

## **CIPFA SCOTTISH CONFERENCE**

**4-5 APRIL 2002**

### **THE SCOTTISH PARLIAMENT THREE YEARS ON: A PERSONAL PERSPECTIVE**

---

I am delighted to give this keynote address to the Scottish Conference, firstly because I am not being asked to talk about public audit in any of its forms, which makes a pleasant change; and secondly, because it gives me a privileged opportunity to reflect upon the most momentous changes in the government of Scotland in the last three hundred years.

On the eve of the Parliament, the late Donald Dewar spoke of “building a new kind of Scotland, with modern, relevant, open and transparent government”. He had a vision of a modern Parliament for modern times. Is the reality matching up to that vision?

As a Scottish citizen, voter, tax payer and user of public services I have my personal views, but I need to be careful. I am speaking today as the Auditor General for Scotland, and as Auditor General, I am prohibited from speaking out on policy matters, let alone matters of political controversy. As an auditor, I can of course resort to the objective evidence of what has happened and found my opinion on the facts as I find them. But even here there may be dangers. A Westminster MP said recently, with some insight I thought, that “Under New Labour the future is certain. It’s only the past that keeps changing”. Any

notion that the past is not certain is of course deeply, deeply worrying for an auditor.

It is only the past that keeps changing. The serious point is that our recollection and interpretation of past events is coloured by our personal expectations and experience. I recall a comment made recently to me by a very senior figure in the Scottish financial sector. He said that the Parliament had been a disappointment and that it had not come close to meet the expectations of the Scottish people. I asked him what his expectations had been at the time and I did not get a very clear answer. But I guess that his haziness about what he expected was experienced by most of us. What were the expectations of the Scottish people in July 1999? Did most of us expect a better government? Did we hope for a stronger sense of nationhood? Or improved economic performance? Did we expect better and more efficient public services? Were some of us hoping for a more effective and representative political class? Did some optimistic souls hope for lower taxation? How many of us had high on our priorities delivering a better deal for foxes? Perhaps rather more of us hoped for a better deal for the elderly and for teachers who are, of course, increasingly the same group. And I guess many of us hoped for a more open and inclusive society and a Parliament that would do its best to tackle poverty, poor health and inequality in Scotland. So, each and every one of us will have ill defined expectations, and our perceptions of whether our fledgling Parliament has done well will have been influenced by our personal priorities and experience.

However, despite the likelihood that our perception of the past probably does change, I will nevertheless resort to the tried and tested auditor's technique of

founding my opinion on the facts as I find them. I will do my best to offer a true and fair view.

I think we should start with that most basic of questions, “What is the Scottish Parliament for”?

Sir David Steel, as the Presiding Officer of the Parliament, gave a very down-to-earth answer to the question in the first annual report of the Parliament. He said that the three main roles are to pass laws, keep a check on the activities of the Scottish Executive, and act as a forum for national debate and for expressing the opinion of the Scottish people.

This is a commendably plain and concise answer, and I intend to use it in structuring my remarks. It is of course important to distinguish between the Scottish Executive, with its responsibility for framing policy and ensuring the delivery of public services, and the Parliament which passes laws and holds the Executive to account. I shall be concentrating mainly on the Parliament, but I shall refer at some points to the Scottish Executive.

Let me start with a mention of the systems and procedures of the new Parliament. These were, of course, designed from first principles. The recommendations of the Consultative Steering Group, and the Financial Issues Advisory Group of which I was a member, were adopted pretty well without alteration by the Parliament. It is also true to say that the systems and procedures have bedded down well. There have, of course, been some alterations along the way, but none of the changes have affected the core principles and recommendations made by the expert groups. If I may again

resort to the words of the Presiding Officer, Sir David Steel has said “There is clear evidence of a Parliament steadily going about its business”.

My first heading is the role of the Parliament in making laws, and I shall link this heading to the making of policy.

As the Parliament goes about its business, one of the most striking features is the sheer work rate of our new institution, and in this I include not only the Parliament and its committees, but also the Scottish Executive. By the end of March 2002, the Parliament had considered 49 new bills. Of these 38 had either become Acts of the Scottish Parliament or had received the Royal Assent. The list of new laws is too long to describe, but I have arranged for this list to be included in your delegate’s pack for you to browse through.

