

**PROFESSOR ALAN PAGE**

I welcome the setting up of the Commission and the opportunity to contribute to its deliberations. The following paragraphs provide a brief summary of the analysis in my *Constitutional Law of Scotland*, which was published in June last year.<sup>1</sup> I have not sought to update the analysis at this stage, but the election of a minority government in May of this year represents a potentially significant shift in the balance of power between the Scottish Parliament and the Scottish Government – a shift on which the Parliament as an institution should make every effort to build.

There is no question about the high expectations that were held of the Scottish Parliament after 300 years which the only ‘Scottish’ Parliament had been Westminster. The Scottish Constitutional Convention’s ‘powerful hope’ was the coming of a Scottish Parliament would usher in a way of politics that was ‘radically different from the rituals of Westminster: more participative, more creative, less needlessly confrontational’.<sup>2</sup> The Consultative Steering Group, which was set up by the Secretary of State for Scotland to recommend the procedures the Parliament might be invited to adopt, was struck by the consensus that existed ‘that the establishment of the Scottish Parliament offers the opportunity to put in place a new sort of democracy in Scotland, closer to the Scottish people and more in tune with Scottish needs. People in Scotland have high hopes of their Parliament, and in developing our proposals we have been keen to ensure that these hopes will be met.’<sup>3</sup>

There are various ways in which we might characterise the change sought by the Scottish Constitutional Convention and others at the time. What they have in common is the idea that that political power should be shared rather than concentrated in the hands of government, and that decisions should be reached by consensus rather than a majority. But whether we characterise the shift as one from a ‘power-hoarding’ constitution to a ‘power-sharing’ constitution,<sup>4</sup> or from a ‘majoritarian’ to a ‘consensus’ democracy,<sup>5</sup> we should not underestimate the challenge involved in bringing it about, or the continued attractiveness and hence likely persistence of the Westminster tradition of ‘winner takes all’.

Were that tradition to simply reassert itself, however, as has arguably happened, the result would be a Parliament that is closer to the people but otherwise little real change.

In approaching its task, therefore, the Commission should not confuse the high expectations that were held of the Scottish Parliament with their realisation in practice. Nor should it overlook the extent to which, especially during Session 4 (2011-2016), the question of how well the Parliament does its job became part of the battle between the political parties at Holyrood.

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<sup>1</sup> Alan Page, *Constitutional Law of Scotland* (Edinburgh, W Green, Thomson Reuter 2015)

<sup>2</sup> *Scotland’s Parliament, Scotland’s Right* (1995) 9

<sup>3</sup> Scottish Office, *Shaping Scotland’s Parliament: Report of the Consultative Steering Group on the Scottish Parliament* (December 1998) Foreword

<sup>4</sup> Anthony King, *The British Constitution* (OUP 2007) 50-51

<sup>5</sup> Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (2<sup>nd</sup> edn, Yale UP 2012)

Faced with an avalanche of criticism at the end of Session 3,<sup>6</sup> the Parliament embarked on what the Standards, Procedures and Public Appointments Committee billed as a 'thorough MOT' of its performance.<sup>7</sup> In a letter to all MSPs in July 2011, the Presiding Officer wrote: 'I am pleased to report that the conveners enthusiastically endorsed a reform agenda that should enable parliamentary committees to increase their agility, responsiveness and focus.'<sup>8</sup> As it unfolded, however, the Conveners Group's programme for change emerged as more about securing favourable media coverage for the work of committees than improving their effectiveness on holding the Scottish Government to account.

The setting up of the Commission, with the support of all the party leaders at Holyrood, acknowledges that the challenges the Parliament faces are not simply ones of media coverage. If the reputation of the Parliament's committees is to be improved, it will only be by doing the job they are supposed to do, and doing it well. What is needed now is a fresh look at the expectations of the Scottish Parliament in the light of the experience of the last 17 years, together with proposals for how that vision - or some lesser vision - might realistically be achieved.

In formulating recommendations for change, however, it will be important to bear in mind that procedural reform can only achieve so much. As the Calman Commission concluded: 'No doubt the system could be improved, but the drivers for change are likely to be less about the formal structures of the Parliament or its rules, and more about its culture and working practices, which are not easily influenced by external strictures. The committee system could work better than it does, but the motivation to achieve that can really only come from within.'<sup>9</sup>

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<sup>6</sup> See e.g. 'Lord Foulkes attacks "pathetic" Scottish Parliament' *Telegraph* 21 September 2010, Jackson Carlaw, 'It's time to realise the potential of the Scottish Parliament' (October 2010), Jack McConnell, 'Why the "pedestrian" Scottish Parliament needs overhauling' *Telegraph* 24 November 2010, 'Holyrood's "three wise men" back parliament overhaul' *Telegraph* 24 November 2010, 'Veteran MSP in call for-shake-up of Parliament' *Herald* 23 May 2011, Bruce Crawford, 'All parties needed to help change Holyrood' *Scotland on Sunday* 12 June 2011

<sup>7</sup> Standards, Procedures and Public Appointments Committee, 2<sup>nd</sup> Report, *Reform of Parliamentary Business Inquiry Phase 1 Report: Remodelling the Parliamentary Week* (SPP 57 2011) para 6

<sup>8</sup> Letter from the Presiding Officer to all members, 8 July 2011

<sup>9</sup> Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21<sup>st</sup> Century* (June 2009) para 6.43