

# If Scotland says 'No'

*What next for the Union?*

Edited by James Hallwood

THE  
CONSTITUTION  
SOCIETY



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# Preface

**Nat le Roux**

With the referendum on Scottish independence a year away, all the polls suggest that Better Together will win the day, perhaps by as much as two to one. However a great deal can happen in twelve months, and it is evident that a substantial proportion of the Scottish electorate remains undecided. The referendum question appears to offer a binary choice, but the reality is otherwise.

It is far from obvious what 'independence' would mean for a small nation, tied by culture, kinship and history to its larger neighbour, in a world where sovereignty is increasingly qualified and layered. These issues have been extensively debated in Scotland in recent months and the public now has a somewhat better sense of the shape which independence might take, especially in the key area of EU membership. All the same, significant uncertainties remain and there are, unavoidably, many matters which cannot be resolved until the electorate has endorsed the principle of independence.

The consequences of rejection are equally unclear. It is conceded, tacitly or otherwise, by the mainstream unionist parties that, as Ruth Davidson put it to the Scottish Conservatives, "a 'no' vote won't be a vote for no change". However, policies are not yet fully developed: we can expect to learn more before the referendum, especially if the polls start to narrow. From an international perspective, the current devolution settlement has always looked unbalanced. A wide range of spending and regulatory matters are already devolved, but

only very restricted fiscal powers. The implementation of the 2012 Scotland Act will go some way to correct that imbalance, but the transfer of fiscal powers will have to go considerably further before Holyrood's relationship with Westminster begins to resemble other decentralised federal systems.

The timetable at least is clear. The referendum result will be known ahead of the 2014 party conferences and a UK general election will be held some eight months later. Assuming Scotland votes 'no', the unionist parties will use the intervening period to polish their proposals for further devolution. When they come to craft their manifestos it will be difficult to ignore England. Those two old chestnuts, the Barnett formula and the West Lothian Question, retain their capacity to irritate significant sections of the electorate south of the border. UKIP's voice is growing louder, and it is mainly an English voice. There may be a broader demand for some form of constitutional convention on the future of the Union, a call which The Constitution Society would support.

We are delighted to be co-operating with three leading policy think tanks – CentreForum, the Fabian Society and ResPublica – in producing this short collection of essays. The first paper is by Michael Keating, Professor of Scottish Politics at the University of Aberdeen, who provides an extended introduction to the devolution debate. Subsequent contributions are from leading commentators – Magnus Linklater, Jim Gallagher and Phillip Blond – who discuss the issues from different points in the political landscape.

We hope these essays will highlight the key issues in the difficult debate about the future of the Union which must follow, should the Scottish people decide next year to remain a part of it.

*Nat le Roux is Director of The Constitution Society*

## About the authors

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# **Scottish devolution: Where do we go from here?**

**Michael Keating**

## **The Scottish Question**

In September 2014 the Scottish electorate will be faced with a straight choice as to whether to go for independence or remain part of the United Kingdom. The duality of this choice was at the insistence of the UK government and the other unionist parties, who argued that there was no third way and that Scotland would have to give a clear yes or no to the independence question. Yet while the words of the agreed question are clear, their meaning is anything but: independence is a difficult concept in the modern world, where states are constrained by wider economic, military and political forces and nested within broader unions of all sorts.

In fact, all the parties, while insisting on the primacy of the nation-state (whether it be Scotland or the UK) are in practice looking for a new centre ground between the status quo and independence in its classical sense. The SNP offers independence but also maintaining the Pound Sterling in a monetary union with the UK. As we know from experience in the Euro zone, this implies not only a common monetary policy but coordination of fiscal policy with strict limits on deficits and debts. In the case of a Sterling union, Scotland would not have a say over how monetary policy was set and would be the weaker party in any fiscal pact.

The SNP also propose a range of common administrative and regulatory institutions and close cooperation in foreign policies, defence and security.

For their part, all three unionist parties (Conservative, Labour and Liberal Democrat) are moving away from their defence of the status quo to accept that further devolution might be necessary and desirable. So, despite the furious rhetoric on both sides of the debate, the parties are all seeking a place in the middle ground. This is the reality of modern statehood, in which traditional notions of sovereignty are out of date and powers over economic and social change have been unbundled and reassembled at multiple levels, from the global to the local. So, we find ourselves in an ironic position, where the political parties are vocally insisting on a straight choice between independence and remaining in the UK, while in practice offering a much more complicated menu. Scotland is not alone here. Nationalist parties in Quebec, Catalonia, the Basque Country and Flanders have repeatedly come back to formulations for self-government somewhere beyond federalism but short of independence.<sup>1</sup> The philosophical basis for these 'post-sovereign' ideas is that sovereignty in the modern world, especially within Europe, is divided and shared; levels of government are interdependent rather than independent; that states do not need to be symmetrical; and that new ways of dividing functions are needed for a changing world.

Indeed, in a different context, the Prime Minister himself has conceded the point.

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1 These are reviewed in Michael Keating *Rethinking Sovereignty: Independence-lite, devolution-max and national accommodation*  
[federalistainfo.files.wordpress.com/2012/10/keating.pdf](http://federalistainfo.files.wordpress.com/2012/10/keating.pdf)

In his speech of January 2013 Mr. Cameron insisted that a simple yes/no referendum on UK membership of the European Union would be inappropriate as the matter is more complicated:

*A vote today between the status quo and leaving would be an entirely false choice.*

...

*It is wrong to ask people whether to stay or go before we have had a chance to put the relationship right.*

*How can we sensibly answer the question 'in or out' without being able to answer the most basic question: 'what is it exactly that we are choosing to be in or out of?'*

Instead, the PM proposes a referendum on some as yet unspecified third way or special relationship.

So, rather than a definitive resolution of the Scottish issue in 2014, we will enter a new phase in the developing relationship among the nations of these islands. In the case of a Yes vote, relations with the UK will be renegotiated in a different kind of union. In the event of a No, the unionist parties will be pressed to make good on their promises to look anew at the current settlement. Three elements are the centre of proposals for devolution-max, going beyond the present provisions, these are revenue-raising; the devolution of more competences in welfare; and external relations, especially in Europe.

### **Tax and Spend**

The present system devolves most domestic policy to Scotland, with the major exceptions of economic regulation, taxation and social welfare. The unionist parties have been reluctant to concede taxation powers. In the original Scotland Act, there

was a provision to vary the standard rate of income tax up or down by up to three pence in the pound but this has never been used because of the cost of collection, the political penalty and the fact that, for the first ten years of devolution, there was more than enough money available in the block transfers from London.

