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## **Scotland ‘one year on’: the legacy of the Independence Referendum**



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# Scotland 'one year on': the legacy of the Independence Referendum

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## I Introduction

According to the UK government, at least, last year's independence referendum would be 'legal, fair and decisive' (HM Government, 2012). That it had the first quality is not disputed – it was, after all, sanctioned by both the UK and the Scottish Parliaments. True, there are inevitably some complaints about how various sections of the media covered the campaign, but in practice few suggest that the ballot was anything other than 'fair'. What, however, is less obvious is that the referendum was 'decisive'. For although it determined that Scotland will remain part of the UK for the time being at least, it has not been followed by a return to 'business as before'. Instead, the last twelve months have seen, first, steps taken to introduce yet more devolution, second, the pro-independence Scottish National Party enjoy unprecedented electoral success, and, third, attempts to give Scottish MPs less influence on 'English' business that is being discussed at Westminster. Scottish politics has seemingly been in just as fevered a state as it has ever been, leaving the country's political future far from clear.

This paper analyses the aftermath of the referendum, identifies the features of the referendum that contributed to that aftermath, and considers what the implications might be for Scotland's political and constitutional future. It focuses on three issues. First, what should we make of the post-referendum proposals for more devolution? Do they seem any more likely than any of their predecessors to provide Scotland with a stable constitutional settlement? Second, what are the implications of the SNP's electoral success? Has it ensured that sooner than later Scotland will be going to the polls once again to decide whether it should be an independent country? Finally, what should we make of attempts to change the voting rights of Scottish MPs? Is it a sign of growing tension between Scotland and England over what their relationship should be?

## II What about England?

We begin with the fallout in Scotland's nearest and largest neighbour. No sooner had the result of the independence referendum been announced, than David Cameron was standing on the steps of 10 Downing St. stating that he wanted, *inter alia*, to pursue the question of whether Scottish MPs should be voting on laws that only affect England. The issue was hardly a new one. The apparent unfairness of Scottish MPs being able to vote on English laws when, post-

devolution, English MPs cannot vote on Scottish laws that lie within the remit of the Scottish Parliament, has been a prominent bone of contention ever since the anti-devolution Labour MP, Tam Dalyell, raised the so-called 'West Lothian Question' during the first attempts to introduce devolution in the 1970s (Dalyell, 1977). Reflecting, perhaps, the party's lack of representation north of the border, the last three Conservative manifestos had all proposed that the issue should be addressed. Indeed, Mr Cameron's administration had previously appointed a commission to examine the issue, and it had recommended that England-only business should at some stage be subject to an indicative vote in which only English MPs voted, although ultimately any negative vote would not necessarily see the legislation in question fall (McKay, 2013)). However, until Mr Cameron's intervention on the morning of 19<sup>th</sup> September, it looked as though the commission's report would simply be allowed to gather dust.

Not that it was going to be easy for the Prime Minister to get his way. Finding a cogent answer to the West Lothian question has after all eluded the abilities of many a constitutional expert. More immediately, it was far from clear that the Conservatives' coalition partners, the Liberal Democrats, would be willing to sign up to the principle of 'English Votes on English Laws' in a House of Commons that was elected by first-past-the-post rather than proportional representation (as used in elections to the devolved institutions) (HM Government, 2014). And so it proved. The Conservatives were able to use the intervening months before the UK general election to develop their ideas – principally that a proposed English law should be subjected to a vote amongst England only MPs that, if lost, *would* result in that legislation falling (BBC, 2015) – but they were powerless to pursue them.

But then came the Conservatives' unexpected success in the general election. With an overall majority of his own, Mr Cameron now seemingly finally had the opportunity to introduce 'English votes for English laws'. Except, of course that that was not what he was proposing – what was on offer was an English 'veto' on English laws that would still require the assent of the whole of the Commons to be passed (HM Government, 2015a). Moreover, the majority at his disposal was but a small one of 12. So if just a few Tory MPs felt that the government's proposals did not go far enough, while others were concerned that they went too far, Mr Cameron could still lose the vote – to take the form of a change to the Commons' Standing Orders – given that the opposition parties were united in rejecting the move. Aware of possible divisions in its own ranks, the government thus held back from its original intention of forcing a vote in July, but it is due to return to the issue now that the Commons has returned from its summer break.