It is in this area that we have tangible evidence of the consequences of devolution. The Scottish Parliament has passed some 38 Bills in the time that would have allowed for no more than ten or so pieces of major legislation at Westminster. Indeed, the Scottish Parliament has passed important legislation on matters that have been around for years in Westminster awaiting Parliamentary time. I am told that this was true in relation to, for example, the Abolition of Feudal Tenure Bill and the Leasehold Casualties Bill. So the quantity of legislation is impressive, but what about the quality? In most cases it is probably too early to conclude whether any recent Act of the Scottish Parliament has had the intended effect. Sooner or later, some of it will be tested in the Courts. However, there is no doubt that the scrutiny of legislation in the Parliament has been intense. Take the Housing (Scotland) Bill as an example. The Parliament considered nearly 700 amendments either in the committee or in the plenary session. The Social Justice Committee spent over 24 hours in the

stage two consideration of the Bill, and the full Parliament set its own record of meeting for eight hours to pass the Bill.

One of the innovative features is the taking of public evidence on Bills. This is one of the most significant departures from the procedures of the Westminster Parliament. The Land Reform (Scotland) Bill is controversial, as we saw during the Stage 1 debate on 20 March. But it must be right in principle that the Justice Committee (2) should take evidence in public from the Law Society of Scotland, the land owning, farming and crofting interests, Scottish Natural Heritage, the representatives of recreational interests and other experts before making its report to the Parliament.

At this point, I can probably venture a reasonably objective point about the poll tax, since it has been consigned for some years to the history books. The community charge legislation, I think it is fair to say, neither reflected the general settled will of the citizens in Scotland, nor was it a piece of legislation that took full account of the challenges of implementation most of which were foreseen by expert opinion. I venture a question: would the poll tax legislation have survived scrutiny by the Finance Committee, or the Local Government Committee, or the Social Justice Committee of the Scottish Parliament? Could it have been enacted in Scotland in the form in which it was enacted at Westminster? I think the answer is probably in the negative.

In theory, the rigour of the scrutiny processes of the Scottish Parliament should reduce the risks of seriously flawed legislation, provided (and this is a very important condition) that expert opinion is carefully listened to and weighed in the balance. The Scottish Parliament is unicameral – that is, it has a single chamber. The committees are therefore an essential part of the checks and

balances within the Parliament. It is therefore very important that the committees should take proper evidence and weigh that evidence in the balance in reporting to Parliament, and it is equally important that the Parliament should carefully reflect on the reports from committees before passing laws.

I think we can conclude that, if the Parliament is there to make laws, then it got off to a flying start. But laws are a means to achieve ends, these ends being better public policy and better public services. Are we seeing the quality and relevance of public policy making in Scotland getting better?

As I have mentioned, I am not able to comment on specific policy initiatives. However, I have a real sense of a new vigour in public policy making in Scotland. The framing of policy is generally the responsibility of the Executive. Let me give one example of public policy making by mentioning the NHS in Scotland.

In the millennium year we saw the publication of “Our National Health: a plan for action, a plan for change”. Also in the millennium year, new ground was broken with the publication of clinical standards covering coronary heart disease, cancer and mental health. We also saw the Arbuthnott Report in that year which provided a new basis for allocating NHS resources across Scotland. In 2001 we saw the Millan Report on mental health, a strategy for nursing and midwifery, various reports concerning the implementation of the new NHS strategy and the publication of a series of National Care Standards. This year we have seen a proposal for a new quality and standards board for Scotland, and in the last few weeks, guidance on the implementation of free personal and nursing care in Scotland. Primary legislation in the health field has covered

education and disability, community care, mental health and the regulation of care.

Taking the health service as an example, my conclusion is that we have seen both vigour and rigour in the development of policies for public services. “Our National Health” is a clear strategic statement and, for the most part, the policy announcements and initiatives seem to relate back to the strategic priorities.

Let me now turn to the second role of the Parliament - keeping a check on the Executive.

