



ESRC Devolution & Constitutional Change Programme



## **'Labour in Scotland and Westminster and the Dynamics of Policy Divergence'**

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## **Abstract**

The paper explores the thesis that Scottish Labour, under the new system of devolved government and operating under different institutional and political pressures, may evolve in a programmatic direction distinct from that of the Labour Government in London. Under devolution the Scottish Executive has direct responsibility for issues of health and education. Given Scotland's more robust collectivist traditions, and a pattern of party alignments that tilts more strongly to the left what are the prospects of social democracy of a more classical stamp taking root and flourishing north of the border? The paper explores this question by means of a case study - the implementation by the Scottish Executive in 2001 of free personal care for the elderly.

## **Key Words**

Devolution, Labour Party, Scottish politics, long-term care for the elderly.

## **Introduction**

What has been the role of the Labour Party under devolution? Labour at present constitutes the sole government party in Westminster and, since the 2003 elections, in Wales whilst in Scotland it is the senior partner in a Labour-Liberal Democratic coalition. This paper examines the impact of devolution upon the party in Scotland and its relationship with the Labour Government in London by means of a case study - the implementation by the Scottish Executive in 2001 of free personal care for the elderly. The report of the Royal Commission on long-term care (chaired by Sir Stewart [now Lord] Sutherland) was published in February 1999. A principal recommendation was that long-term personal care should be provided free for all, on the basis of need. This recommendation was rejected by the Blair Government but accepted by the Scottish Executive and introduced in July 2002 - thereby opening up the most serious major policy gap yet seen under the new devolved settlement and causing considerable tension between Edinburgh and London. How can we account for the Executive's decision?

Two standard political variables used in explaining differences in welfare policies are the ideological orientation of political parties and the general norms and values of a society. (Rothstein, 2001: 214). We use the term 'the party effects hypothesis' to refer to the combination of these two variables. It would appear relevant to the case in hand. Scottish Labour has traditionally (since the days of the radical Clydesiders in the early 1920s) stood to the left of the party south of the border. The greater radicalism of Scottish Labour is frequently adduced as a product of a more robustly collectivist culture. According to Paterson, the dominant Scottish social philosophy has been 'social democratic communitarianism'. This contends 'that human identity is intrinsically social and that personal fulfilment depends upon our relations with others. The main aim of public policy should be to safeguard and develop the community conditions that help individuals

to be fulfilled.' (Paterson, 2001: 121). Hence it would be plausible to anticipate that Scottish Labour would opt for a universal (rather than means-tested) system for elderly care, free for all on the basis of need, an approach seen to nurture social solidarity and sentiments of community responsibility. One object of the paper is to explore 'the party effects hypothesis' and, to the extent that it is found inadequate, to consider alternative explanations by analysing the dynamics of policy divergence and convergence. What are the key variables, the constitutional, institutional and structural conditions that impact upon policy-formation in Edinburgh? A second object it to consider what the episode tells us about the nature of Scottish Labour. To what extent did policy divergence reflect Scottish Labour's more collectivist orientation? Thirdly, what light does the episode cast on the relations between the party in Scotland and nationally? To what extent did informal Labour Party connections and party solidarity serve as an alternate path for inter-institutional coordination and conflict resolution? Are Labour ministers in the new devolved administrations expected to adhere to national party policy and to sort out their differences with the centre through party channels? How extensive was 'the zone of policy tolerance', that is the scope and scale of policy variation acceptable to the Blair Government?

The Royal Commission on long-term care was commissioned on the 17th of December 1997 by the newly elected Labour government to propose 'a sustainable system of funding of long-term care for elderly people' (Sutherland, 1999). The Commission published its report in February 1999. Its 'key recommendation' was that long-term personal care<sup>1</sup> should be provided free for all, on the basis of need (Sutherland, 1999: 6.32). This recommendation was rejected by the Blair Government as too expensive but in January 2001 Scottish First Minister Henry McLeish announced that Edinburgh would implement it in full. The issue of free personal care for the elderly affords a valuable case study for a range of reasons. Firstly, Edinburgh's decision to press ahead with a Royal Commission recommendation rejected by Downing Street 'demonstrated the power and consequences of political devolution' (Woods, 2002: 44, 43). Decentralising power was meant to license policy diversity and this is precisely what happened. The Scottish Executive's introduction of free personal care 'opened up the biggest policy divide yet between Holyrood and Westminster, and raised the spectre of a two-tier UK society split along the Scotland-England border' (Guardian January 27, 2001). Secondly, it illustrated more starkly than any other issue the dilemmas facing public policy making in the new devolved institutions. 'Tensions between administrators are inevitably greatest where there are shared, overlapping or uncertain responsibilities, where there are complex

arrangements for resource transfers and where the process of conflict resolution is unclear.’ (Woods, 2002: 28). Each of these considerations applied in the case of free personal care. Thirdly, it posed a challenge to the Blair Government’s ideological trajectory, since the McLeish initiative reflected a different perspective on ‘the role of the State and the boundary between public and private responsibilities in long-term care’ (Deeming and Keen, 2001: 85). The decision ‘to make personal care a right and not a personal responsibility’ represented the first serious challenge from a devolved government to the New Labour strategy of extending welfare selectivity (Pollock, 2001).

The first section of the paper chronicles the course of events, commencing with the setting up of the Royal Commission on Long-term Care. It briefly discusses the response of the Blair Government before looking in a little more detail at how the Executive in Scotland handled the issue. The second section examines the debate within the Scottish Labour Party and the various pressures and constraints which influenced the thinking of the main actors and the calculations which led the majority to *reject* the policy of free personal care. The third section then analyses why, notwithstanding the opposition of the majority within Scottish Labour (including most of his ministerial colleagues) the First Minister, Henry McLeish, decided to press ahead and the response of the Blair Government to his decision. The fourth section explains McLeish’s success in overriding the hostility the majority of influentials within Scottish Labour and of the Blair Government in terms of institutional factors. The final section reflects upon the significance of the episode in casting light upon the nature of Scottish Labour, its relationship with Labour in London and the dynamics of policy divergence.

Policy outcomes, Exworthy suggests, ‘will reflect the interaction between existing territorial structures and processes, and new devolved competencies’ (Exworthy, 2001: 272). How can this interaction be conceptualised? We adopt an ‘actor-centred’ institutional framework. ( Scharpf, 1997). It is institutionalist in that behaviour is seen as the product of the interaction between intentions and institutional settings. Institutions both constrain choices and structure the way in which the participating actors organise their preferences by establishing complexes of risks, costs and opportunities. The term institutional is given here a broad meaning , encompassing the new territorial configuration of policy-making institutions. This includes constitutional structure, (i.e. the constitutionally prescribed rules defining and apportioning

competencies as laid down by the devolution settlement), the pattern of decisional rules engendered by coalition government, and the particular constellation of party and electoral systems. It is actor-centred in that decisions and outcomes are seen to reflect the preferences, values, cognitive orientations and strategic calculations of relevant actors. Institutional structures constrain choices, but they do not predetermine them. Rather, by proscribing or impeding some policy routes and permitting or facilitating others, they 'define repertoires of more or less acceptable courses of action that will leave considerable scope for the strategic and tactical choices of purposeful actors' (Scharpf, 1997: 42). This leaves room for the interplay of preferences, judgements and values – what Scharpf calls the 'action orientations' - of policy actors (Scharpf, 1997: 43). Action orientations encompass strategic, normative and diagnostic considerations. Strategic in that actors calculate which of a range of possibilities are most likely to foster individual and institutional (e.g. party) goals; normative in that these goals normally have a value or ideological content; and diagnostic in that choice is structured by understandings of the nature of a problem, and the perceived viability of the options deemed to be available. In practice the three feed into and react upon each other.