There is, in truth, little doubt that that there is widespread sympathy in England for the idea of 'English votes on English laws'. However, there is nothing new about this sympathy. As long ago as 2000, the British Social Attitudes survey found that 63% of people in England either

'agreed' or 'strongly agreed' that, 'Now that Scotland has its own parliament, Scottish MPs should no longer be allowed to vote in the House of Commons on laws that only affect England'. Thirteen years on, when the same survey last repeated the question, that proportion was, at 62%, almost unchanged (Curtice, 2014a). Meanwhile, polls conducted since the referendum – and Mr Cameron's Downing St. initiative – that have used a similar (though not identical) formulation have obtained largely similar results, on average finding two-thirds of people in favour. In short, while the West Lothian Question undoubtedly strikes many in England as an anomaly, concern about the issue is no more widespread now than it was long before the independence referendum ever took place.

Moreover, 'English votes for English laws' is an idea for which there is also considerable sympathy north of the border. The Scottish Social Attitudes survey has regularly found that around a half agree with the idea, while only between a fifth and a quarter are actually opposed. Meanwhile, polls conducted since the referendum have again suggested that just over half still back the idea, suggesting that Mr Cameron's promotion of the idea has not given rise to an adverse reaction north of the border. What, however, we do not know, because no Scottish poll has addressed the issue since, is whether attitudes have changed in the wake of the SNP's landslide in May. That development has certainly changed the party politics of EVEL – what originally looked like a good way of embarrassing Labour could now, perhaps, be portrayed as an attempt to silence 'Scotland's party', the SNP – and it has seemingly led the SNP, which hitherto had voluntarily abstained on what it regarded as England only matters, to adopt a narrower definition of what it regarded as an 'English law' on which it should not vote. But, as yet at least, there is no reason to assume that the high politics of EVEL reflects a growing post-referendum tension on the issue across the two sides of the border.

### **III The winding road to more devolution**

One of the key features of the referendum was, of course, that voters were simply invited to choose between independence and remaining part of the UK. A suggestion that had been made by the Scottish Government, amongst others, that the referendum should ask a 'second question' about giving the Scottish Parliament responsibility for almost all of the country's domestic affairs while remaining part of the UK, was not pursued at the insistence of the UK government. It feared that including such a question would both cloud what it regarded as the central issue in the referendum and give the SNP an opportunity to claim a 'consolation prize' should independence itself be defeated (HM Government, 2012). Nevertheless all three of the principal parties backing a 'No' vote decided individually to embark on the development of proposals for more devolution. First off the mark were the Liberal Democrats who in October 2012 proposed a substantial devolution to the Scottish Parliament of the rates and revenues of

a number of taxes, including income tax in full, such that around three-fifths of the money spent by the devolved institutions would be funded from revenues raised in Scotland (Campbell, 2012). Welfare, on the other hand, would remain almost entirely a UK government responsibility.

Much closer to the referendum, in March 2014 Labour proposed rather less in the way of tax devolution, recommending only an extension of the partial devolution of income tax that was already in train under the terms of the 2012 Scotland Act (Scottish Labour Devolution Commission, 2014). Meanwhile, on welfare, recognising the unpopularity of the UK Government's 'Bedroom Tax', the party now proposed that Housing Benefit should be devolved but otherwise welfare would largely remain a UK-wide responsibility. Finally in June the Conservatives backed the Liberal Democrats on the full devolution of income tax, raised the possibility of assigning to the Scottish Parliament some of the revenue raised by VAT in Scotland, and while, like the other two unionist parties, the party largely eschewed the devolution of welfare, also accepted the idea of devolving housing benefit (Strathclyde, 2014). It also raised the suggestion that the Scottish Parliament might be allowed to supplement the welfare payments received by people in Scotland.

So, in truth, although their proposals fell short of the full devolution of more or less all of Scotland's domestic affairs (or 'devo max' as the idea had come to be known), all three parties were implicitly accepting that the status quo was not an option, and that a No vote would be followed by moves to increase further the powers and responsibilities of the Scottish Parliament. However, rather than coming to an agreed position before referendum polling day, it appeared that the three parties wanted to retain the freedom to put forward their own proposals and compete with each other on the issue in the forthcoming general election. Their calculation appeared to be that, with the No side well ahead in the referendum polls, reaching agreement amongst themselves was not necessary to shore up support for the pro-UK cause and thus there was no reason to limit their freedom of action thereafter. Only the Liberal Democrats argued that an attempt should be made, albeit after the referendum, to try and generate a consensus (Campbell, 2014).