Instead, the Barnett Formula, whose demise has regularly been predicted for the last three and a half decades, survived. This gives the Scottish Parliament in each spending round the same as it had last time, with an increase or decrease based on the corresponding per capita change in comparable English spending. It thus combines a mixture of historic spending and per capita allocations and also, contrary to what is sometimes asserted, pays no attention whatsoever to relative need or tax yield.

The Barnett Formula is often criticized in the rest of the United Kingdom as a mechanism for giving Scotland more than its fair share of spending, but in fact, properly applied, it would have the opposite effect; gradually aligning Scotland's spending with that of England. That this has not happened is the result of a failure to adjust the base, in line with population changes and side deals or 'formula by-pass', as well as the existence of spending (for example on social security) falling outside the formula. Barnett is defended as being simple to calculate and transparent, but in practice it is very complicated, as we know from the evidence that has slowly emerged as to how the sums are actually done. Barnett has survived because nobody has been able to come up with a viable alternative but it is under steady pressure from other parts of the UK (notably in Wales). There was some convergence during the time of rapid increases in public expenditure but this seems to have halted (as would be expected, since reductions are also allocated according to population).

The unionist parties have therefore moved cautiously through the Calman Commission and the subsequent Scotland Act (2012), which extended the Scottish Parliament's discretion over the standard rate of income tax (from 3 pence in the pound to 10 pence) and devolved various minor matters. The Scottish Conservative leadership now proposes further fiscal devolution. A Scottish Labour Party commission proposes to devolve the whole of income tax. The Liberal Democrats have reverted to their historic policy of federalism (although not saying what they would do about England) and propose changes in taxation rather similar to those of Labour, including most income tax.

All of these proposals assume that the balance of powers and spending between Scotland and the United Kingdom would be much as at present. The Scottish Parliament would have greater devolved or assigned tax powers but the assumption appears to be that there would not be a great variation in practice. This is because (as is argued most explicitly in the Calman report and the more recent Labour proposals) the broad outlines of the welfare state would continue as at present. The United Kingdom is seen as an economic and social union, in which economic factors inhibit significant tax and spending variation and the basic lines of the welfare state are set centrally.

These assumptions, however, can no longer be taken for granted. Scotland and the UK are open economies, subject to the vagaries of currency and bond markets and embedded in a wider economic union, the European Union. Neither the UK nor a putative independent Scotland possess or could possess the macro-economic levers available in the Keynesian era. In particular, governments have lost the ability to balance the spatial economy through planning, regulation and redirection of investment through subsidies and restrictions; the instruments of regional policy in the Keynesian era. As a result, emphasis has moved from

regional policy in which places find their own niches within a national division of labour, to competitive regionalism in which places compete with each other for investment, jobs and advantage in general. The powers possessed by devolved governments and their development strategies have become more important, and competition is not just within the UK but across Europe, and indeed the world. The 1998 Scotland Act recognized this by devolving economic competences that were to be reserved under the earlier 1978 Act (which failed the 40% rule in the referendum). There may now be a case for going further.

The nature of the social union is also changing as a result of wider shifts. Theories of federalism and devolution have usually argued that redistributive services should be organized at the higher or federal level, with lower levels of government focusing on promoting development and on allocating services. The argument is twofold. First, the higher level can mobilize more resources, redistribute on a wider basis, and cope with asymmetrical shocks, as when an economic downturn hits one part of the country more than others. This might logically point to taking welfare up to the highest level of government, which is the European Union. To explain why this has not happened, a second argument is invoked, that the national level is able to generate more affective solidarity and a feeling of common citizenship. Some people, like the philosopher David Miller, have argued that we actually owe a higher moral obligation to co-citizens but we do not need to go that far to accept that, in practice, it is easier to share with co-citizens in the absence of universal solidarity. So cash payments, notably pensions, family support and unemployment pay have tended (although not always) to be state-wide even in federal systems.

It is not clear that these assumptions are still tenable in their old form. There has been a move everywhere away from passive

support for the unemployed and disadvantaged to active support to get people back into the labour market. This idea is supported, in different forms, by both the left (as 'active labour market policies') and the right (as 'workfare'). Such active policies need to be tied into training and economic development policies, which tend to be handled at the intermediate, devolved or 'regional' level. Nor is it clear that the old distinctions between redistributive and allocative policies is any longer tenable. New forms of inequality have opened up, or been noticed, such as gender and age inequalities, not corresponding to the old social categories. New social risks and forms of precariousness have emerged which do not correspond to the previous risks linked to the old labour market. The language of social inclusion emerged in the 1990s to capture this shift, although arguably we now seem to have reverted to even older thinking about the deserving and undeserving poor. There is also a realization that most public services are redistributive and not just cash payments. So there are concerns that policy is geared too much to the interests of old people at a time when age is no longer a good proxy for need, and about the implications of loading debt onto the shoulders of young people.

While it might have been axiomatic at the time of T.H. Marshall's post-war essay on citizenship that 'social citizenship' was inextricably bound up with the nation-state, this can no longer be taken for granted. In multinational states like the United Kingdom, the term 'nation' itself may refer to more than one level, while spaces of solidarity might also open up at other levels, whether local or supranational. So as both welfare and citizenship are being renegotiated, the old simplicities are disappearing.

The present Scottish settlement gives the Scottish Government and Parliament wide discretion over the allocation of resources for public services but reserves the big decision about the overall size of the public sector and the balance between taxes

and services to the centre. This has been challenged not only by the pro-independence side but by other political voices who argued that Scotland might want to strike this balance itself and to forge its own welfare settlement within a reformed union. Some of these are on the free market right and argue for fiscal autonomy to allow tax cuts (and consequent cuts in spending) to improve Scotland's competitiveness. Others, on the left, want fiscal autonomy in order to defend levels of public spending, which implies higher levels of taxation. The idea that tax cuts will themselves automatically generate enough growth to pay for themselves is, in my view, a piece of wishful thinking without the empirical evidence to support it. Deficit spending in a recession may be justified as a way of mobilizing idle resources and stimulating recovery but in the longer term the debt must be paid down. Otherwise, tax cutting is likely to lead to a 'race to the bottom' as other jurisdictions cut their taxes. On the other hand, a high tax regime may or may not hinder growth, depending on how the taxes are spent. The 'social investment state' is a regime which spends in areas that enhance human capital, research and infrastructure, public goods necessary for growth in the longer term.