### **The Sutherland Report**

In the discussions over a long-term care a distinction was commonly made between three elements: residential (food, heating) costs, nursing (medical) costs and personal costs, that is the additional costs of care arising from frailty or disability such as feeding, dressing, toileting and so forth. The main recommendations of the Royal Commission, published in March 1999, were as follows:

1. Where the need for long term personal and nursing care has been established, that care should be provided free both residentially and at home.
2. The basis should be assessed need.
- 3 The whole community should share the risk of care payments through general taxation. The cost was seen as affordable. For the UK it would be around £1 billion per year, around 0.3% of the tax bill or 0.1% of GDP rising in time to 1.4%.
4. Residential costs should be means-tested (Sutherland, 1999).

Nine of the 11 members of the commission endorsed these recommendations. Two commissioners, David (now Lord) Lipsey and Joel (now Lord) Joffe signed a Note of Dissent' (or minority report) arguing that

better use could be made of limited resources and proposing that whilst nursing care should be freely provided for all, personal care should be means tested with those who could afford it encouraged to take out private insurance cover (Minority Report, 1999). The Health Select Committee of the House of Commons, reporting in May 1999 strongly urged the government to implement the Commission's recommendations in full (Health Select Committee, 1999) but though the government had given the Commissioners a tight timetable, a period of inaction followed. According to Sutherland, there was then a systematic attempt to discredit the commission's recommendations. 'There was a strong belief that we'd got it wrong, with discussions going on between government advisers and dissenting commissioners' (New Statesman 3 March 2000). In due course, the government announced its rejection of free personal care on the grounds that it would 'consume most of the additional resources we plan to make available for older people through the NHS' (Alan Milburn, Health Secretary, Guardian September 1, 2000). Instead, it opted for free nursing but means-tested personal care, as the Note of Dissent had proposed.

In Scotland First Minister Donald Dewar took a similar line to his party colleagues in Westminster and decided not to implement Sutherland. His was the response of a seasoned and cautious politician. A longstanding member of Labour's Westminster club with its shared culture and values he fully appreciated why London had stopped short of full implementation of Sutherland and had no intention of taking decisions that would cause trouble for colleagues with whom he had worked closely for many years. Such was his authority within the Scottish Cabinet that his decision was approved without demur. (Interview, former political advisor). In October 2000 Health Minister Susan Deacon announced the Executive's response to Sutherland, with a series of measures designed to support older people in their own homes, but not including proposals for free personal care. However, the same month Dewar died and was succeeded by Henry McLeish after a close contest with Jack McConnell, He declared that all policies would be reviewed and signalled that the introduction free personal care would be a priority for the new administration. In November 2000 the Scottish Parliament's Health and Community Care Committee published the results of an enquiry into Community Care. 'The overwhelming message from stakeholders in community care', it found, 'supports the principle of making available personal care services free at the point of use as recommended in the Sutherland Report' and it proclaimed that 'our cross-party committee unanimously supports the principle of free personal care delivery, without means testing individuals' eligibility' (Health and Community Care Committee, 2000).

Yet when Susan Deacon announced a care package for the elderly on January 24 2001 it stopped short of universal free care. ('Scots coalition at risk over care for elderly' Guardian January 25, 2001). What had happened? It appears most likely that McLeish decided to stage a tactical retreat. Not only was he being subjected to 'mounting pressure' from a Downing Street dismayed by his reversal of Dewar's stance but he may well have underestimated the strength of opposition from within the Scottish Parliamentary Labour Party (SPLP) and his ministerial colleagues. His calculation, it seems probable, was to demonstrate to his critics that political realities (of which more later) were forcing his hand. (Guardian January 24, 2001; Guardian January 25, 2001). Whatever the reason he failed to anticipate the attacks his apparent back-tracking provoked. To the biggest-selling Scottish daily, the pro-Labour *Daily Record*, it was 'Nightmare On Henry Street'. 'The handling of the personal care of the elderly has been marked by the characteristics which have already become the McLeish administration's trade-marks. It has been shambolic and farcical' (Quoted in Herald 28 January 2001). Pensioners' groups and opposition parties charged that the First Minister was a stooge of Downing Street (Herald January 25, 2001). The author of the Sutherland Report himself added his considerable weight warning McLeish that 'he has marched us to the top of the hill on this. People would take it remiss if he marched us down again' (Herald 22 Jan 2001).

To the extent that he sought to prove to London that he had no option but to press ahead with free personal care McLeish's plan worked. All other parties (including his coalition partners and the Scottish Conservatives) declared for Sutherland and threatened a vote in the Scottish Parliament which would enact free personal care, if need be against the opposition of Labour (which held only a minority of the seats). The two coalition allies in another 'dramatic policy U-turn' hurriedly agreed a new package committing the executive to legislate for free personal care for all who required it (Guardian January 26, 2001). Despite his twists and turns, the outcome undoubtedly corresponded to what McLeish wanted. And by this point he was determined to push the matter through since it was clear that his personal prestige and authority rested upon it. McLeish commissioned the Care Development Group under deputy (now full) Health Minister Malcolm Chisholm to investigate how the proposal could be implemented. It reported in August 2001 proposing that free personal care be put into effect in April 2002 though the launch was postponed until the summer because of practical problems of implementation. By this time Scotland was in the hands of a new First Minister – the third since 1999. Jack McConnell had replaced McLeish (without a contest) in November

2002 after the latter had resigned over a (relatively minor) financial scandal. Though McConnell may well have lacked enthusiasm for the proposal he effectively had little choice but to enact it. The Community Care and Health (Scotland) Act 2002, passed in July, introduced free nursing and personal care for the elderly to take effect in 2003. The key aspects of the policy were free personal care for all those aged 65 and over, irrespective of income or capital assets with eligibility to be decided by an assessment of need by the local authority. Personal care was defined to include personal hygiene such as bathing and showering, assistance with eating, help with mobility, continence management and counselling and support services. In England those with similar needs might still have to sell their home and pay for such services in a nursing home. 'The difference is called devolution' (Scotsman 3<sup>rd</sup> September 2001).

### **The Debate within Scottish Labour over Personal Care for the Elderly**

Commenting on the Scottish Executive's pledge to introduce free personal care, Guardian declared: 'thanks to devolution...the UK.....has a constituent state in which social democracy is strong ('Made in Scotland,' leader Guardian January 27, 2001). To what extent did the final outcome reflect the action orientations of Scottish Labour's key actors – its ministers and parliamentary representatives?