But then as the clock began to tick down towards polling day, the No lead in the polls began to narrow. Indeed, just ten days out, one poll, from YouGov actually put the Yes side narrowly ahead. That gave rise to a rapid rethink. After apparently getting a nod of approval from the UK government, the former Prime Minister, Gordon Brown made a speech in which he proposed that the parties should commit themselves to an accelerated timetable for the development of a plan for 'a modern form of Scottish Home Rule'. Under this timetable, an agreed proposal would be published by St Andrew's Day and a draft bill designed to enact its provisions released

by Burns Night. All three UK party leaders rapidly agreed to Mr Brown's plan, and on the Monday before polling day, the front page of the *Daily Record* was dominated by a picture of a 'vow' that was signed by those leaders and in which they committed themselves to developing 'permanent and extensive new powers for the Scottish Parliament' within Mr Brown's timetable. Voters, it was argued, could now vote No in the sure knowledge that the Scottish Parliament would secure significant new powers, and thus anyone toying with voting Yes because they thought the Parliament was not powerful enough no longer needed to do so.

Thus a referendum that the UK government had originally insisted would simply be a vote for or against independence ended up being presented by that same government and its allies as a choice between an option that was on the ballot paper and one that formally was not and whose details were uncertain. This inevitably meant that, following the No vote that eventually transpired, far from closing the cover, Scotland simply moved on to the next chapter in its constitutional story. Within a matter of hours Lord Smith of Kelvin had been appointed to chair a commission consisting of two members from each of Scotland's principal political parties, including the SNP and the Greens that had campaigned for a Yes vote. Their involvement was important, for under the terms of the Sewel convention the powers of the Scottish Parliament can only be changed with its assent, and that body currently had an SNP overall majority. In short, more devolution was not something the unionist parties could deliver alone.

The commission was, however, inevitably a very different process from the extended public debate that had accompanied the referendum. Although it issued a call for submissions from the general public, it was primarily a forum in which the political parties could hold private discussions with a view to reaching an accommodation between themselves. There was little opportunity for public debate about the merits of more devolution, let alone any chance to test public reaction to any of the ideas the commission might propose. What though did emerge was a document that was probably more radical than any of the three unionist parties individually had originally had in mind (Smith, 2014). It said that income tax should be fully devolved, together with two smaller taxes that had long been earmarked for devolution, air transport duty and the aggregates levy, while half of the revenues from VAT in Scotland should be assigned to the Scottish Parliament too. Meanwhile, despite what had hitherto been a lack of enthusiasm in any of the unionist parties for devolving welfare, the Commission proposed that a number of welfare responsibilities (especially in respect of disability), as well as Housing Benefit, should now be passed to the Scottish Government. At the same time, that government would also be able to top-up the benefits paid the by the UK government to people in Scotland by making additional 'discretionary' payments. Thus while welfare would remain primarily a UK government responsibility, it would now be one that to some extent was shared between the two governments.

According to Bell and Elser (2014), these proposals would make Scotland one of the most fiscally decentralised sub-states in the developed world. The Parliament would be responsible for not only well over half of all public spending in Scotland, but also would have assigned to it the revenues from nearly two-fifths of all taxes raised in Scotland. Although the devolved institutions would still receive some of their money in the form of a grant from the UK government, as determined by the so-called Barnett formula that links changes in the level of spending in Scotland to changes in the level of equivalent spending in England, over half of their revenues would now come from taxes raised north of the border. In short, while Scotland would gain the power to set a number of taxes, it would also gain the responsibility for financing much of its expenditure.

