

# DEVOLUTION AND INDEPENDENCE IN THE UNITED KINGDOM: THE CASE OF SCOTLAND

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## 1. Introduction

In 1997 the Labour government decided to implement an asymmetrical devolution model granting differing degrees of autonomy to Scotland, Wales and Northern Ireland. In doing so, they sought to respond to different demands for devolution based upon particular national identities existing within Britain.

The British model stands in sharp contrast with the symmetrical devolution programmes implemented in Germany after World War II, where all its *länder* enjoy similar degrees of devolution, and with post-Francoist Spain, where its seventeen autonomous communities are due to enjoy similar powers once the devolution process is completed.<sup>1</sup> So far, devolution in the UK has been confined to Wales,

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1. For a comparative analysis of the Catalan, Quebec and Scottish cases see Guibernau, M. *The Identity of Nations*, Cambridge, Polity Press 2007, chapter 2. In Catalan, Guibernau, M. *La identitat de les nacions*, Barcelona, Deria Editors, 2010.

Scotland and Northern Ireland, omitting the 85 per cent of the population that lives in England, something which could find a remedy if elected regional assemblies are finally created there. Some argue that in this omission lies the inherent instability of British devolution, quite apart from the different settlements already in place.<sup>2</sup>

### In support of devolution<sup>3</sup>

According to the latest available data obtained by the ESRC Devolution and Constitutional Change unit (2004) among the English, 57 per cent support the current model of government for England, 22 per cent are in favour of English regions having their own assemblies, and 16 per cent consider that England as a whole should have its own new parliament.<sup>4</sup>

When questioned about their preferences regarding the British model of the state and according to a survey carried out by the Institute of Governance, University of Edinburgh in 2004, 53 per cent of Scots<sup>5</sup>, 25 per cent of Welsh and 12 per cent of Northern Irish were in favour of the current devolution settlement. In addition, 37 per cent of Welsh and 31.4 per cent of Northern Irish considered that their Assembly/Parliament should enjoy tax-raising powers and only 5.6 per cent of Scots thought that their Parliament should not have tax-raising powers, as it currently has. As early as 2002, 18.6 per cent of Scots, 7.2 per cent of Northern Irish and 6.5 per cent of Welsh supported the independence of their region within the European Union.

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2. Osmond, J. 'A Constitutional Convention by Other Means: The First Year of the National Assembly for Wales' in Hazell, R. *The State and the Nations*, London, The Constitution Unit-Imprint Academic 2000, pp. 37-77, p. 40 and; Tomaney, J. 'The Regional Governance of England' in Hazell, R. *The State and the Nations*, London, The Constitution Unit-Imprint Academic 2000, pp. 117-122.

3. For a comprehensive analysis and statistical data concerning support for devolution in Scotland see McCrone, D. and Paterson, L. 'The Conundrum of Scottish Independence', *Scottish Affairs*, núm. 40, summer 2002. pp. 54-75.

4. *SN 4766. ESRC Devolution and Constitutional Change*, 2001, UK Data Archive. [www.data-archive.ac.uk](http://www.data-archive.ac.uk) (consulted 16 February 2004) p. 42.

5. Lindsay Paterson provides slightly different percentages corresponding to 2002 in the paper 'Attitudes to Scottish Independence and to the SNP', Institute of Governance, University of Edinburgh, 29<sup>th</sup> May 2004. Web accessed on 15<sup>th</sup> March 2005. <http://www.institute-of-governance.org>

When questioned about whether the long-term policy for Northern Ireland should involve it remaining part of the UK, to unify with the rest of Ireland or to become an independent state, it is interesting to observe that 25.3 per cent of the English and 51 per cent of the Northern Irish considered that it should remain in the UK. It is also quite striking to note that 55.4 per cent of the English and only 25.8 per cent of the Northern Irish considered that it should unify with the rest of Ireland. Only 0.65 per cent of English and 6.4 per cent of Northern Irish thought that it should become an independent state.<sup>6</sup>

## **2. Devolution in Scotland, Wales and Northern Ireland**

### **2.1. Scotland**

Scotland has endured a long and complicated process towards self-determination. In the 1979 Referendum on devolution, the Scots voted in favour of the Devolution Act prepared by the then Labour Government. The aim of the Act was to establish a Scottish Assembly thus introducing devolution to the United Kingdom. However, the Act was repealed because a special majority provision required that at least 40 per cent of the registered electorate should vote in favour. Only 32.9 per cent of the electorate voted positively in the referendum. This means that the 'yes' to devolution won in the referendum, but the percentage of citizens voting 'yes' was short of the 40 per cent of the registered electorate required to sanction the Act. As a result, Scots had to wait until 1997 –when a new Labour government was in power– to have the opportunity to vote in a fresh referendum on Scottish devolution.

After the failure of the 1979 referendum there was widespread disillusion in Scotland. In 1988, the Scottish Constitutional Convention comprising Labour, Liberal Democrats, Nationalists, churches, unions and other civic groups initiated a campaign for constitutional change. In 1995, they published a plan for a Scottish Parliament. In the light

of the unhappy memories of earlier attempts at major constitutional reform, the Convention opposed an establishing referendum considering it as a high risk strategy.

In 1997, and after a landslide Labour victory, Tony Blair became prime minister. Once in power, the Labour government decided to hold a new referendum (11 September 1997) which had a positive outcome: 74 per cent of the Scots voted for a Scottish Parliament and 63 per cent voted to give it tax-varying powers. After the referendum, in 1998, the Labour government introduced the Scotland Act 1998; it created the Scottish Parliament, establishing the regulations concerning its functioning and the procedures.