As noted, the Cabinet had approved Dewar's decision to follow the Westminster precedent.<sup>2</sup> The view of the Scottish Health Department, headed by Susan Deacon, was emphatic: free personal care was not cost effective in the use of resources. Its computation of the initial costing was a little higher than Sutherland but it also anticipated that it would suck-in an increasing proportion of the Department's budget.<sup>3</sup> Financial calculations were reinforced by political ones. Implementation of free personal care would be politically very embarrassing for the Westminster Government– leaving it acutely exposed to criticism for its refusal to follow suit - and inevitably provoke a row between the two administrations. Finally, it was feared that if Scotland exhibited greater generosity to its citizens than England it would bolster the case of those within the Parliamentary Labour Party (especially MPs from the North where levels of social and economic deprivation were comparable to Scotland's) who claimed it was receiving a disproportionately high share of total national resources – thereby complicating future negotiations of the size and shape of the block grant. As a result, the Department drew up an alternative £50 million package designed to provide for all who wished to remain at home and presented by Deacon to the Cabinet where it was readily agreed. 'We thought that we were home and dry', one former senior official recalled.

The bulk of key Labour actors agreed with this line of reasoning. It may be useful here to identify the relevant policy principles which informed the subsequent debate.<sup>4</sup>

*Affordability.* Policy should not set up future costs for the State that were unaffordable in the sense that they implied a sharp and ongoing rise in spending as a proportion of national resources.

*Effectiveness:* Policy instruments should be effective in terms of able to realise their postulated objectives

*Equity:* Provision should according to need and not ability to pay, equal and appropriate treatment of all guaranteed.

*Solidarity.* Policy should have the effect of fostering a sense of mutual and collective responsibility for the welfare of all those who succumb to disabling frailty in old age.

*Feasibility:* Any policy must be politically viable, administratively practical and constitutionally permissible within the terms of the devolution settlement.

*Avoiding Perverse Incentives:* Those who make efforts to provide for themselves in old age and desist from exploiting tax loopholes must be rewarded, not penalised and vice versa.

*Feasibility* was inevitably an issue. There was no doubt that the Scottish Executive possessed, under the devolution settlement, the right to legislate on issues of care for the elderly.<sup>5</sup> In practice, in this as in other areas, policy-making was complicated by the reality of functional interdependence between ostensibly distinct devolved and reserved issues. Whilst care for the elderly falls within the devolved domain the highly interconnected issues of welfare benefits are reserved – which led to the controversy over the attendance allowance (see below) (Keating, 2001). Furthermore, what may be constitutionally feasible may be less so politically. The Health Department's anxieties about the damaging effects on relations with the Westminster Government were widely shared. Furthermore, parties are underpinned by the norm of party solidarity, the sense of shared membership in a party engaged in a common enterprise. \*This sense of party solidarity or mutual interdependence remains a powerful constraint on the Scottish Labour leaders, an inhibition to experimenting with innovative policies that might provoke or intensify central-territorial tensions within the Party.<sup>6</sup>

Doubts about feasibility were reinforced by those of *affordability*. Under the Block Grant system Holyrood is free to determine the allocation of spending within the devolved sphere. But whilst it has ample discretion in determining how the funds provided via the block grant are spent it has been limited ability to influence the amount available. Westminster remains overwhelming responsible for revenue-raising with the

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powers of the Executive confined to varying the basic rate of income tax by up to 3p in the pound, local taxation and the business rate. To this extent it operates within fixed and quite constraining parameters. (McEwen, 2003). The majority of Labour Executive members and backbenchers feared that, in approving Sutherland, the Executive would be incurring costs that it could not afford. They believed, firstly, that the Sutherland report had seriously underestimated the danger of escalation in the costs of free personal care, notably by taking too little account of demographic pressures increasing the proportion of the elderly in the population and the actual costs of providing the service (Sunday Herald 29 January 2001). Some even claimed that retirement refugees might sweep over the border to take advantage of free personal care.<sup>7</sup> In addition, ministers feared that finance to cover the cost would have to be transferred from their programmes. Minister of health, Susan Deacon, in particular was a stubborn opponent because she was worried that resources would be diverted from primary and acute care within her Department.

The questions of *effectiveness* and *equity* can be considered together. The issue was how the goals of the policy – over which there was a broad measure of agreement – could best be realised. Far from being a technical matter, it raised fundamental problems of principle. Roughly 20% of men and 30% of women will be stricken by a disabling disease and require permanent care. How should society respond? By concentrating limited resources on the poorer leaving those who have the means with the responsibility to protect themselves by taking out insurance cover? Or should that responsibility, as with health-care, be collective with the state providing for all according to need? 'Historically, a crucial political divide across the British political spectrum has been over the fundamental aims of the welfare state, with those on the Right...seeing its role as predominantly that of poverty relief, while the Left has pushed towards provision of welfare services on a universal basis, not just to the poor' (Hills, 1998) Universality – the provision of public goods and services for all financed by progressive taxation – has traditionally been a fundamental social democratic tenet. Thus, Richard Titmuss, Labour's most influential social policy thinker, in his 'institutional redistributive model' saw social welfare as firmly embedded in the principles of universalism and social need. The universal provision of education, health, social security and welfare were seen as attributes of social citizenship which contrasted with the residualism of a means-tested safety-net for the least well-off bound to be both inferior and stigmatising (Hewitt, 1992: 22, 30). Universalism formed the normative framework for the Sutherland Report:

'From a theoretical point of view, the Commission are persuaded that universal risk pooling . . . represents the most effective way of providing the coverage required. The overall solution here should have regard to what will benefit the majority of citizens at the lowest cost to the nation overall, and remove from as many people as possible fear of the costs of needing to be cared for at the end of their lives' (Sutherland, 1999: 3.16). The costs of personal care are those that 'unpredictably and through no fault of their own, old people have to incur when unfortunately they can no longer be looked after at home or cannot be sent home after hospital treatment. They reflect the true risk and "catastrophic" nature of needing long-term care'. Since neither the 'incidence nor the scale of care needed are predictable... it is equitable and proper for the state to meet at least one element of these "catastrophic" costs for everyone. And the costs in the future, in relation to people's likely means, will remain catastrophic' (Sutherland, 1999: 6.32 – 6.34; 10.13).

There was also the question of equity applied to different forms of disabling illness. All cancer sufferers received free personal care but not the victim of Alzheimer's disease. On what grounds could this be justified? 'Smokers, if they develop cancer, go to hospital and get non-means-tested care....If you give yourself a particularly reckless injury while mountaineering, for example, you get non-means-tested care, Why are the elderly singled out?' (Scotsman Jan. 28 2001). In short, universalism was 'the best guarantee of equity' (Sutherland, 1999: 3.15).

The debate over the contending merits of universality and targeting in the provision of personal care was, one MSP recalled, 'one of the most turbulent in the party's recent history...there were very strong feelings expressed' (interview MSP) For this reason, it is important to outline the reasoning of both sets of protagonists. For New Labour critics universalism was outdated dogma, reflecting a preference for the old and timeworn over fresh and novel ways of tackling social problems. New Labour's Third Way seeks to transcend the distinction between universality and selectivity in that it combines inclusion through universal services on education and health with an increasing selectivity in disbursing cash benefits: within a situation of constrained resources, the ruling norm must be that benefits must be targeted on those most in need. This was the rationale for rejecting Sutherland's recommendation for free personal care. 'Making personal care free for everyone carries a very substantial cost, both now and in the future. It would consume most of the additional resources we plan to make available for older people through the NHS Plan' (Department of Health, 2000: 2.6). Universalism, A Scottish Westminster minister remarked, had become a totem - 'rose coloured spectacles' (interview).

