Scrutiny of Legislative Competence and Other Devolution Issues – a Means of Political Control by Whitehall, An Expansion of Judicial Oversight of Governmental Behaviour to include the Constitutionality of the Actions of Elected Legislatures, or a Final Nail in the Act of Union's Coffin?

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“ O would, ere I had seen the day
that treason thus could sell us,
My auld grey head had lien in clay,
Wi’ Bruce and loyal Wallace!
But pith and power til my last hour,
I’ll make this declaration;
We’re bought and sold for English gold -
Such a parcel of rogues in a nation.”

Robert Burns,
from ‘Fareweel to a’ Our Scottish Fame’

“Weary with centuries
This empty capital snorts like a great beast
Caged in its sleep, dreaming of freedom
But with nae belief …”

Sydney Goodsir Smith,
‘Kynd Kittock’s Land’

The Labour Party's landslide election victory in 1997 gave a popular mandate for constitutional reform. However, the honeymoon period has worn off, and the Government is now being judged on results. One of its initiatives for constitutional reform, an elected mayor for London, has descended into abject farce. The Scottish Parliament has drawn criticism, north and south of the border, for sleaze, and its disputes over working hours, location, building and other expenses from a number of sources, even those traditionally loyal to the Labour party cause.

Whilst there is no question that the Scottish Parliament created by the Labour government is anything other than a subordinate, non-sovereign legislature, many have argued that the means by which Holyrood was created have served to compromise its ability to act[1].

One powerful argument for the lack of 'success' of the Scottish Parliament is that the drafting of the statute establishing was done in such a way as to minimise the consequences on perceived constitutional principles, serving to make it particularly complex, and beyond the understanding of the general public, and even, some argue, many MSPs. This proposition would seem to gain a great deal of support in the way the Parliament's competence to legislate is drawn. The 1978 scheme for devolution explicitly provided for the areas within which the Parliament would have been competent to legislate. The system provided for by the Scotland Act 1998 rather, details 'reserved matters' which remain the preserve of the UK Parliament, the idea being that the Scottish Parliament is competent to legislate in all other matters, with some exceptions, most notably where any proposed legislation would be in contravention of provisions the relating to Human rights or existing European Community law[2].

Another argument is that the Act is drafted so as to maintain as much direct control as possible by the Government in Whitehall, all but eliminating the possibility of the Parliament deviating from UK wide policy initiatives. At present, any legislation proposed by the Scottish Executive has certainly been given approval in advance by the Prime Minister's Office in Downing Street, indeed, that is if it has not been drafted at its initiative.

The introduction of an element of proportional representation into the electoral system of the Parliament ensures that within the current political climate, no one party will be able to form a majority Government. While for the time being this has forced the Labour party to make significant policy concessions, most notably in the area of Student Tuition Fees, in order to maintain a coalition with the

[1] Scotland Act 1998, section 28 (7) explicitly reserves the power of the UK Parliament to legislate for Scotland
[2] Scotland Act 1998, section 29 (1)

Liberal Democrats, it is possible that a Scottish Executive in future may contain some representation by the Nationalists. If current opinion polls are to be believed, this eventuality may not be as far off as it might seem.

Whilst the parameters of the constitutional framework of the Scottish Parliament are rigid, the UK constitution remains flexible. As such, a boisterous, 'rabble-rousing' Scottish Parliament, that causes annoyance to an unfriendly Government in London, may find it attracts further initiatives for constitutional change in order to limit its competence, Acts of the Westminster Parliament superceding its actions, or indeed its very existence being terminated. Whilst this last move would, at present, be politically disastrous for the Government, playing into the hands of the Nationalists, and attracting criticism from the other parties, if the popular dissatisfaction with the Scottish Parliament's activities persists, then it would represent an easy way out for a UK administration, particularly a Conservative one, given their waning support in Scotland[3].

