their number of seats, since Alex Salmond and the SNP were generally popular throughout.

The maintenance of these arrangements reinforced the imbalance of power between Government and Parliament, in four main ways. First, the SNP Government was able to distance itself from the Scottish Parliament by pursuing many of its policy aims without recourse to

legislation (Cairney, September 2007b: 83; September 2008: 94). The Scottish Government has the vast majority of policy capacity and many of its policy aims (on intergovernmental relations, the civil service, capital finance projects, public service targets, curriculum reform, prescription charges) were pursued without using legislation, while others could be pursued using legislation that exists (i.e. with secondary legislation and regulations much less subject to parliamentary scrutiny) (Cairney, September 2007: 82). Further, small committee size and MSP turnover still undermine the abilities of committees to scrutinize government policy and the huge gulf in resources remains (Cairney, January 2008: 17). The best example regards the Scottish Government's concordat with COSLA to grant local authorities more discretion in the use of their budgets, and more leeway when monitoring local outcomes (chapter 6)—a decision that undermined the ability of the Scottish Parliament to monitor local authorities through the Scottish Government.

Second, the Scottish Parliament produced minimal legislation and proved unable to go beyond the level of scrutiny and agenda setting that it achieved from 1999–2007. Most notably, from 2007–9, the Scottish Parliament did not use the opportunity to assert its position at a time of low legislative output. A key outcome of the 1999–2007 sessions was a widespread sense that too much legislation had been produced and that a new government should slow down (Cairney, September 2007: 24; 83; Mitchell, in correspondence). The 'legacy' reports produced by committees in 2007 suggested that they were unable to perform their scrutiny and inquiry functions properly because there was too much legislation to consider (McGarvey and Cairney, 2008: 102). Minority government had an initial effect. The SNP Government, already committed in its manifesto to a reduction in legislative volume (and faced with a tight budget that precluded expensive policy innovation), found that it did not have the votes to pass legislative measures that it would certainly have introduced if it enjoyed a majority (including a referendum bill in 2010). Consequently, from 2007–9, legislative demands on the Scottish Parliament were not high. The SNP's first legislative programme was dubbed by opposition parties as 'legislation lite' (Cairney, September 2007: 83), while Labour's business manager, Michael McMahon, labelled Alex Salmond as a 'work-shy First Minister leading a group of idle ministers' because the Scottish Government had passed seven pieces of legislation in two years (Peterkin, 2009; note that opposition party criticism of the legislative programme has always been an annual event).

Yet, the Parliament did not fill the legislative gap. There has not been a perceptible rise in successful legislation initiated by committees or MSPs since 2007 (committees passed 2 bills and members passed 7 from 2007–11, compared to 3 and 8 from 1999–2003 and 1 and 3 from 2003–7). While there was some talk by Labour regarding their alternative legislative programme (Cairney, September 2008: 97; May 2009: 31), this never took off (and it seemed to consist of four member's bills—Holyrood.com, 2008). While committees had more time to set the policy agenda through inquiries, few used their time effectively (compare with the second session committees which had begun to identify useful cross-party issues—Cairney, September 2006: 20–1; January 2006: 27–30; April, 2007: 15). Few found enough common ground to pursue a long-term inquiry in any meaningful way, while others merely exploited the chance to make party political points with short, headline grabbing, inquiries (Cairney, January 2008: 16 discusses the inquiry into Donald Trump's development in the Menie estate; see also Cairney, May 2008: 17–18; September 2008: 20–1; for more recent evidence that committees were able to find areas of common interest, see Cairney, September 2008: 21; January 2009: 37–8; September 2009: 45–8).

Third, the Scottish Government produced most policy and passed and amended most legislation. Overall, it produced 42 bills in four years (compared to 50 and 53 in previous sessions). Its small number of high-profile manifesto successes includes a bill to abolish the graduate endowment and, less importantly, to abolish bridge tolls. Its ability to pass so many other bills reflects the fact that a large proportion of government business in Parliament is rather innocuous legislation that would have been passed by any party. There is little incentive for the opposition parties to oppose the principles of, for example, a bill reforming flooding policy. The SNP also inherited many bills from its predecessor government (on issues such as the need to prepare for the Commonwealth Games, reform the judiciary and courts, reform public health law, and revise the law on sexual offences).