Champions of Sutherland countered by rehearsing Labour's traditional objections to means-testing.

- Means-tested benefits tend to stigmatise. Applicants who are required to provide details of their financial position commonly experience this as intrusive if not demeaning. Universal welfare articulates the view that

the nation as a whole has a moral responsibility for the welfare of all. Differentiating 'the needy' from other citizens and singling them out for special treatment encourages a view of them as less worthy, even stigmatising them..

- Means-tested benefits are much more expensive with much higher administrative costs. Determining entitlement to support (and guarding against unmerited claims) entails time-consuming and complex forms which are expensive to design and check. For this reason, they are normally extremely difficult to complete accurately - which acts as a deterrent and leads to low take-up rates. Furthermore, identifying the 'truly needs' raise problems over where the line is to be drawn - inevitably penalising borderline cases.
- Means-testing erodes the legitimacy of social welfare. If the thrifty are forced to use up their savings whilst those who never saved gets free care, this will provide an incentive either not to accumulate savings or to spend them rapidly. As even the authors of the Minority Report conceded many people surveyed 'felt resentful that, while those who had spent their money during their lifetime received care free after a means test, those who had been frugal had to pay'. (Minority Report, 1999).
- Means-testing supplies an incentive for evasion. 'By transferring ownership of assets to children or grandchildren, those with the foresight, calculation or cunning to do so can effectively and legally thwart the means test. The means test is about as equitable and efficient as another "voluntary" tax - death duty' (Guardian June 23, 1999).
- Means-testing requires alternative means of funding such as private insurance. The then Health Secretary, Alan Milburn urged people to 'provide for themselves where they are able to', i.e. via private insurance (Guardian March 1, 2000).<sup>8</sup> The centre-left think tank, the IPPR, however, suggested that there were 'inherent and insurmountable' barriers to effective and equitable long-term care insurance. Because of problems of innate complexity, imperfect and often unreliable information coupled with uncertainty and unpredictability about future need 'people find it very difficult to assess the relative merits of different insurance products' (IPPR, 2001: 15). In short, 'only public authority can compel universal contributions, pool risk and, way into the future, fairly distribute resources to ensure no one in need is left exposed'. (Guardian January 27, 2001).

Supporters of selectivity countered that – in the words of the Royal Commission's Minority report - those who would benefit most from 'the Croesion flood of expenditure' required by free personal care for all would be the be relatively well-off - and their heirs. (Guardian June 23, 1999). This was an argument

commonly used by critics of Sutherland. The Party's duty was to the needy and this meant - in an age of constrained possibilities for public spending - husbanding resources so that benefits went disproportionately to those who were least able to support themselves. Indeed it was not uncommon for Scottish Labour parliamentarians to refer to universal care disparagingly as 'a middle class subsidy'. (interviews with).<sup>9</sup> One Scottish Westminster MP dubbed it 'a personal care plan for Scotland's rich' (Herald 15 Jan 2002).

To those who claimed that universalism was regressive since resources which could have been devoted in entirety to the less well-off were shared by the better-off, the standard social democratic response was that the redistributory element was supplied by a progressive system of taxation. But herein lay, for supporters of free universal personal care, the crux of the problem. Under the devolved financing mechanism Scotland receives a block grant through the Barnett formula, which establishes a set ratio to England for additional expenditure. It was only given one significant revenue-raising lever: to raise income tax up to three pence in the pound. Raising tax to cover the costs of free personal care was not so much rejected as never even proposed: indeed it never figured on the agenda of debate (Interview, former senior official). Scottish Labour's reluctance to use the power has been expressed successive Labour manifesto commitments to hold tax rates steady. The most redistributive instrument would be a new, higher, tax rate for higher-income earners, especially since they are more lightly taxed in the UK than virtually any other country in the European Union. However, Scotland does not have this power and the UK Government has not been willing to use it. All this has left the Executive with no option but to draw the money from within its current block allocation: rather than the better-off bearing a disproportionate share via progressive taxation (as in Sweden) personal care would effectively be funded by re-apportioning social spending. (Pollock, 2001: 311-2).

But Scottish Labour's room for manoeuvre was not, at least in the short term, as constrained as was alleged. Most Labour Scottish politicians in private describe the existing block grant settlement as sufficient for the country's needs and a recent volume concluded that, in the context of generous spending increases, Scotland had no need to use its tax varying powers (Adams and Robinson, 2002: 222). This suggests that there is sufficient slack in the system to meet priority spending commitments such as free personal care for the elderly without penalising other programmes. Given that free personal care is a long-term commitment, funding problem might well intensify sometime in the future, but whether this was a significant consideration in the debate is a moot point: the mental horizon for most politicians rarely extends beyond

the next election. Why then the opposition to Sutherland amongst the bulk of Scottish Labour influentials? Given that all political choice is about arranging priorities it seems likely that, for the majority of Scottish Labour politicians, a Titmuss-style 'institutional welfare state' is no longer regarded a prime objective. Indeed Gordon Brown's case for selectivity appears to be winning the argument. Thus, even if a national system for the funding of a universal system of personal care by additional progressive taxation had been on the agenda, it seems reasonable to doubt whether it would be welcomed by the majority of Labour parliamentarians either in Westminster or Holyrood.<sup>10</sup>

Scottish Labour has long had a reputation of standing on the more radical, collectivist-minded, wing of the Party. The decision to opt for free personal care would appear, at first glance, to validate this. In reality, we have suggested, this is not the case. Even if there had been no pressure from London (of which more below), it is higher doubtful whether Labour in Scotland, left to its own volitions, would have implemented it. In fact, of all the political parties represented in Holyrood, Labour was least enthusiastic. As one commentator noted, whilst the Conservatives were 'part of the chorus which is demanding that free care be implemented immediately' Labour MSPs were at one point 'left clutching a party line' which deemed universality to be both 'unaffordable and undesirable' (Scotsman Jan 28 2001). In short, the party-effects hypothesis, in this case, does not explain what happened. We must search for other causes.

### **The Role of McLeish**

Sometimes individuals do make a difference.<sup>11</sup> 'If Henry McLeish had not re-opened issue' one former top Executive official recalled, 'it would have gone away'. 'Without McLeish's decision to choose free personal care as a hallmark of his administration' another former senior advisor reflected, 'it seems unlikely that it would have been introduced'. This raises two questions: why did McLeish pin his colours to this mast? And why – despite the opposition of more or less all his Labour ministerial colleagues, the lack of enthusiasm within the SPLP and the furious resentment of the Blair Government – did he succeed? One can never be totally sure of a politicians' motives but enough evidence has accumulated to allow a good stab at an answer. As with all politicians, in the real world of politics, decisions are influenced by contingency, conviction and calculation. The contingent factor was that the First Minister was heavily influenced by his wife, who happened to be a senior social worker specialising in the care of the elderly and was a staunch protagonist of free personal care (Taylor, 2002: 37). Conviction, too, played a part. He was personally

persuaded by Sutherland's logic: why cover the cost of treatment for the stroke victim but not the sufferer from Alzheimer's? As one extremely well-informed observer commented, 'McLeish instinctively felt free personal care to be right, to be humane' (Taylor, 2002: 38).