An expressed wish of the Government was that the framework under which the allocation of powers to the Scottish Parliament was made, with the reservation of certain matters, over which Westminster retained exclusive competence, and the devolution of other matters, would be the best way of "ensuring maximum clarity and stability[4]". It was thought that this method would result in fewer disputes coming before the courts than the 1978 Act framework would have, but it was still recognised that there would be questions as to the limits of the Parliament's competence would be raised, and as such, the means to allow the resolution of such disputes were included in the Act. There are such provisions for scrutiny during the enactment of a provision, as well as for measures that have already entered the statute book.

Scrutiny Prior to Enactment: The Scottish Executive and the Presiding Officer

The provisions for scrutiny during the enactment process are detailed and complex, presumably in order to avoid, as far as is possible, challenges occurring at a later stage. Section 31 of the Act provides for scrutiny by the member of the executive responsible for the Bill, who must state that in their view, the provisions of the Bill are within the Parliament's legislative competence[5]. This provision, one could argue, is somewhat redundant, as it is highly improbable, that a Minister would go to the effort of putting a Bill before the Parliament, and then make a decision to the effect that the Parliament is not

[3] Or will the Ayr by-election represent a revival in the Scottish Conservative Party's fortunes?
[4] Scotland's Parliament Cm 3658 (1997), at para. 4.3
[5] Scotland Act 1998, section 31(1). The form of such a statement is set out in the Parliamentary standing orders. (s. 31(3))

competent to enact it. The only possible scenario for this that comes to mind is one of a Scottish Executive dissatisfied with the legislative powers it possesses, trying to score some political points.

The Parliament's Presiding Officer is to decide, and make a similar statement, on or before a proposed Bill's introduction, as to whether he is of the opinion that it would be within the legislative competence of the Parliament[6]. It is thought that a statement made by the Presiding Officer to the effect that the proposed Bill was outwith the Parliament's competence, would result in its subjection to the Act's other scrutiny provisions.

The Judicial Committee of the Privy Council and the Law Officers

Foremost among these is the power of the Scottish Law Officers to refer questions of the legislative competence of the Parliament to the Judicial Committee of the Privy Council for decision[7]. No referral may be made if the Law Officer in question has already notified the Presiding Officer that he does not intend to do so, unless the Bill has been subsequently reconsidered and approved by the Parliament under s. 36 (5)[8]. Any referral must occur within four weeks of the Bill's initial passage through Parliament, or within four weeks of any reconsideration and approval of it[9]. Any decision made by the Judicial Committee, on such a reference, or under any other proceedings under the Scotland Act, is binding on all courts other than the Committee itself[10]. Any act progressing into law after being ruled competent by the Judicial Committee is thus immune from challenge on grounds of legislative competence in a lower court at a later stage. Some have questioned the legitimacy of such a provision, given the fact that traditionally, abstract decisions based on hypothetical facts, such as those made by the Judicial Committee in such instances, have, in the past, been regarded as non-binding *obiter*.

The applicability of the Judicial Committee as a forum for such decisions has also been questioned. It is composed of 109 members, 52 from other Commonwealth countries. In cases relating to the Scotland Act, the panel's is to be entirely composed of UK judges who have held the office of a Lords of Appeal in Ordinary, but importantly there is no provision guaranteeing representation by Scottish judges[11]. The expectation of the Government is that this question will be adequately addressed, the idea being that a

[6] *supra*, s. 31 (2)
[7] *supra*, s. 33 (1)
[8] *supra*, s. 33 (3)
[9] *supra*, s. 33 (2)
[10] *supra*, s. 103 (1)
[11] The White Paper does suggest at the Senior Law Lord's discretion, where appropriate, the Judicial Committee could sit in Edinburgh

convention will develop, similar to that existing in relation to Scottish appeals in civil cases to the House of Lords, that at least one Scottish judge will sit in every such case[12].