Traditionally, Westminster has always appointed its own representative in Scotland, Wales and Northern Ireland in the figure of a nominated Secretary of State for each one of these three territories. In 1885 a Secretary of State for Scotland was appointed, however he did not command a place in the Cabinet until 1892 and the office did not become a full Secretaryship of State until 1926.

In Wales they had to wait until 1964, when the Labour government appointed a Secretary of State for Wales, a ministerial post of cabinet rank, and subsequent Labour and Conservative administrations promoted the transfer of functions to the Welsh Office.

In Northern Ireland, the office of Secretary of State for Northern Ireland was created in 1972 and after the suspension and subsequent abolition of the home rule Parliament of Northern Ireland following widespread civil conflicts.

The striking differences between Scotland, Wales and Northern Ireland respond to the different time and conditions under which each one of these three territories joined the United Kingdom. The specific status of Scotland after the union of parliaments of Scotland and England in 1707 allowed the Scots to preserve their own Kirk (Church of Scotland), Scottish law, the education system and the judicial system.

In contrast, the accession of the Welsh Tudor dynasty to the English throne, after Henry Tudor's victory at the battle of Bosworth Field in 1485, encouraged Welsh assimilation on the basis of equality.

The Act of Union (1536) enshrined Henry VIII's wish to incorporate Wales within his realm. It meant the complete administrative assimilation of Wales into the English system. Welsh customary law was abolished and English was established as the sole language of legal proceedings.

The union of the three kingdoms of England, Scotland, and Ireland was effected in 1653. By an Act of Settlement, Ireland was regarded as a conquered territory. By this time Ulster had become the most British and most Protestant part of Ireland, although a large Irish Catholic population was also living in Ulster. The rest of Ireland remained Catholic. The Williamite wars reinforced Catholic discrimination by imposing the Penal Laws which excluded Catholics from the army, banned them from politics at both local and national levels, and deprived them of access to education.<sup>7</sup> The Act of Union of 1800 put Protestants under the formal protection of the British (now Union) Parliament. The 1920 Government of Ireland Act divided Ireland into two self-governing parts: Northern Ireland formed by six of the nine counties of Ulster which remained as part of the British state primarily due to the opposition of Protestants in this area who feared the possibility of becoming a minority within a largely Catholic Irish state; and the three remaining counties of Ulster together with the 23 counties of the rest of Ireland considered as a dominion of the British Empire and known as the Irish Free State. Eamon de Valera became its first president.

## 2.2. Wales

A Royal Commission on the Constitution was appointed to consider increasing demands for an elected assembly in Wales. In 1973, the Commission recommended devolution for Wales. An Act giving Wales some devolved powers was passed at Westminster in 1978, but rejected by the Welsh people in the 1979 Referendum. Finally, in September 1997, the Welsh voted for the establishment of a Welsh Assembly and elections took place in 1999. Initially, the Assembly had no powers to initiate primary legislation, however this was to change following the passing of the Government of Wales Act 2006. Cur-

rently, the Assembly now has power to legislate in devolved areas although legislative competence requests are subject to the veto of the Secretary of State for Wales or Westminster, a highly controversial situation which the Welsh Assembly seeks to reverse. Although it has to be said that since the inception of the Welsh Assembly, the Secretary of State has never effected such prerogative:

'Under the Government of Wales Act 2006 c.95, once the pre-legislative scrutiny process is complete, the First Minister sends a draft LCO (Legislative Competence Order), with notice of the Assembly's resolution to the Secretary of State, who has 60 days to either lay the draft LCO before Parliament or refuse to lay it before Parliament and give notice of refusal, with reasons to the First Minister. To date, the Secretary of State for Wales has not refused to lay a draft Legislative Competence Order before Parliament'.<sup>8</sup>

The so-called 'All Wales Convention' was created in 2007 with the aim of establishing the views of the people of Wales concerning devolution and, in particular, to find out whether they might be keen on the possibility of expanding the legislative powers of the Welsh National Assembly. The Convention's remit was to:

- Raise awareness and improve understanding of the current arrangements for devolved government in Wales and of the provisions of Part 4 of the Government of Wales Act 2006, and their future implications for the governance of Wales.

- Facilitate and stimulate a widespread, thorough and participative consultation at all levels of Welsh society on the issue of primary law-making powers.

- Prepare an analysis of the views expressed and the evidence presented through this process.

- Assess the level of public support for giving the National Assembly for Wales primary law-making powers.

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8. *House of Commons-Wales and Whitehall*-. <http://www.publications.parliament.uk> (Accessed 14.06.10).

Report to the *One Wales Government* on its findings, with recommendations relevant to the holding of a referendum.<sup>9</sup>

Currently the Welsh government, formed by a Labour-Plaid Cymru coalition, has plans to expand the powers of the Welsh Assembly by holding a referendum before the forthcoming May 2011 Welsh elections.