But, inevitably, political factors were uppermost. The new First Minister was looking for a political success to shore up his political position, establish his authority and place a very distinct personal imprint on the new politics of devolved Scotland. 'He wanted to do something that Westminster would not do, that Donald Dewar had not done. He wanted to make his mark' (Taylor, 2002: 38). He arrived into high office with multiple disadvantages. Firstly, whilst Dewar had been a major national politician, a former cabinet minister and a much-respected senior Labour figure, McLeish had much less impressive credentials. He had occupied a junior position in the Westminster Government —allegedly with little prospect of further promotion. He lacked political stature and the confidence of many of his colleagues. He was mocked in the press because of his verbal infelicities and lack of lucidity and had a weak foundation of political support amongst Labour MSPs – as his narrow win over McConnell indicated. Further, he knew that he would be sniped at as the new First Minister in Scotland by backbenchers, particularly by Scottish Labour Westminster MP starved since the creation of the Scottish Parliament of the oxygen of publicity and eager for media coverage.

He knew free personal care was popular. (Health and Community Care Research, 2001). He was aware that Scotland had an ageing electorate and that the over-45's were twice as likely to vote as the under 45's so free personal care for the elderly would win the Party electoral plaudits.<sup>12</sup> Opting to make free personal care his personal mission would enable McLeish, at a stroke, to identify himself with a popular political cause, 'assert independence from London, present himself as the pensioners' hero, break from the Dewar leadership and command his reluctant cabinet colleagues' (Scotsman 3rd September 2001). But all this was the judgement of an instinctive, somewhat impulsive, politician. No attempt was made to consult the Cabinet or the Department of Health. There was no consideration given to the problems of finance, of practical implementation or of the serious implications of relations with London. It was, one insider commented, 'policy-making on the hoof.' All this might seem to bear the hallmark of an inept, ham-handed politician, who was (as his Party critics put it) totally out of his depth. But if he was not a coldly calculating politician, arguably he was an intuitive one. He understood that government was, for the most part, about

routine administration and that the ability to make an intervention which actually has a real, tangible effect on politics and upon people's lives is very rare – and should be seized if the opportunity is there. A change had to be swift and dramatic to be noticed – and galvanise the electorate. Implementing free personal care would be a major reform, it was fully consonant with Labour's traditional values, would be popular and fitted in well with Scotland's more social democratic political culture. He angered London by braking the golden rule of Labour's new territorial politics – advance consultation, proper co-ordination and no surprises. But if he had not, he may not have succeeded. His *démarche* give the issue momentum . If he had delayed pressure – especially from Gordon Brown, the Chancellor of the Exchequer and with a particular interest in Scotland – would have been brought to play and, as the costs of conflict with London began to mount, the initiative might well have been stifled.

'Henry' as one MP commented, 'nailed his leadership colours to the mast on it, which then created a dynamic difficult to resist' (interview). He caught his colleagues unaware, he caught his parliamentary party unaware and he caught London unaware – and by so doing forced the issue. In effect, he came close to making free personal care for the elderly a *fait accompli* . He thereby made his mark. But, from a personal point of view, it was a miscalculation: he offended too many powerful figures, forfeited much goodwill and, rather than bolstering his political base eroded it. When the moment of crisis occurred – within less than a year – and he was assailed with charges of financial misdemeanours, there were few prepared to lend a hand to the beleaguered and transient First Minister.

### **Labour in London and in Edinburgh**

What was the response in London? How extensive was the Labour leadership's 'zone of tolerance'? Cross-border policy differences were not 'an accident but an intention' the Prime Minister declared. (Taylor, 2000: 142). 'Devolution means that it is for the Scottish parliament to make decisions on its response to the royal commission on long-term care' the UK health minister, John Hutton, commented. 'Both the government and the Scottish executive are committed to improving health and social care services for older people, but we are doing this in different ways (Guardian January 27, 2001). Publicly, then, the zone of tolerance was extensive – behind the scenes London's response was much less benign. The UK Health Secretary – a 'bit of a bully boy' – was 'in a blind fury...incandescent'. McLeish came under 'persistent pressure from the Treasury and from Alastair Darling at social security to back down' (Taylor, 2002: 39) and he was left in no doubt about Downing Street's intense displeasure (interviews with former officials). 'This

was not an issue,' the Herald reported in January 'on which Whitehall was going to make things easy for the First Minister'. (Herald 28 Jan. 2001). In September 2001 a consultation document issued by the Department of Health contained 'stinging criticism' of what McLeish was flagging as a priority pledge. It was a wasteful delusion which would do nothing to help the poorest pensioners and would only aid the better-off. The Scotsman reported that ministers in London 'had privately agreed to make it clear to English voters that the Scots are going to have to pay a price for the executive's largesse' (Scotsman 3rd September 2001). The BBC's Scottish Political editor was told, when McLeish persisted, that the Treasury had threatened 'to re-examine the extent of the funding available to Scotland. If the Executive could even contemplate free personal care, it plainly had too much disposable cash' (Taylor, 2002: 40).

The UK Government did not confine itself to words. It insisted that the £23 million Attendance Allowance for elderly people spent in Scotland would be withheld – in effect adding about 20% to the total costs of the scheme. Under the previous system, some Scottish pensioners had received means-tested Attendance Allowances from the UK Department of Works and Pensions.. 'By effectively 'opting-out' of the UK scheme to develop its own social policy in this area, the Scottish Executive had hoped to recoup the monies currently paid to pensioners - some £23 million per annum - to help contribute towards the costs of financing its considerably more expensive universal scheme' (McEwen, 2003). However, the UK government refused, ostensible for practical and administrative reasons. McLeish sought to prize the Treasury's grip from the money but, after his resignation – and following an eight-month dispute - McConnell gave up the struggle as hopeless. The refusal to release the money was interpreted as 'Whitehall's punishment for introducing free personal care'. (Sunday Herald 13 January 2002). As one senior official put it 'McLeish had to be taught a lesson' (interview).

Why did New Labour in London take this uncompromising stance? After all devolution had been all about devolving power to the new Parliament, allowing it to allocate its annual budget according to local priorities and preferences. Furthermore, not only did the elderly comprise a higher proportion of the population north of the border, and not only were they more prone to illness but the decision seemed (as we have noted) to be wholly in accord with Scotland's stronger collectivist and solidaristic traditions. In fact, there were solid political reasons for the UK Government line. These were both procedural and substantive.