The fact that the Scottish Law Officers may refer such issues is, in itself of some interest. The Scottish Law Officers, with the exception of the Advocate General, who is a member of the UK government, are appointed by the Queen, on the First Minister's recommendation, which is in turn subject to Parliamentary agreement. They are not required to be members of the Parliament, but their decisions are to be accountable to it. One of these posts, that of Advocate General, a creation of the Act, is designed so as to be a representative of the UK Government[13]. He is responsible for the powers relating to 'reserved matters' that were previously the responsibility of the Lord Advocate, as well as being the UK Government's advisor on Scottish legal and constitutional affairs. Potentially of great importance is the fact that he or she is an appointee of the UK Government, and as such, the power to refer questions of competence where there is an element of doubt, should there be differing administrations in Edinburgh and London, could be of great importance as a means to challenge Bills of the Scottish Parliament by Whitehall. Whilst such action might not be successful, it could be useful as a delaying mechanism at the very least. Such time could be particularly handy if there was a need to prepare legislation in Westminster in order to supercede a Scottish Act.

The Lord Advocate's position in general has been questioned, not helped by Andrew Hardie's sudden and unexplained resignation form the post. The holder of the post is a member of the Scottish Executive and as such a political appointee, made from the Scottish Bar. Nevertheless he is expected to form an independent view over these matters of competence. An important question as to the legitimacy and effectiveness of his power to question the Parliament's competence to act may be raised. If his views differ from those of his colleagues, even in the absence of a question being raised as to competence by the Parliament's Presiding Officer, he would theoretically be capable to bring proceedings before the Judicial Committee. This is probably unlikely in the foreseeable future, given the Labour party's close central control, a far more likely outcome being resignation. Could such an occurrence mark the first steps towards a convention of Ministerial Responsibility within the Scottish Executive, mirroring that in existence in Whitehall?

[12] This matter was raised in the Scotland Act's House of Lords Committee stage. 593 HL Official Report (5th series) col. 1984, 28/10/98

[13] *supra*, s. 87

The Powers of the Secretary of State

The office of the Secretary of State for Scotland was created in 1926, and its role, along with the functions and importance of the Scottish Office gradually increased until devolution in 1999. The White Paper envisaged a role, prior to Devolution, for the Secretary of State of ensuring the passage and implementation of the legislation establishing the Parliament, with the holder of that position then fostering its initial development. As the occupancy of this position changed, once Donald Dewar became First Minister, and Jack Reid taking over the UK Cabinet post, as did its role. The White Paper recognised this, and spoke of the Secretary of State becoming responsible for "promoting communication between the Scottish Parliament and Executive and between the UK Parliament and Government on matters of mutual interest; and on representing Scottish interests in reserved areas"[14].

A potentially more important role is that conferred by the Scotland Act. Section 35(1) empowers the Secretary of State to intervene to prevent a Bill from being enacted into law, by making an order prohibiting the Presiding Officer from submitting it for Royal Assent. He may do so on two grounds. Firstly, if he has reasonable grounds to believe provisions in the proposed legislation are incompatible with the interests of defence or national security, or with any international obligations. Secondly, he may make an order if the Bill's provisions "make modifications of the law as it applies to reserved matters, which he has reasonable grounds to believe would have an adverse effect on the operation of the law as it applies to reserved matters". In any such order the Secretary of State must identify the Bill, the offending provisions and state the reasons for making the order. Importantly, he is not obliged to refer the matter to the Judicial Committee[15]. In making an order, he is constrained by the same time limits and procedural requirements, essentially, that apply under the other scrutiny provisions.

One would expect that this power will be of most use to Whitehall in ensuring compliance with international obligations, notably in respect of European Union obligations, and broader international commitments such as those under membership of the World Trade Organisation. An example, of an absolute worst case scenario, might be the not inconceivable circumstance of a non-'New Labour' administration implementing policies of protectionist character toward industry, that would be incompatible under international agreements. Whilst Import and Export control is a reserved matter under head C5, there might be a need for Whitehall to intervene under this power to ensure the UK's international obligations are complied with.