In early 2010, an ICM market research company poll found 56 per cent would vote “yes” to full powers in a referendum, while 35 per cent said they would vote against. The 21 per cent gap has grown three-fold from 7 per cent in 2008 and suggests a clear majority of people support giving the Assembly primary powers in devolved policy areas. Asked how Wales should be governed, 40 per cent said they would like a full law-making Assembly that also had some taxation powers. Support for Welsh independence remains small, with just 7 per cent wanting to split the UK and make Wales an EU member state.<sup>10</sup>

### 2.3. Northern Ireland

The Labour government from its appointment 1 May 1997 granted priority to the initiation of all party talks in Northern Ireland including the Sinn Fein. The government managed to obtain a renewed cease-fire from the IRA and invited Senator Robert Mitchell from the United States to act as a chairman in the peace process talks. The decommissioning of arms by the IRA was made into a condition to be met during the talks however no specific date for its accomplishment was ever given. This position underlined the government's stance on the illegitimacy of the use of violence for political ends but it also stressed the role of negotiations as a means to attain political aims which, for a long time, had been pursued through the use of violence. As Guelke (1985: 106) argues, ‘seeking the inclusion of the political representatives of the paramilitaries was an acknowledgement of the link between their violence and the long-standing con-

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9. *All Wales Convention*, Published by the Welsh Assembly. <http://wales.gov.uk/docs> (Accessed 14.06.10).

10. *The Guardian*, 2<sup>nd</sup> February 2010.

flict between the Protestant and the Catholic communities in Northern Ireland'.<sup>11</sup>

An extremely tense negotiating process was initiated. The British Prime Minister Tony Blair, the Irish Prime Minister Berthie Ahern, the Secretary of State for Northern Ireland Mo Mowlam, and the President of the US Bill Clinton intervened in the process and put pressure on all sides to continue the talks. The *Belfast Agreement* (also known as the *Good Friday Agreement*) was finally signed 10 April 1998.

The Agreement represented a major breakthrough in conflict resolution strategies. It sought to reconcile the unionist desire that Ulster remains as a province of Britain, and the republican claim for an independent united Ireland free from English domination. The two objectives are opposed, and have provoked years of intense violence and suffering for the people of Northern Ireland.<sup>12</sup>

The major conditions for peace set up in the Belfast Agreement were 'the total and absolute commitment to exclusively democratic and peaceful means of resolving differences on political issues' and the endorsement of consent as a principle on the basis of which the people of Northern Ireland should decide upon their future. The participants in the drafting of the *Belfast Agreement* endorsed the commitment made by the British and Irish Governments that they would 'recognize the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland'.<sup>13</sup>

The Belfast Agreement was signed by the British and the Irish governments 10 April 1998 (Good Friday) and endorsed by most political parties in Northern Ireland. The citizens of Northern Ireland endorsed the Belfast Agreement in a Referendum (23 May 1998). The same day, the citizens of the Irish Republic voted separately to mod-

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11. Guelke, A. *The age of terrorism and the International Political System*, London, Tauris Academic Studies 1985, p. 106.

12. *The Belfast Agreement*, London, The Stationery Office April, 1998, p. 1.

13. *The Belfast Agreement*, p. 2.



ify their Constitution which laid a territorial claim to Northern Ireland –Northern Ireland was considered as a part of the Republic of Ireland currently under British jurisdiction–. The acceptance of ‘consent’ as the mechanism to decide the future of Northern Ireland (be it within the United Kingdom or by uniting with the Republic of Ireland) meant that the democratic will of the citizens of Northern Ireland was to take precedence in defining their political future. And it was precisely this condition that prompted the Republic of Ireland to renounce to its long term territorial claim over the province of Northern Ireland.

The Belfast Agreement was endorsed by 71 per cent of the population of Ulster (turn out 80.98 per cent) and 94 per cent of the population of the Irish Republic (turn out 55.59 per cent) and provided strong support for the peace process. In Ulster, however, these results revealed a profound split within the ranks of unionism. Catholic voters supported the deal almost unanimously, while Protestant voters were divided. For those who voted ‘no’ in the Referendum, the *Belfast Agreement* signified a sell out, a clear first step towards what they hate most, the prospect of a united Ireland in which Protestants would lose their privileged status and become a minority. As Senator Tom Hayden wrote, ‘Unionism continues as the political identity of the threatened majority which fears change. Their choice of British identity must be honoured even while its scaffolds of privilege are taken down’.<sup>14</sup>

The endorsement of the Belfast Agreement involved the creation of the Stormont Parliament in Belfast which is inclusive in its membership, capable of exercising executive and legislative authority, and subject to safeguards to protect the rights and interests of all sides of the community. It also promoted the creation of a *North/South Ministerial Council* to develop consultation, co-operation and action between Northern Ireland and the Irish Government on matters of mutual interest within the competence of the Administrations, North and South. A further new institution emerging from the Agreement was the constitution of the *British-Irish Council* (BIC) whose aim is to promote the harmonious and mutually beneficial development of the

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14. Hayden, T. Pamphlet: *No Border, no cry? The Peace Process and the Causes of Conflict in Northern Ireland*, February 1, 1998, Senator Tom Hayden, State Capitol, Sacramento CA, p. 2.

totality of relationships among the peoples of the these islands. It comprises representatives of the British and Irish Governments, devolved institutions in Northern Ireland, Scotland and Wales and, if appropriate, elsewhere in the UK, together with the representatives of the Isle of Man and the Channel Islands.

### **3. The case of Scotland**

#### **3.1. The Scotland Act 1998**

The Scotland Act 1998 has transformed Scotland's status within Britain by ending years in which the Scots were governed by a Scottish Secretary of State appointed by the Westminster Parliament a post that was created in 1926. Prior to that, a Secretary for Scotland was appointed, however he did not command a place in the Cabinet until 1892 and the office did not become a full 'Secretaryship of State' until 1926.