Under this heading, I am of course, operating closer to home territory as the Auditor General. The Parliament is there to keep a check on the activities of the Scottish Executive, but it is important not to see this as a negative process. The process of holding to account must always be challenging, but it can also be constructive. The goal must be, again, fundamentally to improve the management and hence the quality of public services in Scotland. I have a concern that the notion of “keeping a check on the Executive” implies a rather negative role for audit, which centres on using the wisdom of perfect hindsight to find the mistakes and expose them. However, the creation of the Scottish Parliament, supported by new audit arrangements, has provided a unique opportunity to modernise the audit.

In my strategy, which I produced last year, I suggested that a fundamental role of public audit is to support the democratic procedures of the Scottish Parliament. Audit is there to provide objective evidence that can be used by the Parliament, mainly, but not only, by the Audit Committee, in exercising the scrutiny function. This is another area where the modern arrangements in

Scotland are an improvement on what went before. In the past, there was very limited scrutiny of public bodies in Scotland because all audit activity took place through the Public Accounts Committee in Westminster. I am told that there were only some two afternoons a year devoted to Scottish business, with the result that for senior civil servants, receiving a call to appear before the PAC was only marginally more likely than being struck by lightning. Now we have in Edinburgh an Audit Committee which meets fortnightly and other committees which also take the issue of scrutiny seriously.

The Audit Committee is the first and main recipient of reports from the Auditor General. I am in no doubt that the Audit Committee has been a success story. The Committee has taken a robust approach when necessary, to holding to account for performance weaknesses and management mistakes. You can find evidence of this in the various firmly worded reports that the Committee has produced over the last couple of years, and in your delegates' pack you should have a list of the major reports produced by the Audit Committee.

However with my encouragement, the Committee has also sought to engage in supporting continuous improvement in public services in Scotland. Whilst accountable officers and senior managers may sometimes have to be criticised for failings, it is also important to create the right incentives to improve the performance of public bodies in Scotland. In this area, we again see the Scottish Parliament departing from Westminster practice. The Audit Committee of the Scottish Parliament has recognised that the scrutiny of performance is a process that may run over many months or even years. The Committee has now received a number of baseline reports from the Auditor General, which give a snapshot of an organisation or a sector's performance at a point in time. Having given general consideration to the issues in a baseline report, the Committee



lends its support to further work on continuous improvement. I give a commitment that, after a suitable period, I will prepare a further detailed performance report for consideration by the Committee. At that point, individual organisations will be named and accountable officers and senior managers can expect to be asked to appear before the Audit Committee to give evidence. Later this year, for example, I will be producing follow up performance audit reports on NHS hospital cleaning and on GP prescribing in the health service. These arrangements are unique to Scotland. They provide both a challenge to managers where there are shortfalls in performance but the arrangements also offer incentives to improve things quickly before managers are held to account by the Audit Committee.

I am in no doubt that devolution has brought a healthy increase in the quantity and the quality of democratic scrutiny in Scotland. Accountable officers in the major spending blocks, notably the health service and further education, have already made several appearances before the Audit Committee and the chief executives of NDPBs, who also carry “accountable officer” responsibilities, have also given evidence. The Audit Committee has been assiduous in following up on issues, particularly in the health service and further education. And there is clear evidence that the scrutiny process is achieving positive outcomes. For example, the Scottish Executive recently accepted all the recommendations arising from two reports of the Audit Committee which examined governance and management issues in the further education sector.

Of course the Finance Committee and the subject committees of the Parliament also exercise a powerful scrutiny role.

I think the developing role of the Finance Committee is particularly interesting and significant. An important part of the vision of FIAG was that the Parliament should have a real say in the budget setting - in other words, that the budget process should be less dominated by the Executive, in comparison with the Chancellor's predominant role in the Westminster budget. With this end in mind, a three-stage process was devised starting with a discussion of strategic priorities, moving on at a later stage to consideration of detailed proposals, and finally leading to the stage of legislation on the budget Bill.