Procedurally, the expectation has been that all potential matters of dispute be processed via either newly-created intergovernmental or informal party channels – or both. The former have evolved in a pragmatic fashion reflecting the fact that the British political culture ‘is based much more on ongoing working relationships rather than on formal rules and procedures’ (McCrone, 2002). There are two main mechanisms for co-ordination and conflict-resolution. The first is the holding of regular Joint Ministerial Committee in which functional ministers from the various administrations discuss items of common concern in order to air matters of common interest and avoid jurisdictional disputes. The second are the non-statutory frameworks for agreement on areas of functional interdependence known as concordats.<sup>13</sup> For the most part, the system has worked since intergovernmental relations have been characterised by a substantial degree of co-operation. (McEwen, 2003; Keating, 2002). These channels have been supplemented by informal Party ones, normally private discussions amongst ministers within the various Labour-controlled administrations, with political advisors performing a key role. The failure of McLeish to utilise either of these channels, the announcement of a major policy change with obvious and potentially damaging repercussions for the Westminster Government without prior discussion, in effect by unilateral action was perceived as a flagrant breach both of governmental convention and party solidarity.

But it was for substantive political reasons that London felt so aggrieved. The cost to individuals of long-term care was an increasingly salient political issue. It was estimated that some 40,000 homes were being sold each year to pay for nursing and residential home fees (Guardian June 23, 1999). As the Guardian commented, the strength of feeling around this issue was about more than money. ‘Selling up the family home under duress has a distressing symbolic significance. Not only does it mark the end of independence and normality for the older person in question; it can also feel like an affront to pensioners who have worked, saved and paid taxes to provide for their families’ futures’ (Guardian June 14, 2000). Furthermore, there was a widespread expectation that the state would and should provide for all in old age and puzzlement why personal care should be free for some illnesses but not for others. Means-testing was widely seen as inequitable.

In addition, it is not at all clear that the Blair government’s policy on long-term care is feasible or sustainable. According to Christine Hancock, then the Royal College of Nursing general secretary, the distinction between nursing and personal care was ‘artificial’ and would ‘create perverse incentives and

inequities' (Guardian September 1, 2000). Experts queried the feasibility of private insurance, the mechanism by which the majority of then population was expected by the government to protect itself against the risks of disablement in old age. The Sutherland report found that only 4% - 5% of Americans were covered by private insurance, and 80% of the population would never be able to afford it (Sutherland, 1999: 5.38). It seemed highly unlikely that the pattern would differ in England since evidence suggested that few people on average incomes would be able to afford to take out long-term care insurance care<sup>14</sup>. Added to this, there was a real danger – intensified by the advances in genetic science – of adverse selection by insurers with those most at risk (e.g. of Alzheimer's) having to pay most to protect themselves.<sup>15</sup>

The key political point here is that, in other circumstances, the Government would have been able to claim – as it did for instance in the controversy over the Private Finance Initiative – that whatever people's reservations, its approach was the only realistic and workable one: 'the only game in town'. The decision of the Scottish Executive to press ahead with free personal care pulled the rug from under its feet. Pensioners' groups in England warned that there would be great anger and bitterness if the frail elderly were denied what was freely available in Scotland. (Guardian January 27, 2001). Age Concern declared that 'older people in England and Wales will be jealously eyeing the Scottish parliament's decision to make personal care free. That decision wholly undermines the case which UK ministers have been making' (Guardian 26 January 2001). According to the Scotsman both the Chancellor, Gordon Brown and the Health Secretary, Alan Milburn were besieged with demands from elderly campaigners that England follow Scotland's lead. (Scotsman 3rd September 2001).

The countrywide-scope of the NHS had institutionalised a sense that equal and uniform treatment should be available to all, irrespective of where they lived, on the basis of need. (Keating, 2001) This is why 'postcode prescribing' has traditionally caused so much anger and resentment. Help the Aged stated that 'we can't have a system that gives better care for people in Scotland than in the rest of the UK. That goes down the road of creating a new postcode lottery. The NHS is meant to provide care at the point of need throughout the UK and should not be dependent on where people live' (Guardian January 26, 2001). According to Age Concern it was 'patently ridiculous that we are now going to have a situation where an elderly person living a few miles across the border will be up to £350 a week worse off in terms of paying for their care' (Guardian January 30, 2001) The IPPR called it the *Berwick question*: 'Mr Jones in Berwick might

have to pay for his personal care while Ms Smith living just north of the border gets it free'. It speculated that such examples of differential public service provision between England and Scotland would intensify pressures on the London government to match services north of the border. (IPPR August 2001 15). Hopes that the issue could be kept of the political agenda have been foiled whilst English campaigners for free personal care could take succour from the Scottish experience. As Mervyn Kohler of Help the Aged observed, 'Westminster believes it has managed to bury the issue of long-term care - but I'm sure that it's only a temporary funeral' (Observer February 23, 2003).

### **The Institutional Setting**

As a result, and whatever its occasional obeisance to the right of devolved Scotland to act autonomously, Labour in London did its best to induce party colleagues in Edinburgh to scupper the scheme. Why then was free personal care – despite the limited support within Scottish Labour and in the teeth of the opposition from Labour in London - eventually enacted? McLeish's Cabinet was composed of virtually the same ministers who had backed Dewar's contention that free personal care could not be afforded and – they were reluctant to change tack simply on the First Minister's say-so. (Taylor, 2002: 39). The answer lies in the new institutional realities of the devolved polity in Scotland: a policy process more receptive to the pressure of the welfare lobby, the decision rules of coalition government, a balance of power in government-legislature relations tilted, in comparison to Westminster, much more in favour of the latter and, most decisively, the imperatives of party competition in a multi-party system.

Devolved politics has engendered a policy-making structure more open and fluid than either in Whitehall or pre-devolved Scotland and this has benefited the welfare lobby, which traditionally lacked the intimate insider status of business, financial and professional interests. Not only have the more open, transparent and inclusive Holyrood procedures helped organisations – such as the Alzheimer's Society and Age Concern - which lack the power and authoritative status to engage the government machine directly but the centre-left consensus which defines most of Scotland's parties have rendered the system more amenable to welfare policy advocates.<sup>16</sup> The result was that Labour found itself under 'under tremendous pressure' not least because they were assailed by groups which commanded strong support in constituency parties and whose demands resonated with the public at large (interviews, Labour parliamentarians). However, the real potent pressures emanated from Scotland's new party political arrangements.

The proportional electoral system rendered coalition government inevitable and this fundamentally altered the rules of the game. Firstly it created a disjuncture – which does not exist in Westminster – between official (i.e. leadership-defined) Labour policy and government policy. The Executive's programme of government has to be agreed in negotiation between the two coalition partners. It cannot be simply imposed by the leadership of the ruling party, as with majority government. If differences arise they must be negotiated. McLeish appears to have both grasped and felt more comfortable with the realities of continental style coalition government more readily than his predecessor, Donald Dewar. Devolution under proportional representation meant multi-party politics and coalition government and this meant a different style of leadership in which a First Minister could not have the same power and authority as a Prime Minister in a single party government. The coalition partner had to be handled with respect, and differences had to be resolved by mutual accommodation.