### **Tax Options**

Taxes can be levied on income, wealth, business profits, consumption, property and miscellaneous other transactions. At present, income tax is partially devolved and the Labour Party devolution commission proposes to devolve it entirely. The present provision however, applies only to the standard rate and not to investment income. A more radical idea would be to allow the Scottish Parliament to define the tax base, higher rates as well as the standard rate, and the allowances. It could then either have lower rates to attract wealthy residents, or

higher rates in the interests of progressivity. The main objection is that lower rates would provoke a race to the bottom, while higher rates might lead to the flight of higher rate payers. International evidence would suggest that the effect of taxes on mobility depends on exactly how mobile people are and on the size of the tax differential. People may not move because they are tied to jobs in one place, for cultural or family reasons, or because of the housing market. In the case of Scotland, modest differences in income taxes would probably be possible without provoking taxpayer flight.

Employee National Insurance contributions have effectively become a form of income tax since the fiction of a distinct fund has long disappeared. There have been many proposals to fold them into the income tax and make them more progressive; if this were to be done, then they could be devolved to Scotland. On the other hand, there have been voices recently wanting to return to the contributory principle, with benefits depending on how much individuals have paid-in, suggesting the restoration of a distinct fund. In that case, devolving the contributions would be appropriate only if the corresponding benefits were also devolved.

The United Kingdom does not tax wealth directly and wealth taxes can be easy to evade by moving financial assets into other jurisdictions. The nearest suggestion has been the so-called 'mansion tax', which is in fact a variety of property tax. Wealth can also be taxed at the time of succession through death duties and inheritance taxes. It is quite common for these to be levied by sub-state governments, based on the legal residence of either the deceased or the inheritors. For some reason, succession taxes have become politically unpopular, although they do provide a way to avoid excessive inter-generational accumulation of unearned wealth and foster equality of opportunity and social mobility.

Business taxation in the form of corporation tax is at present not devolved, although business rates are (and are tied to local government income within Scotland). Business taxation is often devolved in federal systems, usually shared with the central government. The argument against devolution of business taxation is that it could generate market distortions and tax competition as governments seek to attract investment. This in turn could stimulate a race to the bottom as governments try to out-cut each other, to the detriment of all. The SNP's emphasis on cutting corporate taxation and Air Passenger Duty suggests that this is a real possibility. There is little evidence that tax cutting does in fact attract investment, since many other factors are present, while tax cuts would benefit not only new investors but also existing businesses, including banks and oil companies, who might be expected to make a significant contribution to public services in Scotland. On the other hand, governments have in some places made intelligent use of business taxation and allowances in order to encourage research and development, cultural industries or environmentally responsible behaviour, while keeping the overall burden in line with that of their neighbours. Variations in corporation taxes within a single country are contrary to EU competition law, unless it is clear that there is a devolved government with real responsibility and which bears the cost of any revenue lost through lowering rates. These conditions could certainly be met in Scotland.

The main consumption tax in the UK is Value Added Tax and, under EU rules, this cannot vary across a state, and can only vary between states within certain limits. It is therefore ruled out as a tax that can be devolved. It would be possible to assign it, that is share the proceeds out according to the amount levied in Scotland, but this would be contrary to the spirit of a value added

tax, which is in principle levied on each stage of production, rather than a simple sales tax.

Excise duties on alcohol, petroleum and tobacco are consumption taxes that could legally be devolved. This would give the Scottish Government an instrument for alcohol and tobacco control, which in the case of alcohol could be preferable to existing proposals for minimum pricing, since the surplus would accrue to the public purse rather than the suppliers. The main objection is that it would encourage cross-border shopping and smuggling. This would be a problem if the price differential was very large but smaller differences could be possible without giving an incentive to cross-border shopping. Similarly the margins for smugglers would have to be large to make it worthwhile, especially since they are typically looking to sell their products without paying taxes at all. Air Passenger Duty is a consumption tax, which has been justified on environmental grounds and to compensate for the fact that air tickets do not attract VAT and aircraft fuel is free of duty. It seems, however, that devolved administrations only want to get their hands on it in order to cut it, another example of tax competition.

Another candidate for revenue consists of fees and charges of various sorts. The Scottish Government already has extensive powers here, although they are little used. Bridge tolls have even been abolished, as have university fees for Scottish-based students. Fees are unpopular since people have to pay at the point of use, making them more obtrusive than income taxes, which are deducted at source, or VAT, which is concealed in the retail price of goods and services. They are also denounced as burdensome and regressive (unrelated to ability to pay) although this is not necessarily the case. Road and bridge tolls would be paid disproportionately by the better off, although there would also be an impact on rural dwellers. Fees could certainly be designed to be progressive in their impact.

Property taxes are currently limited to council tax, business rates and stamp duties, all now devolved. There are strong arguments on grounds both of efficiency and equity for moving the burden of taxation onto land and property. Land value taxation is a way of capturing some of the profit from business without the risk of avoidance and transfer pricing as practised by many multinational corporations. Heavier and more progressive taxation of residential property could allow for reductions in income taxes, yet the only gestures we have seen in this direction are the mansion tax proposed by the Liberal Democrats, which has some support from Labour. Otherwise, the movement has been in the opposite direction. No political party in Scotland has supported the revaluation of property necessary to re-establish both revenue-raising capacity and equity in the council tax. The SNP has in the past proposed to abolish it entirely in favour of more income tax and has frozen it since 2007.

If Scotland were to assume responsibility for more welfare payments, as discussed below, then it would need to have borrowing powers to tide it over bad economic times, running surpluses in boom years.

### **Fiscal Equalization**

There has never been a system for allocating spending among the parts of the UK on the basis of either wealth or needs. The Barnett Formula is based, rather, on historic patterns that reflect neither of these principles. A more radical devolution of taxation could seek to dispense with equalization altogether and let each government raise the amount needed to finance its own expenditures. It is more likely, however, that some element of redistribution and solidarity would be retained. This can be based on wealth, with a provision for better off areas to contribute more, and/ or on needs, whereby areas with more social and

economic problems would receive more. A distribution based on wealth would be sensitive to oil revenues. Broadly speaking, Scotland has usually contributed as much to UK revenues as it has taken, but this has fluctuated considerably because of varying oil revenues. If allocations were based on needs, on the other hand, Scotland would probably lose out as most calculations have suggested that its expenditure levels are higher than those of other parts of the UK, and that this does not all reflect higher needs. If a new system of redistribution is to be introduced, this could not easily be applied in Scotland alone but would have to apply across the UK, with Welsh interests in particular demanding more generous treatment for themselves. The international evidence suggests that reaching overall agreement on revenue sharing is extremely difficult and that in practice reform is incremental, making adjustments at the margin in response to political pressures and bargaining. If there is a No vote in the referendum, Scotland may be in a strong bargaining position or a weak one, depending on the size of the victory.