FIAG was realistic about this, in that the Group recognised that the new arrangements, which were so radically different from Westminster experience, would take time to bed down. I think it is true to say that, generally speaking, the Finance Committee has not yet taken a strategic approach to budgets. The Committee has devoted considerable time and effort to the detail of the budget, but it is questionable whether the time and effort devoted to this has been adding as much as might be expected to the quality of decision-making. Their task has not been helped by deficiencies in the quality and usefulness of the information supplied by the Executive. In all fairness, the Executive fully recognise this and they are committed to improvements here, some of which have already been made.

One of the most attractive and refreshing features of the new Parliament is the general willingness to challenge and review its own ways of working. Very commendably, the Finance Committee has recently started an exercise to review and improve its own effectiveness.

In my opinion, this is an extremely important and promising development. Indeed, I might be tempted to go further, and say that consolidating the role of

the Finance Committee is one of the most important issues within the Parliament. I have already mentioned the very impressive legislative programme already completed or in the pipeline. Within that legislative programme there are some significant expenditure commitments. It has been very fortunate for the Parliament that its early years have coincided with a period of growth in public expenditure. So far, there have been few very hard decisions about opportunity cost and trade offs. However, as biblical writers and economists tells us, the seven fat years are all too likely to be followed by the seven lean years. In my opinion it would be desirable to move towards a more strategic approach to financial scrutiny to ensure the efficient and effective spending of public money over the long term.

What do I mean by this? I have four suggestions. Firstly, the Parliament should encourage the Executive to continue to develop the annual expenditure report so that there is continuous improvement in the information about the outputs, and where possible the measurable outcomes, of expenditure programmes.

Secondly, the Parliament might consider requesting of the Executive an annual performance report relating back to the budget.

Thirdly, the Finance Committee should be able to take a stronger line on insisting on an improved quality of analysis in the financial memorandums that accompany Executive Bills. The Finance Committee should be able to commission an independent check on the robustness and completeness of the numbers and the assumptions in the financial memorandums accompanying any Bills where large amounts of funding might be involved.

My final suggestion is that the Finance Committee and the Audit Committee could work more closely together in preparing a strategic plan for the systematic scrutiny of how public money is used. Let me call it the scrutiny plan. The performance audit programme of Audit Scotland could take the scrutiny plan into account. If appropriate, performance audits could examine areas of expenditure which are due to be scrutinised, in order to provide supporting objective evidence for the scrutiny process.

The scrutiny plan should give adequate attention to a number of questions:

- Are new projects and programmes delivering the expected outputs and outcomes?
- Are programmes in the base budget delivering acceptable outputs and outcomes, and are they delivering continuous improvements?
- Are unavoidable pressures on base budgets being properly resourced? In its early life, the Parliament has had, understandably, an interest in developing new and improved services. It is clear from the audit reports that I receive, that there are some significant pressures building up in the base budgets of major service providers, such as NHS bodies. It is important to ensure that the financial pressures of sustaining current services are rigorously analysed and taken into account.
- What is the scope for economy and efficiency improvements in the public sector? Is there a political will to address challenges in these areas?
- What are the implications of longer term demographic, social and economic trends for the Scottish budget? (for example, the ageing population and declining economic activity rates.)

- More specifically, what do social trends tell us about the impact of government policies and spending programmes? For example, six social indicators that seem to be moving in the right direction include life expectancy, deaths from cancer and heart disease, rates of smoking, overcrowding, accidental deaths among children, and pupils without qualifications. Another half dozen moving in the wrong direction are obesity, alcohol and drug misuse, prison population and numbers in young offenders institutions, mental health problems, death rates from suicide, accidents and homicide amongst young men, and traffic congestion. I suggest that a key part of budget scrutiny should be to ask the Executive about the extent to which spending programmes are intended to influence outcomes such as these.
- Finally, I suggest that the Parliament should be interested in finding out the level of satisfaction with public services, and whether people becoming more or less satisfied.

Those of you from a local government background will, of course, spot the obvious parallel with Best Value. It is only right, in my opinion, that the Parliament should find ways of systematically scrutinising the major areas of expenditure.