Coalition government gives rise to a more consensual style of cabinet decision-making. Cabinet members of the minority party are not appointed by and cannot in normal circumstances be removed by the head of government in a coalition polity. The First Minister can persuade, placate and demand but cannot direct his cabinet in the Westminster-style. The operations of cabinet decision rules are also structured by the distinctive decisional style of the Liberal Democrats. Parliamentary discipline is considerably weaker than in the two major national parties, and correspondingly the influence of backbenchers greater. Thus initially the two LibDem cabinet ministers, Jim Wallace and Ross Finnie, had supported Dewar's position on personal care and had lodged no objection to the Deacon formula when agreed in cabinet. However, they had not realised the strength of feeling among their backbenchers favouring full implementation of Sutherland (Herald Jan 28 2001). The backbenchers threatened to vote with the opposition to force through free personal care: in a manner inconceivable in Westminster, there appeared a real prospect that a position (Deacon's) endorsed by the Executive would be overthrown by a largely non-Labour coalition of backbenchers. As one insider recalled, 'there was political mayhem at the time' (interview). Wallace tried to persuade his backbenchers to back the Executive's line but, given both the individualistic ethos of parliamentary liberalism and its relaxed disciplinary regime, he could not direct them to do so. The LibDem stance was driven (as is normally the case in politics) by a combination of principle and perceived political advantage. They felt themselves exposed to the dangers of a junior party in a coalition government where

typically the major party receives all the credit when all goes well but the minor party shares the blame when it does not. Equally, they were apprehensive about losing their political identity in the shadow of the senior coalition party. In free personal care the Liberal Democrats found a policy which was popular, which had majority support in Holyrood, which appeared to differentiate them from a divided Labour Party and for which they could claim the lion share of credit.

The Blair Government failed to block free personal care because whilst there were levers available to exert pressure on Scottish Labour, arising from ties of loyalty and solidarity, of mutual interest and from the power derived from an organisationally centralised party none of these were of any use against other parties. Indeed, even deploying them could be, as we have seen, counterproductive as it exposed Scottish Labour to the charge of promoting policies Made in England. Ironically, had a majority Labour government existed in Edinburgh free personal care for its frail elderly would probably not been in existence.<sup>17</sup>

### **Implications for the Future: Prospects for Programmatic Divergence?**

One was the significance of the episode? Is the implementation of free personal care for the elderly a precursor to further experiments in innovation? 'Was this', a former senior policy actor wondered, 'just a necessary flexing of muscles which effectively demonstrated that Scotland could go its own way without bringing the house down? Or was it such a searing experience that it has discouraged such a thing happening again?' What insights does it shed upon the nature of Scottish Labour, upon its relations with the Party in London and upon the extent and limits of 'the zone of policy tolerance' which the latter extends to the former? What are the prospects of Labour south and north of the border following divergence programmatic trajectories?

It may be useful to organise the discussion by a four-fold categorisation arising from two sets of distinctions, between positive and negative divergence and between volition and constraint. Positive divergence refers to policy initiatives, such as the introduction of personal care for the elderly, different from those being pursued at Westminster. Divergence is negative when Scotland fails to replicate policy initiatives taken in England, for example the introduction of so-called 'foundation hospitals' in the NHS. Volition refers to policy adopted because it expresses the desires of Scottish Labour (or, more accurately, its senior echelons), constraint to policy adopted under pressure from other actors – as with Scotland's

distinctive system of higher education student finance. Policy deviation can then follow any of four models: positive-volition, positive-constraint, negative-volition, and negative-constraint.

These are models and in real life one can anticipate approximations. The most visible and highly-publicised instances of major policy departures north of the border have tended to fall into the positive-constraint category, that is Labour has been, to a substantial degree, pushed into such moves by pressures arising from the distinctive institutional configuration in Scotland created by devolution (though often rooted in distinctively Scottish cleavage structures and traditions). This was the case for free personal care for the elderly. Undoubtedly McLeish played a key role, pushing the issue to the centre of the political agenda and encouraging popular mobilisation by parties and pressure groups. If McLeish's decision to espouse the policy was a necessary condition for its adoption, the sufficient one was Lib-Dem intervention. This, in turn, was a function of the new institutional realities emerging from the devolution settlement.

There are no really significant instances of policy differentiation following the 'positive-volition' model, that is to say of a major policy initiative instigated by Scottish Labour which has departed markedly from the line taken by Party colleagues in Westminster. For example, since 1999 there has been considerable convergence in social policy where the Scottish Executive has followed many of the UK government's initiatives, even the most controversial, such as using the private finance initiative as a key mechanism in capital investment programmes in health and education. Indeed, under Jack McConnell, the Scottish Executive has been noticeably more diffident about opting for policies which risk an adverse reaction from Number 10 (McEwen, 2003, Bradbury and McGarvey, 2003: 221).

From one angle, this is not surprising. The two governments, both led by Labour, share many social and economic objectives reinforced by the norms of party solidarity and discipline whilst the whole machinery of intergovernmental relations, combined with a unitary civil service, is geared towards conflict-avoidance. Yet, from another angle, it *is* surprising. Many Blairite policy innovations – indeed the whole thrust of market-oriented reform – are decidedly unpopular amongst Labour's grassroots. Given that the Scots are more social democratic in outlook and exhibit greater faith in the value of public services (McCormick and Leicester, 1999: 132), given too the left-wing traditions of the Party in Scotland, a newly devolved Scotland under Labour leadership opting for more collectivist policy solutions seems a natural outcome. But it has not materialised. One reason – which emerges clearly from our case study – is that neither Labour constituency membership nor (more surprisingly) the unions figured as significant actors in the debate. Though there were lively discussions in some constituency parties, in effect the key forum was

Holyrood. Hence we have a paradox that a policy which could be expected to elicit enthusiastic support from Labour's rank and file was pushed through by the LibDems (with some held from the SNP and even the Conservatives) against the resistance of its own leadership. Are, as Hutton claimed, the Liberal Democrats now 'assuming the mantle of championing the liberal and centre-Left propositions on collective responsibility' (Hutton, 2001)?

What of the negative-volition model? Here much depends upon perspective. There are those (amongst whom can be included Wendy Alexander, a potential future leader of the Scottish Party) who feel frustrated by what they perceive as the Party's sluggishness, its unwillingness to replicate the reforming fervour of the Blair administration.<sup>18</sup> Scottish Labour, it is argued, is too reluctant to modernise, partly because of its vapid, dull and uninspiring intellectual life, partly because of its dependence upon the producer establishment – the complex of Labour-controlled local government authorities, public sector trade unions and the large number of Labour MSPs with a background in or organisational affiliations to them. This analysis – advanced by what one can call the 'Blairite' or 'New Labour' wing of the Party – rests upon an equation of 'reform' and 'modernisation' with the importation into the delivery of public services of private capital, market disciplines and a more commercial and consumerist ethos. Though this requires further research, there does seem plausibility in the proposition that the more solid implantation of public sector interests in Scotland has restrained and diluted New Labour-style modernisation. – and may well continue to do so in future.

However – here we come to the positive- and negative-constraint models which can be considered together – a more formidable constraint on New Labour-style modernisation derives from Scotland's distinctive institutional configuration. The key factor here is a pattern of party competition which is radically different from that in England. In Westminster elections the major threat to Labour still emanates from the Conservatives.<sup>19</sup> New Labour's strategic response for almost a decade has hinged on securing the allegiance of those 'swing voters' living in marginal constituencies whose preference has in the recent past oscillated between the two main parties, and whose attitudinal preferences are generally to the right of the mean voter. The strategy is positional rather than spatial: rather than seeking to occupy a supposed 'centre ground' New Labour have sought to reposition the Party to align more closely to the mean political stance of the targeted voters on high salience issues which traditionally have been areas of Labour weakness, such as law and order, attitudes to immigrants (or asylum-seekers), tax policy and social security fraud. (Gould,

1998). The logic of the strategy is a gravitational pull to the right (though of course other pressures and constraints effect actual policy choice).