### **Devolving Welfare**

The present settlement, as amended by the Scotland Act (2012), devolves most domestic policy to Scotland, with the notable exception of social security and welfare. Excluded items include pensions, unemployment benefits (job seeker's allowance) and the various benefits being rolled into the Universal Credit. Pensions tend to be state-wide even in federal systems, although Quebec has opted out of the Canada Pension Plan and operates its own system, which provides substantial investment funds largely spent within the province. Elsewhere it is generally argued that the need for a wide contribution base to cope with asymmetrical economic shocks makes organization on the higher level desirable.

An effect of devolving unemployment benefits is that it could enable Scotland to pursue its own active labour market policies, tying benefits to training and employment. This would be advantageous if Scotland were considering breaking with the present pattern of passive support combined with sanctions for those not taking jobs. The Danish 'flexicurity' model, for example, combines reduced job security with high unemployment benefits but active policies to get people back into work so that the time on benefits is reduced. Other benefits could be tailored to policy priorities and target groups. So Scotland could choose to spend less on the elderly (for example in winter fuel allowances) and more on young people, or vice versa.

## **Europe**

For the last twenty years, there has been a close connection across Europe between the process of European integration and devolution. On the one hand, European integration reinforces post-sovereignty ideas and provides new ways of dividing and sharing powers. On the other hand, it takes up to Brussels powers that have been devolved domestically, and allows state governments to re-enter these fields since it is they who are represented in the Council of Ministers and its associated committees. Various measures were introduced in the Maastricht Treaty to mitigate this problem. An advisory Committee of the Regions was set up; a provision was introduced to allow devolved governments to represent their state in the Council of Ministers; and the principle of subsidiarity was reaffirmed. None of these really resolves the issue. The Committee of the Regions represents all manner of entities, including municipalities, regions with legislative powers and stateless nations, and finds it difficult to reach a common line; and it has only an advisory role. Devolved governments are present in the Council of Ministers by

right in Germany and Belgium, but only by invitation in the case of the UK. In Germany and Belgium they have a role (sometimes determining) in deciding what the negotiating line is but in the United Kingdom must seek to persuade the central government of their case and then toe the overall UK line. This is not always possible. At present, the UK Government is proposing to opt out entirely of the Area of Freedom, Security and Justice and then opt in where appropriate, a policy opposed by the Scottish Government, which has most of the competences in the field. If a future UK government should seek further disengagement from Europe (as proposed by the Conservative Party) then the problem will become more acute. There may therefore be a case for formalising and guaranteeing provisions for Scottish participation in EU policy-making. The EU does not itself provide such opportunities (the idea of a 'third level' of regions having failed), so this would have to be worked out within the UK. Differences over Europe could increase if Scotland should vote to stay in the EU and the rest of the UK to withdraw; or if the Scottish Parliament does not wish to go along with the partial withdrawal proposed by the British Conservatives.

### **Representation at the centre**

The West Lothian Question (the anomaly of Scottish MPs voting on purely English matters) has been a constant presence since devolution but has never been a pressing matter. With extended devolution, especially in taxation, this could become more urgent. It is likely that English opinion will seek to reduce Scottish presence at the centre in various ways including 'English votes for English laws' or a reduction in the number of Scottish MPs. This would cause most problems for the Labour Party.

Devolution has been accommodated by leaving things at the centre largely unchanged but this is likely to be unacceptable

in the longer run to opinion in England (which will become exercised about finance and the West Lothian Question) and will generate increasing anomalies. The Liberal Democrats propose to resolve the issue by federalising the UK but until they say what they would do about England this means little. The other unionist parties have said even less about their vision for the union as a whole.

## Scotland after September 2014

Magnus Linklater

It has become a running cliché of the independence debate in Scotland to say that the referendum vote in September 2014 will be decided by the economy. Perhaps more specifically, one should say the pound. “It’s the Pound, Stupid,” ran a Daily Mail headline the other day, raising once again the question of how or whether a Scottish government of the future would be able to control the economy of the nation while still remaining tied to Sterling.

It has presented the First Minister, Alex Salmond – himself a former economist – with his most intractable challenge. As Professor Gavin McCrone, who was chief economic adviser to the Scottish Office for more than 20 years, writes in his book, *Scottish Independence: Weighing up the Evidence*,\* Scotland could only continue in monetary union with the rest of the UK, if, like Ireland in 1922, it accepted all the constraints that implies – and those constraints would be considerable. “Scotland would have very little influence on monetary policy, and fiscal policy would, in effect, be overseen by the rest of the UK,” he writes.

Since the only valid economic case for independence is that it would markedly improve the lives of its citizens, then those constraints would appear to be an almost insuperable barrier to change.

But how valid is the cliché? As we move into the final full year of the independence debate, it is doubtful whether the majority

of voters are going to be swayed by the finer points of monetary policy. They are more likely to respond to a deeper sense of confidence in the future – or a lack of it. Whether that is a future inside the Union or out of it, measuring the mood of the nation is far harder than simply assessing the state of the economy.

While most polls suggest that the Scots remain unconvinced by the case for independence, there is a marked degree of uncertainty hidden within the statistics. A recent Panelbase survey showed a small improvement in Nationalist support, to 37 per cent, with the pro-Union vote hardening to 46 per cent. While Panelbase tends to favour the independents, the gap does not appear to be insurmountable, and there remains a surprising number of “soft” votes – those that are not so far committed, that they may yet switch.

Analysing the figures recently, Scotland’s leading poll expert, Professor John Curtice, wrote that the two-thirds of Scots who appear to favour staying inside the UK are not necessarily all against independence. “In all of the polls there is a not inconsiderable group of ‘Don’t Knows’, ranging from 10% in an Ipsos-MORI poll conducted at the beginning of May to 20% in a Panelbase poll undertaken later that same month,” he wrote, adding: “To see the referendum outcome to which the polls are really pointing, we need to take out the ‘Don’t Knows’ and calculate what percentage of those with a stated view say they will vote Yes, and what proportion, No.”