[14] Scotland's Parliament, Cm 3658 (1997), at para. 4.12
[15] *supra*, s. 35(2)

As with the powers of the Law Officers, it is unlikely that this power will be tested in the lifetime of the present UK and Scottish Parliaments, or possibly even in the next one. There is some doubt as to how the provision will be operated when the time comes. Whilst so far, this essay has proceeded on the basis that the responsibility will be taken on by the Secretary of State for Scotland, the wording of the Act is not so specific. Section 35 refers only to the Secretary of State, and whilst the present consensus of opinion is that co-ordination of this power will almost certainly be carried out by the Scotland Office, general constitutional practice, where an Act conveys powers or functions on 'the Secretary of State', is that any of the UK Government Secretaries of State may act. Many of the reserved matters are exercised by Government departments other than the Scotland Office. It is not inconceivable that some Ministers might become more aggressive than others in defending their remit, where there is not the cohesive approach between London and Edinburgh there is today.

The Effects of the Pre-enactment Scrutiny Provisions

The effects of these provisions are that the Presiding Officer must not submit a Bill for Royal Assent, where the option of making a referral to determine its competence to the Judicial Committee is open to the Law Officers under the provisions of Section 33, effectively creating a four week hiatus after the Bill's passage through the Parliament. Similarly a Bill may not be submitted for Royal Assent if a referral has been made, and the Judicial Committee has not submitted a decision upon it, or where the Secretary of State has the power to make an order, under his powers to intervene[16]. Furthermore, where the Judicial Committee has made a ruling to the effect that the Bill, or aspects of it, is not within the Parliament's legislative competence to act, the Presiding Officer is barred from seeking Royal Assent for the Bill in its unamended form.

Scrutiny of Acts of the Scottish Parliament and the Behaviour of the Executive

In the drafting of the Act, it was recognised that despite the extensive provisions for the testing of legislative competence, the issue was likely to arise in relation to Acts that were already enacted into law. The Act empowers the courts to consider questions of legislative competence. Similarly the courts may consider questions of competence to act within the Scottish Executive as well as creating a detailed framework for assessing disputes over the division of powers between the UK and Scottish Executives,

[16] *supra*, s. 32 (2)

and the resolution of such disputes between the two Parliaments. Thay may also consider the compatibility of the actions of these bodies with the Human rights provisions of the Scotland Act.

The Act details a set of common procedural rules for the courts' examination of such devolution issues, whichever tribunal they may be brought before in the UK, whether they arise on the request of the Law Officers, or in the course of conventional litigation. This is to ensure a level of certainty and consistency in decision making, a desire reflected in the fact that there is a single body for appeals, the Judicial Committee of the Privy Council.

Schedule 6, by virtue of section 98, of the 1998 Act deals with 'devolution issues'. These are defined in terms of six questions. As a general summary, these are questions as to whether an Act, or part of an Act, of the Scottish Parliament is within its legislative competence; whether any action of the Executive, including the Lord Advocate, is competent under the devolution arrangement[17]; whether such action by the devolved bodies is compatible with the provisions relating to Human rights, and issues relating to reserved matters. In assessing these issues, the courts will be forced to consider questions of interpretation, balancing the meaning of provisions in the Act of the Scottish Parliament in question, with the provisions of the Scotland Act.

The Scotland Act does not specifically determine the court within which questions of competence may be initially raised; neither does it suggest the possible parties who might bring such an action. One outcome suggested by some is that the UK government may bring such proceedings, where the other mechanisms for ensuring an Scottish Act is within the Parliament's legislative competence have failed, creating a situation, not dissimilar that has occurred in the past between Member States of the European Union and the European Commission.