The Scots first elected their own representatives in the Scottish Parliament in May 1999. The First Minister heads the Scottish Executive and is appointed by the Queen on the advice of the Presiding Officer after the Scottish Parliament has nominated a candidate, who will normally be the leader of the party able to command the majority support of the Scottish Parliament. The 1997 affirmative referendum result cannot deliver constitutional entrenchment, but it might reinforce its moral and political legitimacy. Ultimately, Scotland's Parliament will have to secure its future in the UK constitution by convincing the population of its relevance to their lives.

One of the main concerns of British politics when discussing devolution is the continuing role of MPs sitting for devolved areas at Westminster. This issue became prominent for the first time in 1977 when Tam Dalyell posed the so called 'West Lothian Question' in the House of Commons and it acquired greater relevance in 1997 once devolution plans were set up by the then new Labour government. The West Lothian Question refers to 'the anomaly whereby Scottish MPs would retain the right to vote on matters affecting only England and Wales but no Westminster MP would have such a voting entitlement on the same issues for Scotland (having been transferred to the

Edinburgh Parliament)'<sup>15</sup> The current over-representation of Scotland at Westminster by around fourteen seats, justified by the need to compensate sparsely populated regions, is also being considered and might be corrected in the future. In the 2010 general election, 532 MPs were elected in England, 40 MPs in Wales, 59 MPs in Scotland and 18 MPs in Northern Ireland.<sup>16</sup> The absence of a British written constitution where answers to these questions could be found leaves open a wide range of options to be discussed in dealing with these crucial issues.

In response to this specific issue the 2010 Conservative party election manifesto included a clause stating that a Conservative government will introduce new rules so that legislation referring specifically to England, or to England and Wales, cannot be enacted without the consent of MPs representing constituencies of those countries.<sup>17</sup>

The creation of a devolved parliament in Edinburgh has not altered, in principle, the unitary character of the British state since sovereignty continues to reside in Westminster. No doubt, the Scottish Parliament exposes an asymmetric picture of the UK based on the recognition of Scotland as a nation distinct from other areas of Britain by acknowledging its specific culture, tradition and ways of life stemming from a separate past as an independent territory.

The former British Prime Minister, Tony Blair, in his preface to the *Scotland's Parliament White Paper* setting up the terms of devolution refers to Scotland as 'a proud historic nation in the United Kingdom' thus acknowledging the multinational character of the British state. Throughout the *Paper*, Scottish devolution is presented as part of the Government's comprehensive programme of constitutional reform aiming to strengthen the United Kingdom. Scotland is defined as an integral part of the UK, and the Queen continues to be Head of

15. McCormick, J. and Alexander, W. 'Firm foundations: securing the Scottish Parliament' in Tindale, Stephen (ed.) *The State and the Nations: the politics of devolution*, London, IPPR, 1996, p. 161-162.

16. Since December 2009, the number of electors per constituency is 71,537 (England); 65,588 (Scotland); 56,532 (Wales); 64,487 (Northern Ireland). The UK's average is 69,878. Data from Gay, Oonagh and Holden, Helen *The West Lothian Question*, Library House of Commons, SN/PC-02586, p. 8. (Accessed 19<sup>th</sup> June 2010).

17. *General Election 2010*, The Constitutional Unit, UCL. Website accessed 3<sup>rd</sup> May 2010.

State of the United Kingdom. Westminster is and will remain sovereign. The Scottish Parliament will have law-making powers over a wide range of matters that affect Scotland. In turn, Westminster will retain powers and responsibilities for: the constitution of the UK; UK foreign policy including relations with Europe; UK defence and national security; the stability of the UK's fiscal, economic and monetary system; employment legislation; social security; and most aspects of transport safety and regulation.

– According to the Scotland Act 1998, reserved matters to the United Kingdom include:

– The constitution, including the Crown, the Union and the United Kingdom Parliament and the civil service;

– National security, security and intelligence services, international relations and defence;

– Fiscal, economic and monetary policy, including money, taxes, public expenditure and the Bank of England;

– Immigration and nationality;

– Companies, health and safety, employment rights and industrial relations;

– Oil, gas, coal, nuclear energy and supply of electricity;

– Road, rail, marine and air transport;

– Social security, child support and pension schemes;

– Broadcasting.<sup>18</sup>

### 3.2. Ten years of devolution: an overview

Over ten years of devolution have been marked by the charismatic leadership of Labour leader Donald Dewar who became the founding First Minister of Scotland and held office from May 1999, until his death in October 2000. His sudden death left a great vacuum in Scottish politics. Dewar was the architect of Scottish devolution and Tony Blair trusted him. After his death, his Lib-Dem deputy Jim Wallace became Acting First Minister, until the appointment of Henry McLeish by the Labour Party (October 2000-November 2001). After McLeish was forced to resign, he was succeeded by Jack McConnell

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18. *Choosing Scotland's Future: A National Conversation: Independence and Responsibility in the Modern World*, The Scottish Government, 2007. Accessed 5<sup>th</sup> May 2010. <http://www.scotland.gov.uk>

(November 2001-May 2007). A string of Labour leaders presiding over a LibDem-Labour coalition government followed Donald Dewar's de-  
cease.

In 2007, after continuing instability within the Labour party in Scotland and general dissatisfaction with Tony Blair's policies in Westminster, in particular his decision to participate in the invasion of Iraq, the leader of the Scottish National Party, Alex Salmon, was elected First Minister of Scotland with a narrow minority.