The conclusion he reaches is that the average Yes (to independence) vote rises from 33% to 39% (with 61% saying No). “Rather than being two to one behind, the Yes side is seemingly more like three to two behind,” he says.

What, then, is likely to shift the opinion of those who claim they have not made up their minds? The most obvious answer is more

information. That there is a thirst for detail is undoubted. The plethora of conferences, seminars, debates and forums that take place across Scotland these days are consistently well-attended, and most of them reveal that people still feel themselves short of explanation – from both sides. This is not altogether surprising; much is yet to come. The Nationalists promise a white paper on the implications of independence some time later this autumn; meanwhile the opposition parties have different approaches to the future of devolution, some of which will not be properly spelt out until after the referendum: when David Cameron came to Scotland earlier this year, he said the UK government would wait to see the outcome of the vote before spelling out its own views about future tax arrangements in Scotland.

So the arguments will continue, and most will revolve around the deeper question of what kind of people the Scots consider themselves to be. For long stretches of the nation's recent history it was hardly necessary to pose the question at all. As many revisionist historians have pointed out, the Scots have willingly worked to promote British interests, sometimes even forming those interests themselves, whether in the building of empire, the furthering of an industrial revolution, or fighting in two world wars. Colourful Scots, like John Buchan, Sir John Reith, Sir Fitzroy Maclean, Lord Lovat, and a host of imperial heroes, wore their Scottishness lightly (Maclean, a diplomat before the war, used to refer to himself occasionally as English). The appetite for independence between the wars remained thin.

The National Party of Scotland, as it was in the 1930s, attracted few votes and miserly support. To be British first and Scottish second was not a controversial position to take. Beneath the surface, however, the desire for greater autonomy was ever-present, becoming more evident in peacetime, and increasingly urgent during the Thatcher era. It found expression in the 1979

referendum, and finally led to a separate Scottish parliament in 1999. It was not just Mrs Thatcher's policies, such as the poll tax, that cemented Scottish dissatisfaction with Westminster rule. It was also a resentment against the assumption that the Scots could be taken for granted, and the whiff of arrogance that they associated with the Thatcher attitude; in election after election, Scotland voted Labour – and got a Conservative government. Yet no move was made to redress that imbalance.

It is worth pointing out that, as Charles Moore's recent biography of Mrs Thatcher makes clear, the Tories lost a golden opportunity of seizing the initiative and placing themselves ahead of rather than behind the devolution curve when she came to power in 1979. The idea of a directly elected Scottish Assembly had been a Conservative one, drawn up under Edward Heath in 1968, and endorsed at the so-called Declaration of Perth during that year's party conference. It was still party policy when the Tories won power eleven years later. Mrs Thatcher, however, failed to grasp its significance, and allowed it to wither on the bough, thus losing the party's last chance of significant political influence in Scotland. Only after her defeat was the Scottish question addressed. Devolution achieved many things for Scotland. It placed responsibility for key areas of policy, such as health, education, transport and planning in the hands of Scottish politicians, making them openly accountable for all the matters that most directly affected the people of Scotland. In doing so it not only increased the time and attention paid to these matters (Scottish Questions at Westminster had always been a remote and unsatisfactory forum for debate), it drew the sting of anti-English sentiment, which had long been a toxic ingredient in the national psyche; Scots now had Scottish rather than English ministers to blame when things went wrong.

For all that, however, as poll after poll demonstrated, Scottish voters continued to ask for more powers to be devolved. The stock questions revolved around the status quo, increased powers, or independence. The latter option rarely rose much above 35 per cent, but the majority clearly wanted something beyond the mere existence of a Scottish parliament. It is hard to define what precisely these extra powers should be, and those polled were often unsure themselves. Usually it revolved around taxation, but my own view is that what the Scots were really after was not more power, but better government. The early years of devolution had proved a fractious and divided period, with a Labour-Lib Dem coalition providing little evidence of a parliament living up to its promise. It was not just the early standard of debate that disappointed, but the failure of Labour leadership to give devolution a positive or inspiring profile.

The man who seemed to promise something better was Alex Salmond. Returning to take up the reins of power within his party, after a (still not properly explained) absence at Westminster, he brought a sense of optimism to Scottish politics, filling a vacuum that had never been properly filled under Labour. In 2007, he won the slimmest of majorities, and then, four years later, in one of the greatest post-war political shocks in Britain, overall control.

His support came from those who believed that he might unleash some of Scotland's potential, but also because he offered competent government. The SNP administration was more than just a one-man band. Its cabinet had a far greater array of talent than anything on the opposition benches. Mr Salmond himself won plaudits from across civic Scotland, delighting businessmen, academics, bankers and the media with his quick grasp of facts and his winning personality. For once, it was felt, Scotland was led by a man who actually believed in Scotland. At no time, however, did the popularity of the SNP translate into

a surge of support for independence. The polls were clear: Scots liked Salmond. They didn't like the policy that defined him.

Will this, then, be the verdict to be reached at next year's referendum? Possibly. Probably, even. But there is a potential flaw in the strategy of those determined to secure a No vote. The Better Together campaign, headed by the former Chancellor, Alistair Darling, and master-minded by a seasoned activist and Labour adviser, Blair McDougall, has achieved most of its success thus far by exposing the shortcomings of the SNP's proposals for an independent Scotland. It has had the Nationalists on the back foot over their fiscal policy, relations with Europe, defence, welfare, pensions – everything in fact on which Scottish voters need reassurance. It has forced the SNP onto the defensive, attempting to explain policies which appear ill thought out and remarkably unprepared. Even Mr Salmond himself has been made to appear vulnerable in precisely those areas where he needs to be assured. The outcome has been a consistent, but not widening, lead for the pro-Unionist camp.

Negative campaigns can and have succeeded round the world. Arguably Barack Obama won his second term as presidency thanks to a relentless hostile onslaught against his Republican rival, rather than by promising a better America.

Things are different in Scotland, however – and the polls show it. The Yes campaign may currently be stuck on its 35 per cent support. But so is the No campaign on its 60-plus. It seems to be making little headway – and still, out there, are thousands of Scots who are reserving their options. The reasons for this may be many and various, but one risk for the pro-Unionist case is that its very negativity may be undermining confidence, not just in the Nationalists, but in the nation itself. By suggesting that Scotland may not be capable of governing itself properly,

or even improving its lot as an independent country, questions the resilience of the nation itself. Mr Salmond may no longer be the popular figure he once was, but by deriding him and his policies, without proposing a well-explained alternative, risks denigrating those who placed him in power. Their objective thus becomes not just No to independence – it may be translated as No to Scotland.