Devolution issues, most notably in examining the compatibility of the Scottish Executive's devolved powers with the Human rights provisions of the Scotland Act have so far been raised in many different types of proceedings. This new level of judicial review of administrative action has seen accepted standard procedures of Scotland's criminal justice system challenged, and ruled incompatible with Rights under the European Convention. This has served to create an element of legal uncertainty in our system of justice that has been criticised and exploited in equal measure. Rulings on the compatibility of police procedures in drink-driving and speeding cases, as well as the landmark decision on the legality of the appointment and use of Temporary Sheriffs, look certain to be the first of many.

[17] As defined by s. 54 (2), *supra*.

A New Role for the Judiciary?

Lord McCluskey's comments in his 1986 Reith Lecture, reiterated in a Sunday newspaper in February this year, to the effect that Human rights legislation provides "a field day for crackpots, a pain in the neck for judges and a goldmine for lawyers" can reasonably be described as somewhat extremist, but nevertheless, they are not entirely without merit. In the past, when opportunities to challenge the actions of Government before the courts have opened up, they have been heavily litigated. It is likely that aggrieved parties will litigate the subtleties in cases of devolution issues, perhaps to the neglect of substantive issues[18]

The volume of domestic law and reparation cases being brought before the courts has fallen in Scotland, in recent years. There has though been a corresponding rise in the number of public law cases being brought before the courts. The introduction of the possibility of devolution issues being judicially reviewed by the courts will probably have the effect of further fuelling this 'trend'.

Important questions have been raised as to the effect the expanded role of the courts will have on the traditionally perceived constitutional position of the judicial system. Many expect that the media will bring enormous pressure to bear on the judiciary in their handling of issues that will often be of considerable delicacy and importance. The balancing act that needs to be struck in the handling of Human rights law stemming from Strasbourg case law may be difficult for the judiciary to make in the short term, given their relative inexperience in the area, and lack of the accepted practices that have developed over time in other areas of the law. As such, the courts, in handling devolution issues, particularly that of Human rights law, face the challenge of addressing matters brought before them as justiciable, legal problems, and not as political issues. This will be particularly hard if matters come before them that are simply political issues disguised as legal problems. Even so, they may end up in the unenviable position of the Supreme Courts of other western nations, notably the U.S.A., where decisions are heavily criticised, no matter what their outcome and significance.

A rethink of the means by which judges are appointed may also have to occur in order to cope with the judiciary's changing role. As they become more involved in the political aspects of formulating the law, through their handling of sensitive issues in their expanded remit for judicial review, their

[18] If one needs an illustration of such behaviour, one could look to Northern Ireland, where the threat of litigation is a hazard of the day to day life of Government departments. The added burden of the equality principle introduced to counter the effects of sectarianism in Government action is a real concern for administrative bodies there, particularly those whose work

behaviour will become subject to greater scrutiny by the media. The public correspondingly will become more aware of the constitutional issues at stake, and there may be growing demands on their behalf for greater accountability in their appointments. Whilst suggestions that the procedures for judicial appointment should be changed have so far been headed off by the Lord Chancellor, it is uncertain how long the present state of affairs will remain.

Yet despite its failings, the ability of aggrieved parties to petition the courts to test the behaviour of the Executive and Legislative on grounds of Competence and compliance with Human rights obligations, is a profoundly desirable development, insofar as it effectively represents a written, and arguably entrenched, Bill of Rights, that are justiciable before the courts. One particularly favourable development is that it may serve to make the actions of executive government more open and lower the potential for arbitrary conduct. The expanded, more 'newsworthy' role of the courts may mean that their legal decisions may act as a catalyst in promoting political dynamism in areas where acts of the UK and Scottish Executive and the Scottish Parliament are unfair[19].