Indeed, the document was sufficiently radical to secure at least the limited approval of the SNP, for whom the report could be regarded as a not inconsiderable 'consolation prize'. In the SNP's view the proposals were welcome as far as they went, albeit they were of course less desirable than independence. However, crucially, they did not, according to the SNP, match up to some of the rhetoric that had been used by Gordon Brown and the three main UK party leaders. They did not represent the 'extensive new powers' promised by the three party leaders, the 'Home Rule' of which Mr Brown had spoken or indeed a settlement that was 'as close to a federal state' as the UK could be, as the former Prime Minister had also described his ideas in an earlier campaign speech. Indeed the proposals certainly did not represent the 'devo max' with which the SNP had once toyed or indeed the 'full fiscal autonomy' that it was now minded to embrace (Scottish Government, 2015), though in truth a fuller reading of Mr Brown's pronouncements suggests that was never what he at least had in mind. But the apparent gap between rhetoric and reality did mean that the SNP could claim credit for what had been achieved, while still casting a cloud of suspicion on whether the unionist parties were in fact keeping their promises.

That, indeed, has proven to be the SNP's stance ever since. When it was published in January, some of the draft bill's provisions on welfare seemed to represent a rowing back on the proposals of the Smith Commission (HM Government, 2015b; Scottish Parliament Devolution (Further Powers) Powers Committee, 2015; Kennedy et al, 2015). First, the Scottish Parliament's ability to determine the structure and scope of welfare provision was confined to those areas of existing welfare provision for which it was now being given responsibility, rather than extending (as some suggested Smith intended) to all those areas (such as education and health) for which it was responsible. Second, the ability of the Scottish Parliament to top up the welfare payments made by the UK government appeared to be confined to short-term, one-off payments rather than any more regular form of additional provision. Third, the Scottish Government would have to secure the assent of the UK government before it could implement any proposals that affected the payment in Scotland of what is about to become the principal, integrated social security payment in the UK, Universal Credit, a provision that might be



regarded as giving the UK government a potential veto power. These points were arguably all relatively arcane, reflecting in part ambiguity in the relevant portion of the Smith Commission report, but they provided the SNP with ammunition to support the claim that the UK government was failing to deliver the Smith Commission report 'in full'.

In any event, as soon as MPs gathered after May's general election a Scotland Bill intended to implement the Smith Commission's plans was introduced in the House of Commons. Some of the criticism of the provisions of the draft bill that had been published in January was met by the introduction of a new clause that explicitly gives the Scottish Parliament the power to top-up the payments of those in receipt of a benefit from the UK government. Otherwise its provisions largely reflected those of the earlier exercise (Sandford, 2015). At the time of writing, September 2015, the Bill has passed its Committee Stage in the House of Commons largely unscathed – and with relatively little fuss, excitement or debate in the media.

#### **IV Do the Smith provisions provide a stable Scottish constitutional settlement?**

But are the provisions of the Smith Commission, and the manner in which they have been implemented, likely to provide the basis for a stable constitutional settlement in Scotland? After all, the previous response to SNP electoral success – the establishment in 2007 of the Calman Commission and the passing of the Scotland Act 2012 – had evidently failed to do so (Calman, 2009). Do the proposals come closer than either Calman or independence apparently did to meeting the aspirations of a majority of the Scottish public?

At first glance it would seem not. There appears to be little doubt that the views of a majority of people in Scotland are closer to the SNP interpretation of 'Home Rule' than that proposed by the Smith Commission. For example, as Table 1 shows, when in recent years the Scottish Social Attitudes (SSA) survey has asked who ought to 'make the most important decisions for Scotland' about various policy areas, not only have around two-thirds consistently said that the Scottish Parliament should play that role so far as the already devolved areas of schools and health are concerned, but also around three in five have said the same about welfare benefits, while almost as many have said the same about taxation. Indeed, as many as 65% even nominated the Scottish Parliament when in 2011 SSA asked specifically about the old age pension, the devolution of which is certainly not envisaged by the Smith proposals. Only when it comes to defence and foreign affairs, which of course are the quintessential responsibilities of an independent state, do a majority say they want to see Westminster in charge.