At its most extreme this provokes reactions such as one voiced recently in *The Scotsman* by its pro-Union columnist Joyce McMillan, who wrote: “The truth is that the tone of the No camp’s response to the independence debate has – in too many cases – been so reactionary, so negative, and so fundamentally disrespectful of the Scottish Parliament as an institution, that I now find it hard to think of voting with them, no matter what my views on the constitution. And this, for me, is a new experience in politics – to enter a debate with a strongish view on one side of the argument, and to find myself so repelled by the tone and attitudes of those who should be my allies that I am gradually forced into the other camp.” In response to these charges the Better Together campaign argues that it continues to argue the positive case for remaining within the UK, but whenever it does, the media fails to report it. At the same time it is unable to spell out precisely what Scotland might expect from continued membership of the Union, because the separate parties disagree significantly about what shape that Union may take.

The Scottish Conservatives have exercised something of a U-turn by moving from the position endorsed by their previous leader, Annabel Goldie, who urged a “line in the sand” limiting the further devolvement of taxation, to one which proposes a range of measures which would extend yet further the powers of the Scottish parliament.

The Liberal Democrats have endorsed the proposals of a commission, set up under Sir Menzies Campbell which argues for what would effectively be a federal system within the United Kingdom, thus marking the greatest constitutional change in the UK since the 1832 reform bill.

Labour is considering the devolvement of income tax in full, but is cautious about the possible impact on public service funding; a preliminary report from the party's devolution commission has canvassed the idea, but already some critics have pointed out that this could mean scrapping the Barnett formula which allocates a higher percentage of spending per head in Scotland than the UK average, and that in turn might lead to raising levels of personal tax. The Commission's final recommendations are not due to be published until later this year.

Meanwhile the Calman proposals have been incorporated in a new Scotland Act which was given royal assent last year, and they have been described as the greatest transfer of fiscal power to Scotland since the Act of Union in 1707. The UK will reduce income tax rates in Scotland by 10p (on the basic and higher rates) and reduce the block grant made by Westminster to Scotland by a corresponding amount. This will require the Scottish Parliament to take the first steps in making its own taxation decisions.

These options – or the lack of them – have yet to be properly digested by the Scottish electorate. Given the degree of uncertainty, it is hardly surprising that a high proportion of Scottish voters are keeping their powder dry. From the Yes campaign, they need clear answers on how a future Nationalist government would deal with such matters as Europe, NATO and the Bank of England, whether they can rely on North Sea oil to keep the economy stable, and how their pensions will be guaranteed.

From those who wish to see Scotland's place within the UK guaranteed, there is a need to demonstrate what kind of Union is envisaged, and how Scotland would benefit from its continued membership.

There is another point to emphasise. While the SNP need only score the narrowest of victories in the referendum to claim victory, the Better Together campaign must gain a substantial majority to demonstrate its credentials. Were the gap between the two sides to narrow significantly next September, then those who argue for independence could legitimately claim that the momentum is with them, and that it is only a matter of time before the choice is presented again.

When that choice does come, it will be decided against a far wider backcloth than just the economy. Family, relationships, cultural identity, history and the ties of blood will all play their part. Britain is a far more homogenous entity than it was in the early part of the 20<sup>th</sup> century, and few Scots families are without relations living elsewhere in the UK. There are approximately 400,000 English living in Scotland and double that number of Scots living south of the border.

That does not mean, however, that their sense of national allegiance has been blurred. In his masterly book *The British Dream*,\*\* which argues the case against multiculturalism, David Goodhart makes the point that, while the English have no strong views about their own identity, the Scots do.

“The peculiar thing about Britain is that, although it was substantially made by the English, they do not define their own role in it,” he writes. “England dissolved itself into Britain and to this day has only minimal political/institutional identity. And it does not have the option of ‘reactive’ nationalism in opposition to the imperial power, for the simple reason that it is (or was) that power.”

That 'was' is important to many Scots. They may be content to remain within the Union, but only as an equal partner rather than a junior member. Devolution, far from diluting Scottishness, has emphasised it. If Scottish acquiescence in the UK's constitutional arrangement is taken too much for granted, the Scots may yet react against it – they do not like to be taken for granted. Come next September, both sides in the independence debate would be well advised to bear that in mind.

This, then, is an argument that remains to be won. It will depend ultimately, not on arcane discussions about tax regulation, or monetary systems, but on convincing the Scottish people that, whatever choice they make, their security is assured, and their nation will continue to flourish. Safety and happiness were the twin aims of the US Declaration of Independence in 1776. Nothing much has changed since then.

*\*Scottish Independence: Weighing up the Economics by Gavin McCrone, is published by Birlinn at £7.99*

*\*\*The British Dream by David Goodhart is published by Atlantic Books at £20*

## **Labour and devolution**

**Jim Gallagher**

Labour can fairly claim to be the party of devolution. But what does that mean in the second decade of the 21<sup>st</sup> century, when faced with the choice of independence?

### **Labour and Home Rule**

To understand where to go, we need to know where we've been. Start with Labour. Its home rule roots – Kier Hardie standing for socialism and home rule in the 1920s – were largely forgotten until the 1970s. The conversion that led to the 1978 devolution Bills was driven by electoral calculation, perhaps closer to electoral panic. But by 1997, Scottish Labour had learned a different lesson: its commitment to a Scottish Parliament was thoroughgoing, and exactly in line with Scottish opinion.

Wendy Alexander drew on that tradition when she kicked off the Calman Commission, and the further tax devolution in the Scotland Act 2012. That is set to be the next step in Scotland's home rule journey, though not perhaps its last. Labour, like the other parties, is reviewing its policies now, and further proposals seem likely to emerge. Whether this is wise, what the challenges are, and what might emerge, is discussed below.

## Scotland and the Union

It is important also to see this in the context of where *Scotland* has been. Some assume the Scottish Parliament was the first acknowledgement by a unitary British state of anything special about Scotland. Nothing could be further from the truth: since the 1707 union Scotland maintained separate legal, ecclesiastical and other institutions which reflected, indeed embodied, its distinct national status.