### **3.3. The rise of the SNP and the strengthening of secessionism**

The victory of the Scottish National Party (SNP) in the Scottish elections 3 May 2007 has created an unprecedented political scenario in which the government of one of Britain's nations is being presided over by a pro-independence party. The SNP's victory has broken a trend initiated in 1997 according to which British-wide parties have been ruling devolved institutions in Scotland and Wales since their inception.

It is worth noting that support for independence stood at 31 percent in 2007, and 41 per cent in 2008.<sup>19</sup> An opinion poll commissioned by BBC Scotland in 2009 has shown that 58 per cent of Scots are in favour of a referendum on independence as planned by the SNP.<sup>20</sup> Another matter concerns whether, all those who support a referendum on independence, would be prepared to support Scottish independence.

In early 2009, the well-respected research and consulting organization YouGov found in an opinion poll that 57 per cent of Scots would say 'no' to independence, while 29 per cent would vote in favour, and 15 per cent said they did not know or would not vote. When YouGov asked the same question in October 2009, support for independence had fallen two percentage points, while backing for the Union had increased by four points.<sup>21</sup>

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19. *Progressive Scottish Opinion Poll*, cited in *The Scotsman*, 14<sup>th</sup> October 2008.

20. <http://www.bbc.co.uk/scotland> Accessed 5th May 2010.

21. <http://www.telegraph.co.uk/news/newstopics/politics/scotland>. Accessed 5th May 2010.

In October 2009, the leading market research Ipsos Mori Social Research Institute carried out a poll showing that only 25% of Scots wanted a referendum now and only 20% supported the SNP's goal of independence – the lowest figure for some time. However, 50% said a referendum should be held “in a few years”.<sup>22</sup> Since then, the three main Unionist parties have made clear that they intend to vote down the Referendum Bill, arguing that the SNP administration at Holyrood should be focusing on tackling the recession. The Ipsos Mori poll suggests that the public agrees, with only one in eight respondents naming a referendum as one of the top two priorities on which the Scottish Parliament should be concentrating. Reducing unemployment in Scotland heads a list of seven areas rated in the survey, with 63 per cent of Scots saying that this should be precisely one of Mr. Salmond's most important tasks.

Undoubtedly, the global economic crisis has exerted a strong impact upon the traditionally powerful Scottish banking system. In November 2009, it was revealed that the Bank of England secretly handed a £62 billion loan to the Royal Bank of Scotland and HBOS (Halifax Bank of Scotland) to prevent them from collapsing in October 2009. The scale of the intervention of the Bank of England was only publicly recognized after the banking system had stabilized enough to admit such a substantial contribution.<sup>23</sup> The bailing out of Scotland's most important banks –now partly owned by British taxpayers, when previously they stood exclusively in Scottish hands– implies a loss of independence for Scottish banking, now entirely reliant of the Bank of England's support; only time will reveal whether a full recovery might be possible.

The socio economic scenario prompted by the economic crisis will no doubt influence attitudes towards an eventual independence of Scotland and the conditions for its viability. Yet, while Alex Salmond launched the *Scottish Independence White Paper* (30<sup>th</sup> November 2009) on Scotland's constitutional future, paving the way for an independence referendum, Labour was quick to remind Scottish people that if they were independent they might have been faced with a situation similar to that of Iceland.

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22. <http://www.guardian.co.uk/politics/2009>. Accessed 5th May 2010.

23. <http://www.guardian.co.uk/business/2009>. Accessed 5th May 2010.

The next elections to the Scottish Parliament are expected in May 2011 and the SNP is determined to hold a referendum on independence before that date. A white paper for the Bill setting out four possible options ranging from no change and full Independence was in print on 30 November 2009. A draft bill for public consultation was published on 25 February 2010. It set out a two question yes/no referendum, proposing both further devolution, and full independence.

This consultation paper sets out proposals for a Referendum (Scotland) Bill. The Scottish Government plans to introduce the Bill in 2010 and aims to obtain the agreement of the Scottish Parliament to hold a referendum as soon as possible. In what follows, we add a summary of the main points integrated in the Referendum (Scotland) Bill including some quotations from the original text:

## **4. Scotland's Future: Draft Referendum (Scotland) Bill Consultation Paper**

### **4.1. Objectives**

"The Scottish Government believes that Scotland's future interests would be best served by it assuming all of the responsibilities and rights of a normal European state. Independence would give the Scottish Parliament and Government full responsibility for those matters currently reserved to the United Kingdom Parliament and Government, including key economic and political powers and the right of representation for Scotland in the European Union. Other aspects of an independent Scotland would stay the same. Her Majesty The Queen would remain as Head of State and the social union with the remainder of the UK would be maintained, with the nations continuing to co-operate on a range of matters.

However, the Scottish Government acknowledges that there is also support for extending the powers of the Scottish Parliament in more limited ways. The draft Bill would provide the people of Scotland with the opportunity to vote on two questions:

– the first about an extension of the powers and responsibilities of the Scottish Parliament, short of independence;

– the second about whether the Scottish Parliament should also have its powers extended to enable independence to be achieved.

The Scottish Government invites views on two possible options for the first question, one of which would be included on the referendum ballot paper. The first option, full devolution (sometimes called “devolution max”), would give the Scottish Parliament and Government responsibility for almost all domestic matters and most revenues and public spending in Scotland. The UK Parliament and Government would continue to have responsibility for defence, foreign affairs, financial regulation, monetary policy and the currency.