**Table 1: Preferences for who should decide policy areas, 2007-2013**

|                                    | Scottish Parliament | UK Government at Westminster | Local councils in Scotland | EU  |
|------------------------------------|---------------------|------------------------------|----------------------------|-----|
| <b>Health Service</b>              | %                   | %                            | %                          | %   |
| 2007                               | 63                  | 25                           | 10                         | *   |
| 2009                               | 65                  | 25                           | 6                          | 1   |
| 2010                               | 66                  | 26                           | 5                          | *   |
| 2012                               | 66                  | 24                           | 8                          | *   |
| 2013                               | n/a                 | n/a                          | n/a                        | n/a |
| <b>Schools</b>                     |                     |                              |                            |     |
| 2007                               | 62                  | 13                           | 23                         | *   |
| 2009                               | 65                  | 12                           | 19                         | 1   |
| 2010                               | 62                  | 14                           | 23                         | *   |
| 2012                               | 63                  | 11                           | 24                         | *   |
| 2013                               | n/a                 | n/a                          | n/a                        | n/a |
| <b>Taxation</b>                    |                     |                              |                            |     |
| 2007                               | n/a                 | n/a                          | n/a                        | n/a |
| 2009                               | 59                  | 33                           | 4                          | 1   |
| 2010                               | 57                  | 37                           | 3                          | *   |
| 2012                               | 56                  | 36                           | 4                          | *   |
| 2013                               | 56                  | 36                           | 4                          | *   |
| <b>Welfare Benefits</b>            |                     |                              |                            |     |
| 2007                               | 63                  | 18                           | 16                         | 1   |
| 2009                               | 60                  | 19                           | 16                         | 1   |
| 2010                               | 62                  | 25                           | 9                          | 1   |
| 2012                               | 64                  | 19                           | 13                         | *   |
| 2013                               | 59                  | 32                           | 6                          | *   |
| <b>Defence and foreign affairs</b> |                     |                              |                            |     |
| 2007                               | 33                  | 58                           | *                          | 4   |
| 2009                               | 31                  | 61                           | 1                          | 3   |
| 2010                               | 31                  | 63                           | 1                          | 3   |
| 2012                               | 34                  | 59                           | *                          | 4   |
| 2013                               | 39                  | 53                           | 1                          | 3   |

**Source:** Scottish Social Attitudes

It would seem then that the instinctive reaction of a majority of people in Scotland is that responsibility for more or less all aspects of the country's domestic affairs should lie with the Scottish Parliament. This picture has repeatedly been confirmed when people have been asked to choose between four different alternatives that are intended to refer to the options of independence, 'devo max', the current settlement, and abolition of the Scottish Parliament. As Table 2 shows, never have less than 60% backed either the Scottish Parliament making all

decisions or the Parliament making all decisions apart from defence and foreign affairs, and the figure has been as high as 72%. Moreover, when in 2013 respondents were asked which of these options was their second preference, no less than 79% of those whose first preference was for the Scottish Parliament to decide everything went on to say that giving it responsibility for everything apart from defence and foreign affairs would be their second choice. That meant that in that year at least, as many as 62% clearly preferred 'devo max' to the status quo.

**Table 2: Preferred division of powers in Scotland, 2010-13**

| Which of the statements on this card comes closest to your view about who should make government decisions for Scotland?                              | 2010 | 2011 | 2012 | 2013 | 2014      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|------|------|------|------|-----------|
|                                                                                                                                                       | %    | %    | %    | %    | %         |
| <b>The Scottish Parliament should make all the decisions for Scotland</b>                                                                             | 28   | 43   | 35   | 31   | <b>41</b> |
| <b>The UK government should make decisions about defence and foreign affairs; the Scottish Parliament should decide everything else.</b>              | 32   | 29   | 32   | 32   | <b>27</b> |
| <b>The UK government should make decisions about taxes, benefits and defence and foreign affairs; the Scottish Parliament should decide the rest.</b> | 27   | 21   | 24   | 25   | <b>22</b> |
| <b>The UK government should make all decisions for Scotland</b>                                                                                       | 10   | 5    | 6    | 8    | <b>6</b>  |

**Source:** Scottish Social Attitudes

Meanwhile, more recent and in some respects more specific lines of questioning have confirmed this broad picture. First of all, a poll undertaken by Survation for the *Scottish Mail on Sunday* immediately after referendum polling day reported that no less than 80% believed that the Scottish Parliament should be 'given control over' welfare benefits, 72% income tax, 62% both pensions and corporation tax, and 61% VAT. At the same time, only 44% felt it should have control over defence. Meanwhile, a YouGov poll for *The Times* a few weeks later found majority support for devolving to the Scottish Parliament responsibility for a range of policy areas that Smith envisaged should largely or wholly remain the preserve of the UK government,

including taxes other than income tax (67%), the minimum wage (60%) and the law on both health and safety and consumer protection (60%). Only in the case of the state pension did this poll at least suggest that perhaps some Scots might have had second thoughts, though even then 47% would place pensions in the hands of the Scottish Parliament, slightly more than the 45% who would leave the issue in Westminster's lap.