The competitive dynamics for Labour in elections to the Scottish Parliament are fundamentally different. Firstly, Scotland has a multi-party system, a fact underlined by the elections of May 2003. Six parties now have six or more seats, the Scottish Labour Party, the SNP, the Scottish Liberal Democrats, the Conservatives, the Greens and the Scottish Socialist Party (SSP). Only one of these parties, the Conservatives, lies to Labour's right with the SNP and the LibDems occupying similar – broadly social democratic – ideological territory whilst the Greens and the SSP stand clearly to its left. The centre of political gravity, in short, is much further to the left than in England. The impact of a distinctive party system should be seen in conjunction with that of a wholly different electoral law, the Additional Member System under which the 129 seats in the Scottish Parliament are divided into two categories, one constituency and the other list based. Each elector possesses two votes. The first is used to elect 73 members in first past the post single constituencies, the second to elect 56 members via regional lists in which seats are allocated proportionally.

The implication for Scottish Labour is a gravitational pull to the left. This is reinforced by another characteristic of the electoral system. It attaches the same weight to the vote of (say) a working class Labour supporter in the Party's heartland as it does to a floating voter in a marginal constituency. In consequence, the New Labour electoral strategy of chasing the Tory-inclined voter in the marginals (whatever its merits in England) is not relevant. Furthermore, the Party is under constant threat of loss of electoral support if - in emulating the New Labour prospectus - it strays further to the right. The crucial point is that, in contrast to the position south of the border, disenchanted Labour voters in Scotland have numerous *protest* – as well as an *exit* – options: Greens, SSP, SNP and Liberal Democrats. Projecting trends into the future, impressionistic evidence (which needs to be confirmed by electoral data from the 2003 Holyrood election) suggests that Labour is vulnerable on two fronts. On the one hand, both the SSP and the SNP are assiduously wooing its natural working class constituency whilst, on the other, for its public sector middle class voters are being tempted to vote for the Liberal Democrats and (especially) the Greens. If the threat especially from the SSP and the Greens intensifies - Scottish Labour may find itself under competitive pressure to policies further to the left than its own ideological tastes.

But if Labour in Scotland follows (or is tempted to follow) this logic it will encounter a conflicting set of constraints. The first is the risk of another clash with Westminster which Scottish Labour ministers have absolutely no desire to risk. The second is the Executive's very modest revenue-raising powers, hence its limited capacity to promote the characteristic social democratic mix of high-spending, progressive taxation and quality public services. Thirdly it confronts the same problems of an ever-more globalised world economy dominated by multinational corporations. As Jack McConnell, the present First Minister, put it, 'we are players in a world where there is increasing globalisation of trade, and capital flows and financial markets are international. We have a relatively small and open economy and cannot be immune from global developments' (McConnell, 2002). With the various regions in the UK engaged in a contest to attract foreign investment, the Executive will be loath – by acts of commission or omission – to weaken Scotland's competitive position. (Keating, 2001). As a result, there can be no clear political or ideological prognosis for Labour in Scotland. It will be pushed by myriad pressures in different directions and the task of reconciling them and framing a coherent, viable and electorally appealing programme consistent to some degree with the Party's traditional values is likely to prove increasingly onerous.

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<sup>1</sup> The distinction between 'personal care', 'nursing care' and 'residential care – central to the dispute between the two administrations – is explained below p5.

<sup>2</sup> This paragraph draws heavily upon an interview with a former high-level official.

<sup>3</sup> However a big margin of error was assumed because of uncertainty about take-up rates and demographic trends.

<sup>4</sup> These are drawn from a study by the centre-left Think Tank, the IPPR. (IPPR, 2001: 8).

<sup>5</sup> The Scottish Parliament has legislative competence in the areas of health, personal social services, education, training, local government and housing.

<sup>6</sup> As the Guardian commented, 'instead of exploring the elastic bounds of the new constitutional settlement... Scottish Labour leaders keep looking over their shoulders at how London will react (Guardian January 27, 2001).

<sup>7</sup> According to Lord Lipsey, an author of the Royal Commission's Minority Report 'it is hardly an exaggeration to say that the whole of the Highlands could be turned into one big nursing home [for] English people'. Lord Sutherland, in response, mocked the idea of 'container lorries with secret compartments stuffed with grannies and their zimmers' heading north. Funding his recommendations, he added, would cost 0.2% of gross domestic product or one-third of one penny on income tax. (Herald 22 Jan 2001).

<sup>8</sup> He told the Commons in March 2000 that the Government would explore 'with the financial services industry how it could best design long-term care insurance products and other financial products to see if they could be made attractive to a wider audience' (Guardian March 1, 2000).

<sup>9</sup> One actor in the drama close to McLeish tersely dismissed this as the language of 'people who've got no understanding of what the medium income of pensioners in the UK is' (Interview).

<sup>10</sup> The conclusion of this paragraph has been arrived at after interviews with Scottish Labour MPs and MSPs.

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<sup>11</sup> This section relies heavily on interviews with senior figures close to the McLeish administration.

<sup>12</sup> As it happened at the 2003 Scottish general election in the electoral literature of both Labour and the Lib Dems free personal care was prominently highlighted as *their* principal accomplishment.

<sup>13</sup> These were formulated jointly by Holyrood and Whitehall department to regulate relations, stimulate co-operation and define roles and responsibilities.

<sup>14</sup> One reason for this is that such financial products were bound to be expensive and beyond the reach of most potential customers given the uncertainties entailed – in terms not only of the incidence of illness, but of future medical advances and the disposition of family and friends to undertake unpaid care duties. 'To safeguard themselves, private insurers limit the scale of benefits and make their products expensive' (Guardian June 23, 1999)

<sup>15</sup> Deeming and Keen concluded the government's policy was not sustainable and that 'the most equitable and efficient policy solution is one that pools risk across society and redistributes resources according to need' – that is the Scottish solution (Deeming and Keen, 2001: 83, 85, 82).

<sup>16</sup> In reaction to Dewar's opposition to free personal care, Age Concern Scotland launched the 'We Care' campaign in support of the Sutherland report. Within three months over 10,000 signatures had been collected and in January 2000 'the largest petition then seen was handed to the Scottish Parliament in support of the recommendations in the report on long-term care' (Age Concern, 2003: 5.3).

<sup>17</sup> Despite significant teething problems the system of free personal care in Scotland appears to be working fairly smoothly with the Scottish Executive planning to increase its annual budget from £143 million in 2003/04 to £147 million in 2004/05 and to £153 million in 2005/06, so far deemed affordable (Observer February 23, 2003).

<sup>18</sup> This paragraph draws upon interviews.

<sup>19</sup> This generalisation needs to be qualified in that the Conservatives have slid to third party status in many urban centres in the North and parts of London. Equally, the Liberals have made substantial gains in recent elections.