The second option for the first question would involve a more limited extension of devolution based on the financial recommendations made by the Commission on Scottish Devolution (the “Calman Commission”) in June 2009. The Scottish Parliament would have the following additional responsibilities:

- responsibility to set a Scottish rate of Income Tax, which could vary by up to 10p in the pound from the rate in the rest of the UK;
- power to set the rates of Stamp Duty Land Tax and other minor taxes, and to introduce new taxes in Scotland with the agreement of the UK Parliament; and
- limited power to borrow money.

The Scottish Government believes that these Calman Commission proposals for financial devolution are seriously flawed and fall far short of the fiscal responsibilities which the Scottish Parliament requires. It believes that they also fall short of what would normally be seen as requiring a referendum. Indeed, those parties who took part in the Calman Commission have made clear their view that a referendum on these proposals is not necessary. However, the Income Tax proposal goes further than the tax-varying power which resulted from the vote in the second question in the 1997 Scottish devolution referendum. Therefore the Scottish Government can see that there is an argument for in-



cluding the Calman financial recommendations within a multi-option referendum and that approach is put forward here for consideration".<sup>24</sup>

## 4.2. Main challenges to the pro-independence option

At least three main challenges could be identified when assessing the prospect of an eventual move towards Scottish independence. First, Alex Salmond and the SNP do not command the overall majority in the Scottish Parliament and they will almost certainly need the support of another major party to legislate for a referendum on independence. If a referendum is organized, the SNP will have to plan its campaign with great care and be cautious. There are some important examples of failed referendums which have had a negative impact on those parties organizing them.<sup>25</sup> For instance the failed 26<sup>th</sup> October 1992 Charlottetown Agreement granting Quebec a 'distinct society' status within Canada and the 30<sup>th</sup> October 1995 Referendum on Quebec's sovereignty lost by only 5,288 votes, giving a 1.16 per cent majority to the 'no' camp.<sup>26</sup> Issues are discussed and exposed in public debates and experience has proven that support in opinion polls is not always reliable when comparing it with the outcome of the vote.

Second, Scottish membership of the European Union. According to the Constitution Unit's book on Scottish independence<sup>27</sup>, an eventual independence of Scotland would consider the United Kingdom as the successor state, and Scotland would have to re-apply for membership of the EU.<sup>28</sup>

Finally, Scottish independence would require Westminster to legislate to dissolve the Union. However, successive British prime min-

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24. *Scotland's Future: Draft Referendum (Scotland) Bill Consultation Paper*, The Scottish Government, <http://www.scotland.gov.uk>. Accessed 5<sup>th</sup> May 2010.

25. Guibernau, M. *Nations without States*, Cambridge, Polity Press 1999, chapter 5.

26. Quebec Chief Electoral Officer, *Rapport préliminaire des résultats du dépouillement des votes le soir du scrutin: Référendum du 30 octobre 1995*, Quebec, Bibliothèque nationale du Québec, 1995.

27. C. Bromley, J. Curtice, K. Hinds and A. Park (eds.), *Devolution: Scottish Answers to Scottish Questions?*, Edinburgh, Edinburgh University Press, 2003.

28. *The Constitution Unit Newsletter*, Issue 35, January 2007.

isters have acknowledged that ‘Westminster would not seek to override the clearly-expressed will of the Scottish people’.<sup>29</sup>

#### **4.2.1. Union or Independence?: The unionist project**

After ten years of devolution, two main options destined to enhance Scotland’s future have been presented in Scotland; a unionist option initially proposal led by Labour involving further-reaching devolution powers and a pro-independence plan led by the SNP.

It was the then Labour leader in Scotland, Wendy Alexander, who set out a unionist perspective on constitutional change ruling out independence. As early as 2008, Alexander set out a dual strategy of strengthening devolution while also taking steps to underpin the union. It was also a first attempt to build a unionist consensus on Scotland’s constitutional future engaging Labour, the Conservatives and the Liberal Democrats.

The Scottish Parliament and the Government of the United Kingdom established the Calman Commission –which was not to examine independence as an option but to restrict itself to the analysis of greater devolution within the UK–. It focused on a review of devolution with the aim of recommending changes to enable the Scottish Parliament to better serve the people and “continue to secure the position of Scotland in the United Kingdom”.

Alexander’s leadership was undermined when she became embroiled in a small-scale, yet illegal, donations affair concerning her campaign budget. However her political initiative was important because, for the first time, the unionist parties in the Scottish Parliament were to join forces and endorsed the creation of the so-called Calman Commission. Instead of aiming at limiting Scottish devolution or protecting the status quo, Alexander’s proposal combined calls for further powers and greater fiscal autonomy for the Scottish Parliament with ideas on reconciling more devolution with a renewal of the United Kingdom. A controversial point referred to her defense of similar social rights across the UK, thus contradicting the current SNP radi-

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29. Ibid. p. 1.

cally different policies concerning university education, health and support for the elderly as much more generous than those available in England and Wales.

After her removal from power, the impact of her plan faded away and priority was given to the findings of the Calman Commission which Final Report, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*<sup>30</sup> was published on 15 June 2009.

### 4.3. Main recommendations of the Calman Commission

– The Scottish Parliament (Holyrood) has always had the power to vary the standard rate of income tax –the so-called Tartan Tax– by 3p in every pound, but this has never been used.