The union of 1707 wasn't an assimilation, and assimilation didn't follow – though some in London hoped it would. Instead 1707 put into effect a plan long canvassed in Scotland to deal with the problem of a neighbour 10 times its size. A choice between continued independence – which Scotland could not sustain – and assimilation into England – which Scotland did not want – was unpalatable. Instead, the treaty preserved things that mattered hugely to Scots at the time, notably the Scottish church and legal system. At the same time it brought benefits Scots wanted – peace, stability and trade.

Creating a Scottish Parliament was a logical development, appropriate to the 21<sup>st</sup> century, of Scotland's special status inside the UK. Nowadays securing a separate state church matters less to most, and elite rule by powerbrokers around the Court of Session has been replaced by democratic rule by members of the Parliament a mile down the road.

This little potted history gives the lie to a simplistic nationalist narrative that 1707 was a betrayal of an ancient nation, which only by their efforts has gained the concession of devolution, a first step towards independence. Quite the opposite: devolution is the modern way of expressing Scotland's long-term relationship with the rest of the Union. It implies that, when considering further devolution, we begin not by asking

what more can be devolved, but what needs to be reserved to retain the benefits of union.

### **There is a real choice**

Some argue the independence referendum is a false choice. Irrespective of independence, Scotland would inevitably have a close relationship with the UK and be a member of multiple unions, British as well as European. Nowadays sovereignty is not absolute but is pooled and shared. Accordingly both nationalists and devolutionists are seeking essentially the same thing – a comfortable middle ground, maybe ‘devo max.’ The referendum question – said to be forced on the SNP by intransigent unionists – is the wrong one.

This contains a grain of truth: no nation is autarkically independent, and no union – certainly not the UK – wholly uniform. But the choice of statehood does matter: the nation state may be weaker than its 19th century archetype, but has not been “hollowed out”: it remains the primary locus of political power, even in a supra-national body like the EU. A choice about nationhood has profound practical and symbolic consequences – critically important choices about peace and war, signals about belonging, and legitimization of fiscal sharing, discussed below.

It’s certainly wrong to say the referendum is only on independence because of the UK government. That was indeed UK policy. But an independence referendum has been SNP policy for many years. To attribute it solely to unionists assumes that the SNP were insincere in their manifesto commitment. They had ample opportunity to pursue an alternative approach, and challenge the legal or political capacity of the UK to stop them. They did not try to, and their sincerity should be assumed. This is the referendum the SNP chose.

### **The significance of Union: Politics and Economics**

The referendum is about continued political union in a nation state. Some of its characteristics are straightforward. Recognition of international personality matters, as do decisions about defence and the use of military force. Scottish public opinion supports more devolution, but accepts that the best foreign affairs and defence are best dealt with at a UK level. The choice is membership of one of the largest and most powerful countries in the world, with a say in all major international affairs, or to be a small state, essentially a spectator at the world's big tables, and reliant on goodwill, mostly of a powerful immediate neighbour.

Similarly there is surprisingly little real argument about the economic benefits of union. In the UK, Scotland has a home market 10 times the size of its own, and Scottish businesses trade in it unaffected by the border. Even in an EU single market, international borders matter for business and workers – both have to negotiate different legal and regulatory systems. The size of those effects is hard to measure, and in the Scotland/UK case necessarily conjectural: but they can only be expected to increase over time as laws and regulations diverge.

Being part of a large economy differs markedly from being a small economy in a globalised world. It provides a way of managing risk and absorbing volatility – whether in trade, tax revenues, or oil prices. That does not make independence impossible, but it requires a different approach to economic shocks. Many small countries anchor a currency and run conservative fiscal policies, keeping reserves to cope with shocks and downturns. And of course the journey from being part of a larger economy to becoming an independent one involves transitional instability and cost. Whether Scotland would do better or worse economically once these transitional costs were over is impossible to predict.

These aspects of union are largely uncontroversial, and even espoused by nationalists – notably in the idea of a currency union. When considering further devolution, therefore, they should not be put at risk.

### **Union and Social Citizenship**

The interesting questions relate to the “social union”. This is partly about the feelings of belonging and common citizenship created by many years of economic and political union, and the entirely free movement of people across the border. 10% of the population of Scotland were born in England, and immensely more have English friends and relatives. Nearly a million people born in Scotland live elsewhere in the UK, and again immeasurably more English residents have Scottish ancestry and connections.

But social union is about more: it's about whether we share resources, and the common entitlements of citizenship, with those with whom we feel we belong. This is easiest understood by contrast, which illustrates clearly why a referendum on separate statehood is a real choice. The European Union is of a quite different kind to the UK. Taxpayers in Germany do not pay for unemployment benefit in Greece. Tax revenues from the richer member states will not guarantee pensions in poorer countries. Such a proposition would be regarded with horror in the rich countries. But it is an automatic feature of life in the United Kingdom.

The UK's centralised financial system means taxes are collected centrally and expenditure determined by where governments think need is, rather than where money has been raised. This is a very powerful signal of belonging. And it is of course the territory the Labour Party calls its own. “To each according to his needs” is, in a welfare state, not a wholly empty slogan. So when redesigning our union Labour should be arguing for a system

which retains sufficient capacity to redistribute public resources to where they are needed for this principle to have real effect.

### **Needs and resources: the scope for tax devolution**

For some elements of public expenditure, relative need is not a relevant concept: expenditure on defence or foreign relations, for example, benefits the whole UK equally. (Questions may arise about, for example, the distribution of defence jobs, but that is about regional economic policy, not need for public services.) For the largest single element of public spending, social security, individual need is the key determinant, and there is a very strong argument that it should be wholly unrelated to local taxable capacity. That way lies the poor law of the 19th century. Benefits expenditure is the *locus classicus* of taxing those who have the means to pay and redistributing according to needs.

More complex issues arise for devolved spending on public services, administered under a devolved legislative framework. How these are financed is the key devolution question. Until now the Scottish Parliament has had some limited capability to raise revenue: controlling local taxation, about £4 billion in a revenue budget approaching £27 billion. Those powers have been used – certainly by SNP administrations with low tax policies, who have frozen council tax for the last 7 years.

The Scotland Act 2012 extends this principle markedly. Roughly one third of the spending under the Scottish Parliament's control will be financed by taxes it decides. It will have to levy an income tax of around 10p in the pound to sustain its present spending, but can make it higher or lower. Several minor taxes will also be devolved. The objective of tax devolution is principally to improve the accountability of the Scottish Parliament to voters:

at present it takes spending decisions affecting half public expenditure in Scotland, but has little fiscal accountability.