The tangible effect of the opposition parties on Scottish Government legislation is unclear. While we could reasonably expect more government defeats and amendments coming from opposition parties, the effect on the substance of legislation does not seem particularly significant. For example, 98.7% of Scottish Government amendments to its own legislation were passed successfully from 2007–11 (figures from Steven MacGregor; see MacGregor, 2010) compared to 99.4% from 1999–2003 (Cairney, 2006: 186). The SNP Government lost more votes than its predecessors, but its legislative programme remained

unharmed and very few bills were amended against the SNP's wishes. To a large extent, the SNP was helped by support from the Conservative party, with the two parties voting together 72% of the time, reflecting almost 100% Conservative support for the majority of SNP bills (MacGregor, 2010). In some cases, in the absence of Conservative support, the SNP was able to use support from other parties (e.g. on tobacco control policy—an agenda furthered by the previous Scottish Executive). In one other, it benefited from parliamentary rules that effectively limited the extent to which the Scottish Parliament could amend a bill. The opposition parties could not amend the Education (Additional Support for Learning) Bill as much as they hoped, because the Scottish Government had not passed a Financial Resolution—effectively prompting the Presiding Officer to reject amendments which involved significant additional costs (references to this constraint can be found in the stage 2 debate— Scottish Parliament Education, Lifelong Learning and Culture Committee Official Report 25.3.09 Col.2165—and the stage 3 debate— Scottish Parliament Official Report, 20.5.09 Cols. 17576–644).

Although there may be some evidence that civil servants were more likely to anticipate the reactions of opposition parties when developing policy (Paun, 2009: 52), there is less to suggest that this affected policy substantively. Indeed, civil servants appeared to be committed to implementing SNP policy and, in some cases, defending that policy and the Scottish Government's record in public (Paun, 2009: 52; Cairney, September 2009: 53). Further, the process is nothing like coalition government in which civil servants had to clear policy with two parties (Paun, 2009: 52; Cairney, 2011a). Therefore, if anything, the Scottish Parliament has become an occasionally effective policy-stifling forum, acting as a deterrent to some policy initiation and slowing down the legislative sausage machine, without using the extra time to any great effect.

Fourth, a lot of opposition party activity was geared towards the production of non-legislative motions. The Scottish Government's initial reaction prompted some concern that it was subverting the role of Parliament by ignoring its wishes (Davidson, 2008). The first example followed the motion passed by the opposition parties in favour of continued funding for the Edinburgh Airport Rail Link and Edinburgh tram project. Both John Swinney and Alex Salmond were accused of bending the will of Parliament, with Swinney citing irresolvable problems in EARL and Salmond quoting Donald Dewar to suggest that he was not bound by parliamentary motions (Cairney, September 2007; 22; Mitchell, 2008: 80). However, even in this case

there is evidence of a negotiated position (the trams project did go ahead) and ministers generally seek to avoid unnecessary confrontations, particularly since too many confrontations produce opposition party pressure for ministers to resign (see the case of Kenny MacAskill and court reform—Cairney, May 2009: 52). Instead, SNP whips and business managers sought to avoid confrontations by negotiating the wording of motions with their counterparts in other parties (Cairney, May 2008: 18; January 2009: 35–6) and acting on many motions (Cairney, January 2008: 21).

The best example may be the Scottish Government's decision to drop plans for a flagship bill introducing a local income tax, although many other factors were in play (for example, the UK Government refused to modify the rules on council tax benefit—Cairney, 2012a; chapter 9). Parliamentary opposition, along with the uncertainty over funding, was cited by Finance Secretary John Swinney as the reason to withdraw the policy (Scott, May 2009: 75). Yet, few motions forced the hands of the Scottish Government in that way. Far more motions either demonstrated a lack of united opposition or merely (in examples such as police numbers or rural schools) sought to 'reinforce existing Scottish Government policies and place them higher on its agenda' (Cairney, May 2009: 38). This agenda-setting role is also a feature of the better committee inquiries (Cairney, September 2009: 45–8; 57).

Overall, this outcome is not surprising because, despite the range of Scottish Parliament 'powers', it was not designed to be a policymaking body. Rather, the institution represents an attempt to improve on the scrutiny powers of Westminster without marking a profound change in the executive-legislative relationship. Committees have the power to hold ministers and civil servants to account, to make sure they consult properly (i.e. they do not undertake large consultations themselves) and to initiate legislation as a last resort if MSPs believe that government policy is inadequate. They are also instructed by the CSG to let the government govern, arguably encouraged to play a minimal pre-legislative role and, particularly in the case of the budget, not well equipped to develop alternative legislation (see Cairney, September 2009: 47–8 for a discussion of the Finance Committee inquiry and new Financial Scrutiny Unit). Further, the Scottish Parliament's lack of a 'scrutiny reserve' for EU issues, combined with issues such as the release of the Lockerbie bomber, suggests that it often has no role to play before Scottish ministerial decisions are made (Cairney, September 2009: 40–1). The resources of committees and opposition parties are too thin on the ground to provide anything more than scrutiny and criticism (and there appears to be no appetite to boost the resources of

committees). It would therefore take much more than minority government to solve the wider problem of parliamentary constraint.