– The Calman Commission called for a new Scottish-set tax, still collected by Her Majesty Revenue and Customs (HMRC).<sup>31</sup> This would work by the Treasury deducting 10p from standard and upper rates of income tax in Scotland, accompanied by a cut in the block grant Holyrood gets from the UK Government. Such a change would prompt MSPs –this is, members of the Scottish Parliament– to decide whether to levy 10p. In the end the amount of cash received by Scotland would remain the same through the combination of Treasury grant, UK tax and Scottish tax. This would allow them to either increase the levy and people's taxes as a result or to cut it –implying a likely reduction in public services–. Holyrood would also have to maintain the differential between standard and upper rate. The aim of this change would be to increase the accountability of the Scottish Parliament by having to decide on the tax and announce their decision.

– Control over stamp duty land tax<sup>32</sup> could be devolved to the Scottish Parliament from Westminster. It made the same call on land-fill tax, air passenger duty and aggregates levy. Transferring VAT and

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30. <http://www.commissiononscottishdevolution.org.uk>

31. Her Majesty Revenue and Customs is a non-ministerial department of the British Government primarily responsible for the collection of taxes and the payment of some forms of state support. Its equivalent in the Spanish system would be the *Agencia Tributaria*.

32. Tax applied to the buying/selling of housing property and land.

fuel duty has been ruled out, for now. This would probably result in a moderate cut in the Scottish block grant.

– Currently, the Scottish Government has very limited power to borrow cash, which it can use to cover short-term funding gaps. The Calman Commission has suggested easing the cash flow and giving the Scottish Parliament some powers to borrow for capital investment and to build public infrastructure such as schools and hospitals.

– Gaining control over “Scotland’s oil” has been a key SNP policy since the 70s –but the Calman Commission warned of the reliability of North Sea revenue because of volatile world oil prices, and said that value was likely to decline in future.

– The report argued that it might be attractive to speculate how these revenues may perhaps be added to the Scottish budget, but ultimately rejected the devolution or assignment of oil and gas tax receipts to the Scottish Parliament.

– The commission also recognized that oil and gas revenue would continue to contribute to the UK-wide pot, therefore continuing to add to the total level of public spending in Scotland.

– To maintain the controversial Barnett formula which involves providing a grant from Westminster to the Scottish Parliament, since many taxes are not devolved or assigned.

– Further devolution of powers from Westminster to the Scottish Parliament should include control over air gun legislation, drink-driving and speeds limits as well as the running of the Scottish elections. Other areas should include: animal health funding, licensing of controlled substances for use in tackling addiction and Scottish ministers to be responsible for appointing a Scotland representative on the BBC trust.

– In addition, Calman has recommended that Westminster sets laws on charities as well as food content and labeling and the regulation of health professionals to apply all over the UK, however, there was no proposal to change the current arrangement where devolved planning law could be used to block new nuclear power stations in Scotland.

– The Calman Commission also emphasized the need to strengthen co-operation between the Scottish and the Westminster parliaments while declaring devolution a success and describing the Union as an institution working to Scotland's advantage, especially in economic matters.

– The Calman Commission review of Scottish devolution includes a call for Holyrood to take charge of half the income tax raised in Scotland.<sup>33</sup>

The constitution of a new British LibDem-Conservative government in May 2010 and the appointment of David Cameron as Prime Minister have opened up further questions about how the future of Scotland is to evolve. As a result of the 6<sup>th</sup> May 2010 general election, the Conservatives have only one MP in Scotland, while their coalition government allies, the LibDems, have a substantial number of MPs (11). David Cameron's initiative to visit Scotland immediately after being appointed signals his interest in developing what he has referred to as a relationship of mutual respect between the British and the Scottish government. Cameron has promised Alex Salmond not to cut down the quite generous annual grant from Westminster to be received by Scotland later this year.<sup>34</sup> At the same time, Cameron has signaled his willingness to leave the room open to further dialogue with the Scottish Executive and even hinted at the possibility of obtaining some further economic support for Scotland. Surely he is to make an effort to strengthen unionism by showing Scottish people the extent to which they benefit from membership of the Union, in particular, at a time of economic crisis and with the 2011 Scottish election looming in the horizon.

Undoubtedly one of the main issues related to implementation of devolution in the United Kingdom has to do with the ongoing debate on national identity that it has generated. In what follows we

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33. <http://www.commissiononscottishdevolution.org.uk/>. Accessed, 16<sup>th</sup> May 2010.

34. The HM Revenue and Customs collects taxes from all UK citizens and residents, the British Government allocates funding to devolved institutions in Scotland, Wales in Northern Ireland in the form of an annual grant calculated according to the number of people and population density of each territory. For instance, the sparsely populated character of Scotland accounts for a larger grant per inhabitant when compared that allocated to other territories. The need to offer services closer to the people even if they live in remote areas justifies this position. The amount of public expenditure allocated to Scotland, Wales and Northern Ireland is calculated every year according to the so-called Burnett formula.

consider some of the consequences of devolution for British as well as Scottish, Welsh and Northern Irish identity in the United Kingdom.

## 5. British versus Scottish identity

For most English people it is hard to establish a clear-cut distinction between an English and a British identity; this explains their difficulty in understanding the Scottish perspective. Initially devolution in Britain became a highly contentious issue which automatically provoked passionate reactions. Lack of solidarity, unfair treatment, favoritism, and threat to the integrity of the state, were some of the expressions, which emerged when considering a decentralized Britain.