These mechanisms of scrutiny of legislative competence, and testing of compatibility with Human rights conveyed under the European Convention, have arguably marked the first steps towards the creation of a real judicial system of the testing of the constitutionality of governmental action, as opposed to traditional 'check-list' approach to judicial review and oversight of administrative action based on compliance with accepted standards of behaviour [20]. Arguably, taking judicial oversight of governmental action to a new level in this way also marks a challenge to the traditionally narrow perception of the rule of law, criticised, for example, by Harden and Lewis[21]. The competence to legislate held by the Scottish Parliament is constricted not only by the 'reserved matters' imposed by the Scotland Act, but also by a set of fundamental values, hitherto only used as a guide by the Scottish courts in assessing cases, that are now judicially enforceable by aggrieved parties.

The effect of questions of devolution issues expanding the courts' role in the process of law making may mean that its practice and structure could indeed alter. A polarisation of the procedures and treatment of cases of judicial review by the Scottish courts is not inconceivable. Traditional judicial review proceedings, with their tests of compliance with accepted standards of executive behaviour, may

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is not a devolved matter, and operate elsewhere in the UK. Currently, the operation of this provision is being scrutinised in Whitehall to ensure the provision does not conflict with other constitutional reform provisions.

[19] The option of challenge of Westminster Acts under the provisions of the Human Rights Act 1998 will be open from October this year

[20] The same applies already in respect of Human rights to the currently suspended Northern Ireland Assembly, and indeed the rest of the UK under the Human Rights Act 1998 which enters into force in October this year

be marginalised and exist on a separate level from the new standards, based on interpretation in cases of competence and testing of proportionality and justifiability of behaviour in Human rights cases. Specialisation could even be seen within the Court of Session with members of the bench taking charge of these politically charged cases[22].

Returning to the question of the procedures for judicial appointment, for a moment, it is not unlikely that given the Judicial Committee's role as a supreme overseer of the behaviour of Government in the United Kingdom, with the implementation of the Human Rights Act, may see its composition challenged publicly, or even legally under the very legislation that empowers it to act. Could the situation arise that appointments to it might be carried out in keeping with the procedures in force for the US Supreme Court, with the 'smoke-filled rooms' being replaced by public hearings before a committee? One extreme consequence might be the Judicial Council 'mutating' into a dedicated constitutional court, in a process similar to that which occurred in the French public law system. If this did occur, then there surely would have to be greater accountability in its appointment procedure. This pressure for change will only increase, once the Human Rights Act extends this review process to Acts of the UK Parliament.

A Leash to Restrain Opposing Political Forces?

An interesting effect of the provisions for judicial and other forms of scrutiny, both before and after the enactment of legislation may be the 'judicialisation' of the political process in the Scottish Parliament. As an opposition to the enormous potential for judicial review of the Parliament's Acts, and the Executive's behaviour that the Scotland Act creates, there is a real potential that arguments of the constitutionality of proposed bills to may begin to dominate the debate stages of proceedings in the chamber. Could the Presiding Officer begin to question Bills' competence as a matter of course, triggering greater scrutiny, in order to prevent this, and provide for increased legal certainty[23]?

A change in the balance of power at Westminster is a very potent political threat to future action by the Scottish Parliament. Whilst it is relatively unlikely that this will occur after the next general election, given the present disarray and poor, uncharismatic leadership in the Conservative party, it is a real

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[21] *The Noble Lie*, Ian Harden and Norman Lewis, 1986

[22] The emergence of such a trend may have occurred already, with Lord McCluskey effectively preventing himself, and arguably Lords Kirkwood and Hamilton, from presiding over future cases relating to human rights cases

[23] This is already the case in France, where the power of questioning competence to legislate in particular areas is open to elected representatives at the pre-enactment stage. This power has become an important weapon in the arsenal of opposition politics

possibility. If this occurred, and a Labour dominated Parliament and Executive continued to sit in Edinburgh, the mechanisms for scrutiny of legislative competence might be used as a party political tool, in order to prevent, where possible, policy initiatives contradictory to those promoted and legislated for in Whitehall and Westminster.