Against this backdrop it is perhaps not surprising that the Smith proposals have not been met with widespread public enthusiasm. First, only 55% told Ipsos MORI in January that they had seen or heard anything about the report, while just 23% claimed actually to have read any of it. Second, the work of the Commission seems not to have persuaded people that the unionist parties will deliver on the promises they made during the referendum campaign. According to YouGov, the proportion who thought it unlikely that the parties would do so actually increased from an already relatively high 44% in October to 54% in February. Third, there appears to be a widespread impression that the proposals are too timid. In a YouGov poll in December, no less than 51% said that they did not go far enough, while just 14% reckoned they went too far. True, at 30% the proportion who told ICM the same month that the proposals did not go far enough was much lower, but that was in part because no less than 31% said they did not know whether they went too far or not, while the figure still clearly outstripped the 13% who believed the proposals went too far.

Yet public opinion on the issue of more devolution is not as one dimensional as it first seems. As we have noted, more devolution brings responsibility for raising some of the money to fund public services as well as the opportunity for Scotland to make its own decisions about domestic policy. At the same time, devolution of taxation and welfare also opens up the prospect of highly visible differences in rates of taxation and welfare on the two sides of the Anglo-Scottish border. Neither of these consequences is readily embraced by public opinion (Curtice, 2014b).

Consider, first of all, attitudes towards the principle of whether devolved public spending should be funded out of Scottish taxes or a UK-wide grant. The Scottish Social Attitudes survey asked on three occasions between 2009 and 2013 whether public services such as health and education should be paid for 'out of a sum of money decided by the UK Government and funded out of taxes collected across the UK', or whether instead they should be funded 'out of taxes decided and collected by the Scottish Government in Scotland'. On each occasion only around a half agreed that they should be funded out of Scottish taxes, while support for UK-wide funding rose from 40% in 2009 to 46% in 2013.

Meanwhile, it appears that there is a particular reluctance to see devolution applied to the funding of welfare benefits. In 2013 only 34% believed that pensions in Scotland should be funded solely out of Scottish revenues, a proportion that fell twelve months later to just 22%. Much the same pattern was found when the same question was asked of unemployment benefit. In 2013 just 36% reckoned the benefit paid to people in Scotland should be funded solely out of Scottish taxes, while just 26% did so a year later. In short, it seems that while a majority of people in Scotland are keen for the Parliament to be able to make decisions about welfare, they are not so sure about the idea of having to fund those decisions themselves.

So far as having different levels of taxation are concerned, SSA asked on three occasions between 2011 and 2013 whether the basic rate of income tax in Scotland should 'always be the same in Scotland as it is in England', or 'whether it is OK for it to be different in Scotland (either higher or lower) than it is in England', something that could happen as soon as the partial devolution of income tax provided for by the 2012 Scotland Act comes into force, let alone the Smith proposals. Every time, rather more people (between 50% and 52%) said that the rate of tax should always be the same than said it was OK for it to be different (between 41% and 48%).

Meanwhile, even at the best of times, creating differences between one part of a country and another in entitlements to benefits and services always runs the risk of accusations of a 'postcode lottery'. The risk certainly seems to exist so far as having different welfare benefits on the two sides of the Anglo-Scottish border is concerned. Between 2011 and 2013 only between 37% and 41% thought it was OK for the old age pension to be different on the two sides of the border, while between 56% and 63% said that it should always be the same. In short while a majority in Scotland apparently think 'their' Parliament should be making decisions for Scotland about both welfare and taxation, that does not necessarily mean they take easily to the prospect that these decisions might put them in a different position from their counterparts (regarded still as fellow 'citizens' perhaps?) in England. As a result, actually using the powers to do things markedly differently in Scotland could well prove politically relatively difficult, as the SNP indeed discovered when its own proposals for the replacement of Stamp Duty (already devolved under the 2012 Scotland Act) appeared potentially to disadvantage Scots as compared with analogous proposals for England put forward by the UK government (Brooks, 2015).