Neither the Executive nor the Parliament is, of course, very like a local authority. The Parliament does not spend very much money directly, and within the Executive most of the budget is allocated to councils, health bodies, educational bodies and various NDPBs and agencies for them to spend. If therefore the Finance and Audit Committees are to scrutinise spending effectively they must be clear who is spending the money and what the performance targets are. To help inform this thinking, Audit Scotland is

preparing for me a report which I shall lay in the Parliament. This report will describe the performance management and accountability arrangements which are currently in place across all departments of the Executive and public bodies in Scotland. I hope that the report will assist in a better understanding and inform the development of the scrutiny arrangements.

Local government consumes the largest single slice of the Scottish spending cake. The arrangements for audit and holding to account have been carefully crafted to recognise the democratic and legal position of councils and I have been an advocate and supporter of these arrangements, including a clear and continuing role for the Accounts Commission. We have, however, to recognise that the contribution of local government is central to delivering the major policies and priorities of the Executive and the Parliament. Councils continue to provide the core services such as education and social work and, of course, they are increasingly seen as leaders or major players in joined-up policy service delivery. The boundaries in the public sector are being softened in the push for better service delivery and this poses some interesting and important questions about appropriate ways in which the Parliament, supported by the audit process, holds local government to account for its contribution to the key policies, priorities and public services in Scotland.

I have not time to say much about the role of subject committees which, along with the Finance and Audit Committees, play a central role in the scrutiny process. George Reid, the Deputy Presiding Officer, has described the committees as the “engine room” of the Scottish Parliament. This is not a bad metaphor and if I may extend it, the engine is being run with the accelerator hard on the floor. The workload upon MSPs, particularly but not only in the committees, is very considerable indeed. If I may be permitted a personal aside,

I am dismayed that the media image of what MSPs do is frequently so negative and ill-informed.

Neither have I time to say a great deal about Sir David's third role of the Parliament - acting as a forum for national debate and for expressing the opinion of the Scottish people. Before I conclude, I would like however to touch on the impressive record of the Parliament in making the principles of openness and accountability a reality. There is an excellent website and the Parliament leads the way in its teaching materials for education about the Parliament. As I have described, the committees go to great lengths to take public evidence before reporting on draft legislation and concluding their scrutiny reports. And committees have been willing to take the time and trouble to meet occasionally outside Edinburgh.

There is encouraging evidence that the public are interested. The website takes 760,000 hits every month. There are queues each week for seats in the public gallery for First Minister's questions. When the Audit Committee took evidence in Dundee on management failures in NHS Tayside, both the City Chamber and a large overspill room were filled to capacity, and there were complaints that even more public accommodation should have been provided.

There is also encouraging evidence, from the Scottish Social Attitudes Survey 2000, that a clear majority (over 70%), of people in Scotland believed that the Scottish Parliament should have most influence over the way that Scotland is run and (66%) thought the Parliament should have more powers.

In conclusion, are we seeing Donald Dewar's vision become a reality? I think we are seeing the emergence of a Parliament that is putting in place modern

ways of working and a practical commitment to openness and transparency. As I have mentioned, people want the Parliament to be influential. However, there is a worrying gap between people's wishes and their perception of the reality, with a majority believing that the Parliament would make no difference to the way that ordinary people have in how Scotland is governed, and there are declining public expectations that the Parliament will improve service standards.

However this is a snapshot, not a trend. The ambitious legislative programme, which the Parliament has completed in a remarkably short space of time, is intended to improve the lives of many people in important ways. The procedures of the Parliament, whilst they can be improved, are basically sound and fit for their purpose.

If I may end on the most important thought which I would wish to leave with you, it is that the scrutiny arrangements of the Parliament should be strengthened in the ways that I have outlined. The duty to scrutinise the Executive and public bodies in Scotland is, in my view, central to the case for having a Scottish Parliament. The scrutiny powers are as important as the policy making and the law making powers of the new Parliament in creating a modern, open and accountable system of government. In my opinion, the credibility and standing of the Parliament will be further enhanced when it is seen by the public to hold the Executive and public bodies to account in a robust and fair way which looks after the interests of the people of Scotland.

Robert W Black

Auditor General for Scotland

April, 2002