One means of dispute resolution that can always be relied on by Whitehall, if the scrutiny provisions, designed according to the White Paper, for maintaining an open and constructive relationship between Edinburgh and London is money. The Parliament's tax 'varying' power is largely illusory, and revenue established by its optimum use would amount only to a tiny fraction of the devolved administration's budget, not to mention spending on reserved matters. As such, the threat by Whitehall of a decision to reduce the level of funds reaching the Scottish Parliament is perhaps a more important means of political control than the Scotland Act's provisions for dispute resolution.

The Significance of the Act of Union?

T.B. Smith contended, in relation to Article 18 of the Treaty of Union, that the matter of interpreting the 'evident utility' test was a matter for 'Scotsmen', by which he meant Scottish judges. The matter has always been treated softly by the judiciary, who have come to the conclusion that rather than it being their responsibility, in is the job of politicians to make such a determination[24]. The matter of assessing such changes in the law, one could argue is now firmly back in the charge of the courts. The possibility of appeal to the Judicial Committee on such matters, or a reference by the courts or other parties on such matters relating to Scotland's legal or educational systems to a predominantly English tribunal has been seen by some as another significant erosion of the protections of these institutions contained in the Treaty of Union. These arguments have been dismissed as irrelevant by many, given the House of Lords long-standing role as a supreme court of civil appeal, as well as the implications of European Union membership, and the import of human rights law. They argue that these changes have seen the homogenisation of Scots law with that of England and indeed, the rest of Europe, anyway, and the effects of the courts' role in this area will be of no consequence.

Aside from intractable issues of sovereignty, the Act of Union has never been a 'fundamental' law upon which matters of 'right' could be petitioned with any real chance of success by aggrieved parties. Are the remedies created by the Scotland Act, supplanting those the Act of Union is argued to contain, as

[24] See Lord Keith in *Gibson v. Lord Advocate* 1975 SLT 134

Nationalists would suggest, another nail in its coffin, or could it even be argued that this is just another general 'improving' amendment of its provisions?

If dead though, the Act of Union is certainly not buried, regardless of the Nationalist's arguments, and as such, for the foreseeable future, these methods of oversight, imposed on the Scottish Parliament, by its larger, Sovereign neighbour, are likely to continue to grow in importance, creating for the first time adequate justiciable rights that ensure Government within the law.

BIBLIOGRAPHY

Texts:

Page, A., Reid, C. & Ross A	*A Guide to the Scotland Act 1998*	1999
N. MacCormick	*An Idea for a Scottish Constitution,* in Finnie, W., Himsworth, C. & Walker, N. *Edinburgh Essays in Public Law*	1991
McFadden, J,	*The Scottish Parliament: an Introduction*	1999
Taylor, B	*The Scottish Parliament*	1999
Kellas, J.G.	*The Scottish Political System*	1989
Harden, I. & Lewis, N.	*The Noble Lie*	1986

Articles:

Hadfield, B.	*The Nature of Devolution in Scotland and Northern Ireland: Key Issues of Responsibility and Control*	1999 Edinburgh Law Review 3
McFadden, J.	*The Scottish Parliament: Provisions for Dispute Resolution*	1998 JR 221
Burrows, N.	*Unfinished Business: The Scotland Act 1998*	(1999) 62 MLR 241
Taylor, G.	*Devolution and the Applicability of Statutes to the Crown in the Inter-Governmental Context*	2000 PL 7
Smith T.B.	*The Union of 1707 as Fundamental Law*	1957 PL 99

Legislation & Other Governmental Publications:

Scotland Act 1998 (c. 46)

Scottish Parliament, Cmnd 3658 (1997)

Report of the Royal Commission on the Constitution, Cmnd 5460 and 5460 – I (1973)

Other:

Lecture Notes: Professor Alan Page, 1/3/2000

The Rt. Hon. the Lord Rodger of Earlsferry, 15/12/1999

The Herald Newspaper

'Unreliable Evidence', BBC Radio 4, 7/3/2000