Thus there would appear to be two serious impediments to the likely ability of the Smith Commission proposals to provide Scotland with a more stable constitutional settlement. First more devolution is an issue on which public opinion is not wholly consistent – willingness to take on powers seems more widespread than readiness to accept responsibility for funding

them. No settlement is likely to prove stable until this tension is resolved. Second, not only are the proposals seemingly little known, but also the impression that has been formed in many people's minds is that they are inadequate.

But then, as we noted earlier, the Smith Commission proposals were hardly developed on the back of a popular movement. They were a compromise between political parties, speedily forged in a smoke-free room. And while the SNP have subsequently been effective at pointing up their alleged inadequacies, there has in truth been very little public debate or discussion of their merits. Yet such discussion would appear to be vital if some of the apparent contradictions in public attitudes are to be acknowledged and resolved – one way or another – let alone enthusiasm generated for what is intended to be a stable constitutional settlement.

One possible instrument in particular is notable by its absence in the Smith Commission debate – that the proposals might be put to the public in a referendum. This is despite the fact that not only was independence put to that test, but also that in Wales full primary legislative powers were only granted to the National Assembly after a referendum endorsing the change had been held in March 2011, and that the devolution of income tax there will only be implemented after a similar referendum has been held. In short, there at least it is accepted that any major step towards more devolution should only be taken after having secured voters' explicit consent (HM Government, 2015c). Quite why the advocates of more devolution in Scotland should want to eschew the possibility of demonstrating public support for their answer to the country's constitutional debate is far from clear. Their reluctance certainly gives the impression that they are more interested in elite manoeuvring than in matching the ability of the SNP to develop a popular movement.

## **V A second pathway to independence?**

And of the fact that the SNP is currently a popular movement there is indeed little doubt. Its success in May's 2015 general election in winning almost exactly half the vote and 56 of the country's 59 MPs was a remarkable political turnaround for a party that just months earlier had seen its defining aim and objective voted down by the electorate. Certainly none of their political opponents anticipated that a No victory in the referendum would pave the way to a SNP landslide. If anything, they may well have been hoping that the party would fall apart and receive an electoral bloody nose.

However, there is an important difference between a referendum and a parliamentary election, and especially an election held under the single member plurality electoral system. A referendum can only be won by securing at least 50% of the vote. In contrast, in a parliamentary

election fought by a variety of parties, 'winning', that is coming first, may well be achieved on much less than 50% of the vote. Indeed under the winner take all single member plurality electoral system, a party can win a landslide in seats with less than 50%; the 45% won by Yes in the referendum could certainly be sufficient. In short, in some ways the Westminster election represented less of a challenge for the SNP than the referendum, especially as, unlike in the referendum, three different parties would be competing amongst each other for the 'unionist' vote.

But, of course, this would only be the case if the SNP were able to retain the support of most of those who voted Yes in September. Hitherto in fact many a supporter of independence had not voted for the SNP, while many who voted SNP did not necessarily want independence. For example, according to the 2015 British Election Study (BES), just 44% of those participated in the 2010 UK election and who went on to vote Yes in the referendum had backed the SNP four years earlier. Almost as many, 36%, had voted Labour. Equally, the 2011 Scottish Social Attitudes survey found that only just over half (51%) of those who voted for the SNP in the 2011 Scottish Parliament election were supporters of independence at that time.

However, the referendum served to turn the constitutional question from simply being one of many considerations in most voters' minds into the central dividing and defining issue of Scottish electoral politics. As late as June 2014, less than two-thirds (63%) of those who were to go on to vote Yes in the referendum, said that they would vote for the SNP when the UK general election came around. But when the BES interviewed these same people again shortly after the referendum, that figure had increased to over three-quarters (78%). By polling day in May it had reached 90%. It appeared now that once voters had actually put an 'X' against independence on a ballot paper rather than just expressed support for the idea to a survey company, they had formed a firm commitment that they wished to affirm by voting for the SNP in May.

In fact very few polls had been tracking during the referendum how people proposed to vote in the following general election; after all, politically that ballot seemed to be light years away. But the one company that did, Survation, put the SNP on average on 36% during the first nine months of 2014. While that was well above the 20% the party had won in 2010, it still left it no more than neck with Labour (also on 36%), and given that Labour's vote was heavily concentrated in its strongholds, such an outcome would most likely still leave Labour able to defend most of its seats successfully. But by November, Survation had the SNP on 46% and Labour on just 24%, and by this stage every other polling company had much the same picture too. Thereafter, nothing seemed capable of stopping the SNP steamroller.