Scottish Parliament committees did not provide the 'motor of a new politics', particularly since Labour's front bench did not sit on them and Labour did not fully engage with them (in part because the former Scottish Executive does not want to scrutinise its own policies). Rather, key debates were played out and negotiations were conducted in plenary. Indeed, there seemed to be a *rise* in the propensity to overturn decisions reached in committee in plenary from 2007–11. In the 1999–2003 session the key indicator of respect for committee decisions was the non-Executive amendment of Executive legislation—less than 80% of these were reversed by a Scottish Executive (which had the majority to reverse them all), in part because committee assertiveness was linked to at least one vote by an MSP from a Scottish Executive party (Cairney, 2006: 203). From 2007–11, the parliamentary arithmetic was such that a Scottish Government bill may have been amended against its wishes at stage 2 merely because the Scottish Government and its supporting party did not have enough votes, only for this to be reversed in plenary at stage 3 when they did (see, for example, *The Herald*, 2009 on children's hearings). Or, in the case of the Graduate Endowment Abolition (Scotland) Bill, the whole bill may be rejected in committee only to be approved in plenary (Cairney, January 2008: 23). In many cases this is linked to the post-2007 abandonment by conveners of the status quo convention (in which conveners, when asked to provide a casting vote, would generally vote against an amendment to maintain existing policy). Instead, many used their casting vote strategically, undermining the convention that committee decisions are respected in plenary.

Minority Government and the Annual Budgets

The budget bill process took on a new significance under minority government. It became the most important legislative test because there was an obligation for a majority of the Scottish Parliament to agree to the bill each year. Effectively, for minority government to continue, the Scottish Government must seek agreement for its budget and a proportion of the opposition parties must find a way to reach a negotiated settlement. This process showed the best and worst aspects of minority government. First, it is certainly more significant than under coalition or majority government (it was a routine process from 1999–2007). Yet, there are still similarities: only government ministers may amend the bill; and, committees still tend to focus on limited

aspects of the budget, reflecting a lack of information and resources with which to conduct effective scrutiny.

Second, there have been concessions, but their overall importance is debatable; they did not contradict SNP policy but perhaps forced it to make choices among competing priorities. In the first budget, the Conservatives secured a greater commitment to fund new police officers and to revisit drugs policy (with the hope that the SNP would move further from harm reduction to abstention—chapter 8), independent Margo MacDonald secured special funding status for Edinburgh and the Greens secured a commitment to the 'carbon assessment' of spending plans (Cairney, May 2008: 16). In the second, the Conservatives secured a reduction in business rates, Labour secured funding for modern apprenticeships and the Liberal Democrats secured a vague commitment for the SNP to involve Parliament more in budget planning and engage with the Calman Commission on fiscal autonomy (the Greens lost a larger commitment to fund home insulation when their votes were no longer required). In the third, the Conservatives secured an independent review of Scottish Government spending in preparation for expected cuts following the economic crisis, the Liberal Democrats secured £20m for college places and £10m to the Scottish Investment Bank, and the Greens secured £12m towards home insulation and boiler schemes. In the fourth, the Conservatives secured modest spending increases on housing and business, while the other parties secured new targets on employment apprenticeships and college bursaries (BBC News, 2011). Overall, the concessions represent a small fraction of the overall budget (for example, Bell's 2011 calculation is a change of 0.04% in the 2008/9 budget).

Third, few parties took a consistent negotiating position. The Conservative party was the only consistent actor, seeking concessions in exchange for support. The Greens surprised many by voting against the second bill despite securing concessions. The Liberal Democrats opposed the first two bills (only to support the second bill when revised marginally) and abstained in the third. Labour abstained in year one for fear of causing the bill to fall, opposed in year two— contributing unwittingly to the bill's failure on the assumption that the SNP had secured Green support[5] (followed by support for the second bill when assured on modern apprenticeships)—and opposed in years three (citing the loss of the Glasgow Airport Rail link) and four (citing a mere 0.1% movement towards Labour concessions—see Scottish

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[5] A similar example of Labour and Liberal Democrat bafflement and miscalculation can be found in the failure of the Creative Scotland Bill (Cairney, September 2008: 15).

Parliament Official Report 9.2.11) when it was clear that it was safe to do so.

Finally, the failure of the second budget bill did not deserve the incredible amount of Scottish and UK attention it attracted. Rather, the process showed that the parties could work together very effectively when faced with an apparent crisis, and a new bill (almost identical to the defeated one) was passed the following week. The budget crisis showed that there was little appetite among the opposition parties for an impromptu election, particularly when Alex Salmond remained popular.