However, ten years of devolution have changed this. Both the English and the English press seem to feel much more relaxed about the prospect of a referendum on independence being held in Scotland. Ultimately they argue that 'if this is the Scots' wish, then be it'. However such attitudes may change once the referendum on independence have a date and clear question.

An easily predictable but not specifically intended consequence of devolution has been the generation of greater regional awareness. Thus, Scottish, Welsh and Irish identity have been strengthened in the United Kingdom. A further question concerns whether the devolution process has either reinforced or, rather, irreparably weakened British identity. So far, there is evidence that devolution has problematized British identity and prompted an almost national search for those elements that could be defined as 'British' as opposed to 'English' for example, an issue that was completely neglected in the past. The Scottish, Welsh and Irish redefinition and invigoration of their identities has undoubtedly altered the way in which British and English identities are to be constructed. The *Scotland's Parliament White Paper* (July 1997) states in chapter three: 'The Union will be strengthened by recognizing the claims of Scotland, Wales and the regions with strong identities of their own. The government's devolution proposals, by meeting these aspirations, will not only safeguard but also enhance the Union'.<sup>35</sup> The outcome of an eventual referendum on Scottish

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35. *Scotland's Parliament White Paper*, London, The Stationery Office, 1997, article 3.1.

independence will prove a testing exercise to the original drive of the then Labour British government when it embarked upon the devolution process in 1997.

When compared with other nations without states, a key economic issue distinguishes the position of Scotland and Wales with that of Catalonia and the Basque Country. The former depends on state subsidies while the latter are net contributors to the state's coffers. This makes a substantial difference when considering the Spanish and the British prospects for further decentralization.

An asymmetric political structure such as the one set up in Britain is likely to provoke conflict and states are usually reluctant to accept it because it implies, in one way or another, the acceptance of a special status for some areas. Few states define themselves as multinational, although there may be strong arguments for them to do so. In this respect, political autonomy is perceived as an intermediate option, which goes further than simply acknowledging the cultural specificity of some regions, but stops far short of the sharing of sovereignty involved in federation. For the state and the areas which do not benefit from it, asymmetry is hard to accept, however it might come to be regarded as the only acceptable alternative for some nations such as Scotland if they are to be discouraged from seeking independence.

Since 1997, the United Kingdom has not only constructed a successful asymmetric model of devolution but it is currently engaged in deepening such asymmetry and expanding devolution in Scotland, Wales and Northern Ireland. The key question of whether devolution fosters separatism or, on the contrary, whether it tames it remains unanswered. A Scottish referendum on independence will provide a test for such a question since many of those who have supported the SNP, because of its policies and project for the development of Scotland, may not share their ultimate objective of an independent Scotland.

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## ABSTRACT

The aim of this paper is to reflect upon the consequences of the devolution process initiated by the Labour government in 1997. The paper considers the development of Scottish devolution since its inception up to the present day. In so doing, it establishes a distinction between the so-called unionist view and the secessionist approach. It offers a detailed study of current plans for a referendum on secession, as planned by the Scottish National Party (SNP), while considering its main objectives and challenges. It also includes a thorough overview of the main recommendations of the Calman Commission (2009) set up by the Government of Scotland and the Government of the United Kingdom in order to evaluate ten years of devolution. The paper concludes by offering some final reflections on the consequences of devolution for Scottish and British identity alike.

**Key words:** devolution; Scotland; independence; Scottish National Party.

## RESUM

L'objectiu d'aquest treball és reflexionar sobre les conseqüències del procés de descentralització iniciat pel govern laborista el 1997. Aquest document estudia el desenvolupament de la descentralització escocesa des dels seus inicis fins al dia d'avui. D'aquesta manera, s'estableix una distinció entre l'anomenat punt de vista sindicalista i el secessionista. S'ofereix un estudi detallat dels plans actuals d'un referèndum sobre la secessió, tal com havia previst el Partit Nacional Escocès (SNP), a més de tenir en compte els seus objectius i reptes principals. També s'inclou una descripció exhaustiva de les principals recomanacions de la Comissió Calman (2009), creada pel Govern d'Escòcia i el del Regne Unit per tal d'avaluar els deu anys del traspàs de poders. El treball acaba amb algunes reflexions finals sobre com ha repercutit la descentralització en la identitat escocesa i britànica.

**Paraules clau:** devolució; Escòcia; independència; Partit Nacional Escocès.

## RESUMEN

El objetivo de este trabajo es reflexionar sobre las consecuencias del proceso de descentralización iniciado por el gobierno laborista en 1997. Este documento estudia el desarrollo de la descentralización escocesa desde sus inicios hasta la actualidad. De este modo, se establece una distinción entre el denominado punto de vista sindicalista y el secesionista. Se ofrece un estudio

detallado de los planes actuales de un referéndum sobre la secesión, tal y como había previsto el Partido Nacional Escocés (SNP), además de tener en cuenta sus principales objetivos y desafíos. También se incluye una descripción exhaustiva de las principales recomendaciones de la Comisión Calman (2009), creada por el Gobierno de Escocia y el del Reino Unido con el fin de evaluar los diez años del traspaso de poderes. El trabajo concluye ofreciendo algunas reflexiones finales sobre cómo ha repercutido la descentralización en la identidad escocesa y británica.

**Palabras clave:** devolución; Escocia; independencia; Partido Nacional Escocés.