So the foundation of the SNP's landslide was an ability to turn existing support for independence (including that gathered anew during the course of the referendum) into support for the party in a way that had never previously proved possible, while that support was then richly rewarded by the electoral system. In itself, it did not necessarily signal a post-referendum increase in support for independence. Of that there is so far at least only modest evidence. Of 22 polls conducted between October 2014 and August 2015 that have asked people how they would now vote in the referendum, 15 have put No ahead, while just seven have suggested that more people would now vote Yes than No. On average across all of these polls 47% have said that they would vote No, 45% Yes. Still that is a somewhat narrower result than transpired in the ballot boxes in September and it is certainly clear that the support that the Yes side gathered during the referendum has not in any way dissipated or melted away.

Thus, far from settling the issue of Scotland's constitutional status, the referendum has served to turn it into the defining issue of Scottish electoral politics, while leaving the country more or less evenly divided down the middle on the issue. As a result, as the party that commands virtually all of the pro-independence vote, the electoral position of the SNP looks impregnable, and polls of voting intentions for the Scottish Parliament election next May suggest that it is currently on course to win a second overall majority at Holyrood. Certainly, if this is not what is to happen, the opposition parties will need to persuade some of the SNP's current supporters to put the independence question to one side, while offering them reason to believe that in other respects one or more of the other parties represents an attractive alternative. Persuading them that the Smith Commission proposals will make it possible to deliver more than they are currently inclined to think it might be one place to start.

But at the same time, the fact the SNP could well win another overall majority presents it potentially with a dilemma. Should it or should it not suggest that if it does win a majority it will seek to hold a second referendum? Many of its Yes voting supporters will want it to do so, and their support might be at risk if they felt that the SNP was no longer pursuing the goal of independence as speedily as it might. But the party will also be aware that if it were to lose a second referendum then that certainly would prove to be 'decisive' – and holding such a referendum on the back of polls that suggest the outcome would be something close to a 50:50 split would certainly constitute a considerable risk. Meanwhile there is, of course, no guarantee that the UK government will acquiesce in the holding of a referendum in the way that it did in 2014, and thus any attempt to hold such a referendum without the UK Parliament's approval could well simply end up in the courts rather than the ballot box.



Meanwhile, hanging over this calculation is the fact that Scotland along with the rest of the UK will be going to the polls at some point before the end of 2017 to vote on the UK's membership of the European Union. There appears to be little doubt that Scotland is on balance keener on remaining a member of the EU. For example, a Survation poll conducted in Scotland in July found that 54% would vote Yes to remaining in the EU, while just 22% said they would vote No. A poll conducted at more or less the same time across Britain as a whole found a much narrower lead for Yes, of 42% to 35%. Similar differences between Scottish and British-wide opinion have been found in recent months by both YouGov and Panelbase. It thus seems quite likely that should the UK as a whole vote narrowly to leave the EU, that Scotland will have voted at least narrowly to remain. And that probably would impel the SNP to call for a second referendum on independence, when perhaps it will find that the circumstances and the balance of the argument more favourable to their cause.

## **VI Conclusion**

The last twelve months have been amongst the most dramatic in Scottish politics. There has been a revolution in its representation at Westminster. It has had developed for it a substantial rewrite of its existing constitutional settlement. Meanwhile, the first steps have been taken limit its influence on what happens south of the border.

Yet at the end of this period, all of the participants in this drama find themselves facing difficult questions. Although public sentiment on both sides of the border is sympathetic to the principle of 'English votes for English laws', finding an acceptable answer to the West Lothian Question has, unsurprisingly, not proven easy and even if one is implemented it may not produce the political dividend for which the Conservatives (and perhaps the SNP) are hoping. The unionist parties have developed and begun to legislate for a considerable extension of more devolution, yet have so far failed to develop much support, let alone enthusiasm for their project. The SNP, meanwhile, find themselves a significant player at Westminster – and thus in Britain-wide political debate – for the first time in their history, yet are left with the awkward question of whether they can contemplate risking a second throw of the referendum dice. As a result, Scotland seemingly faces the potential prospect of being governed under a constitutional settlement that few love, but to which there does not seem to be an alternative. This is surely a long way away from what many who campaigned for the Scottish Parliament in 1999 hoped that it would bring.

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