Conclusion

The Scottish Parliament is not a policymaking body. Instead, it is a scrutinising, revising and legitimising chamber with limited powers to scrutinise and revise. This point is most apparent under majority single party and coalition government, but is still the case under minority government. While the advent of minority government was accompanied by renewed calls for new politics in the spirit originally envisaged, it actually represented the last nail in its coffin. The Parliament has been a peripheral part of the Scottish policy process for the majority of its 12 year existence and majority government will only accelerate its declining importance.

In the first eight years, the Labour and Liberal Democrat coalition performed the role of a majority government, controlling the vote in plenary and committees and passing so much legislation that most committees devoted most of their activities to scrutiny (instead of agenda setting inquiries). There was little evidence of 'power sharing' and much more evidence of a concentration of power in the government combined with an adversarial atmosphere that we associated so much with 'old Westminster'. We might have expected a big difference in the latter four years, with the Scottish Government finally having to negotiate with opposition parties in the Parliament to secure its policy aims. Yet, with the exception of some high profile government retreats (on the independence referendum, local taxation reform and minimum alcohol pricing—all of which are set to return), there was a muted parliamentary effect. The Scottish Government produced and amended the vast majority of the legislation and found that they could pursue many of their aims without recourse to Parliament. Committees were no more effective. Indeed, at times, they seemed less effective because the main opposition parties seemed disinterested in committee business, party politics got in the way of business-like cooperation, or simply because they did not have the

resources or authority to find out how local and health authorities were spending public money.

In this light, it is time to stop kidding ourselves about 'new politics' for three main reasons. First, what we have, and have had for some time, is government and opposition. Second, the term breeds complacency. It makes it look like Scotland solved electoral and intuitional design before 1999 and that it is superior to its London counterpart. Instead, Westminster is also changing as an institution, while Holyrood's institution has not changed parliamentary behaviour. Third, 'new politics' is a heavy chain around the neck of Scottish politics, producing unrealistic expectations and therefore skewed evaluations of the success of new political practices. In the absence of such expectations, we may come to different conclusions about the first eight years of coalition government which provided *some* examples of new parliamentary influence, the ability of committees to be 'businesslike' and the ability of Scottish Executive ministers to negotiate and compromise rather than dominate Parliament. Similarly, we should be careful not to judge the experience of minority government too harshly. Although 'new politics' as originally envisaged has not materialised, the arrangements proved to be relatively stable, allowing the SNP Government to demonstrate an impressive degree of policy coherence and governing competence. The main caveat is that the minority years were marked by high SNP popularity, suggesting that it would not be in the interests of the opposition parties to destabilise minority government—particularly since they may be held responsible and would need to fund an extra, expensive, election campaign. It is therefore difficult to attribute the new system to a powerful new norm when an explanation based on party self-interest is just as convincing.

Equally unclear is the effect that minority government has on public policy. Eight years of coalition government largely produced a policy agenda driven by the government. Four years of minority government has produced a new relationship between the Scottish Government and Parliament, but this is not based on the eagerness on either side to mark a profound shift in responsibility for policy formulation and implementation. The initial drop in legislative activity from the Scottish Government was not met with an equivalent rise from Parliament. Committees did not produce more agenda setting inquiries. Rather, the Parliament became a forum for limited policy concessions based largely on the (usually uncontroversial) Government legislative agenda. The opposition parties also have a very limited ability to monitor Government policy activity that is not brought to parliament for

regular approval. We may find evidence of parliamentary power in other areas—such as in the anticipated reactions of the SNP when deciding which bills to pursue and when civil servants, developing policy, pay heed to what they perceive to be the parliament's (as well as the minister's) 'mind'. However, this is an area of public policy that has not been researched in great depth either in Scotland or in the comparative literature.

From the evidence that we have, it is difficult to identify enough policy influence for opposition parties to give them an incentive to eschew public office when it is available. This is not really an issue for the Conservatives who are not likely to be offered the chance to form a government and will therefore benefit more from minority government. However, the lack of policy influence enjoyed by the Liberal Democrats since 2007 seems to diminish the probability that it will accept minority government in the future (assuming that it recovers some of its vote and majority SNP governments do not become the norm). Strøm (1990) argues that minority governments are most likely in political systems, such as Scotland's, which possess strong parliaments. The argument is that a strong parliament gives an opposition party the chance to have policy influence. The party is therefore content to negotiate policy concessions, from a minority government that often needs its support, and wait until the next election produces a better result. Yet, the Scottish experience shows us that relatively high parliamentary power, when compared to other legislatures, does not translate into policy outcomes. In the absence of such a policymaking role the opposition parties may have little incentive to support minority government. Conversely, the SNP's experience may have convinced both major parties that they do not need to form a coalition government to satisfy their policy objectives.