These arrangements allow continued scope for redistribution of resources across the UK, as a majority of the Scottish Parliament's expenditure is still funded by Westminster grant, in effect a share of taxes levied by the UK Parliament. Historically Scotland has done relatively well in the distribution of resources, with high spending on devolved services. The principle, however, ought to be that resources are distributed according to some view of need, not location. So Scotland might well be a net contributor to the UK, as it is when oil revenues are high.

There is scope for further tax devolution, but subject to constraints. Some constraints are obvious. EU law forbids devolving VAT. Geographically variable taxes can distort the single market in goods and services, which is one of the benefits of union to be preserved in Scotland's interest. Tax on bases which can readily relocate to a lower tax area (eg online transactions) is not suitable for devolution. Nevertheless it is possible to imagine that more of income tax could be devolved, perhaps all the rates; and perhaps some additional minor taxes also.

The big question of principle is National Insurance Contributions. In my view, the clue is in the name. These are contributions to an insurance system, in name if not in strict form, and should entitle citizens across the UK to the same benefit rights, especially to old-age pensions. If you accept that sharing and belonging go together across the United Kingdom, as Labour should, then National Insurance Contributions should remain a UK tax, guaranteeing benefits like an old-age pension.

Tax devolution should also not be so extensive as to make shared tax resources merely a top up to domestic resources. This would inhibit the UK's capacity to allocate resources according to its

view of needs, and would carry the additional risk that, if a majority of taxes were decided in the Scottish Parliament, the role of Scottish MPs in deciding UK taxation could reasonably be called into question. That would undermine the union which devolution seeks to protect.

### **Powers and responsibilities**

What is striking about the Scottish devolution settlement is the wide range of non-tax matters already devolved. Comparative data show the proportion of public spending devolved is as high as in the most decentralised federal countries. This is the inheritance of decades of gradually increasing administrative devolution.

The main reserved domestic spending is social security. If, as a matter of principle, Labour wishes to maintain national UK social solidarity through a shared welfare state then the scope for devolving it is limited. There may be scope to adjust certain benefits closely related to devolved functions to allow the two to work better together: perhaps attendance allowance and services for the elderly, or the linkage between training and education and benefits for jobseekers. No-one has however yet made detailed practical proposals.

### **Labour and Devolution**

So it is entirely possible to imagine a Labour scheme of further Scottish devolution. Johann Lamont's Devolution Commission has begun to sketch one out. It does however have to address challenges beyond the questions of principle and technical issues described above.

First why is there any need for it? The choice facing Scots is whether or not to leave the UK. It is already clear if it stays in the

UK Scotland will keep its Parliament. Adjusting the Parliament's tax powers won't make much difference to voters. Perhaps rushing to produce proposals for further devolution is simply to replicate the electoral panic of 1974, ineffectually appeasing nationalist sentiment.

This view is mistaken. First, the question of principle: unless there is good reason to retain powers at Westminster, the default assumption should be one of devolution. This applies to taxation as much as to other responsibilities. Now there are good arguments of principle for ensuring that the Parliament is not funded solely from Scottish taxes, but from an equitable mixture of own resources and shared UK taxation. But there is scope to adjust the content of that mixture. Secondly, political devolution has its own logic: devolving only spending power creates an imbalanced institution incentivised towards irresponsibility. This has been seen in Holyrood now: an administration with no responsibility for tax consequences follows populist spending policies. Thirdly, devolution is popular in Scotland, and public opinion is sympathetic to more tax devolution. Public opinion need not be slavishly followed: it is also sympathetic to welfare devolution, but there are good, principled arguments against. Absent such principled arguments, however, political parties have every reason to align themselves with voters' views.

A second challenge is that, for all the rhetoric of public expenditure being distributed according to need, the Barnett formula is not based on a needs assessment. Scotland's devolved spending is high. The historical reasons include Scotland's relative population decline compared to England, but there is resentment in England and Wales, and a worry is that fiddling with the funding system puts it at risk. The practical reality however is that relative imbalances in public spending can only be dealt with at a time of public expenditure growth, so it's unlikely that any

government will produce needs-based reductions to the grant in the short to medium term.

### **Scotland in the UK**

Further devolution to Scotland, whether from Labour or others, must however deal with a more significant issue: change is not purely a Scottish matter. Just as it is unwise to see devolution through the lens of what more powers Scotland can accrue as a step towards independence, but in the context of a union and devolution constitution, so a unionist has to consider other parts of the UK.

First, if tax devolution is good for Scotland, what about Wales and Northern Ireland? Yes, but in each case both devolved institutions would have to accept the powers: and because they have weak tax bases, their dependence on shared resources would be greater, as is only right. The more complex question is England. Devolution in 1999 changed nothing for England (outside London), and Parliament at Westminster sailed on as if nothing had happened. This won't do. Accepting that reality, however, is a challenge for Labour. If the English argue for a little home rule for themselves, *provided that is consistent with the maintenance of the union*, the Scots can hardly object. Scots expect exactly the same from them. But the proviso is in each case important – the form of devolution should not destabilise the union. And here the asymmetry of national size matters: an English Parliament with similar powers to Holyrood would inevitably be so destabilising as to be setting out on a road of independence.

By contrast, procedural change at Westminster to allow a stronger voice for English MPs on domestic legislation can be devised without putting the union at risk. So there is no basis for Labour to object in principle to the proposals for “English votes from English laws” proposed by the McKay Commission, so

long as they are consistent with having a single UK government, even if it has to listen to English opinion when legislating there. Similarly, Labour should be enthusiastic about decentralising power in England, and should not be put off by producing an untidy and asymmetric framework. The lesson of London is that regional democracy can be made to work.

What should not be acceptable from Labour's point of view, *nor from the point of view of the maintenance of the union as a whole*, is a system of devolution which cut the number of members of Parliament from Scotland or Wales to below a proportional level, a so-called "devolution discount". This is not simply a partisan point, though no doubt it will be made in partisan ways. Equal electoral districts were demanded by the Chartists, and are fundamental to the maintenance of political union, with a Parliament taking critical decisions for the whole UK. That should certainly be a red line for Labour. Conversely it should constrain Labour's ambitions for tax devolution, so that Scottish or Welsh members are not levying all the taxes on England while not applying them to their own constituents.

## **Conclusion**

All this, of course, depends on a vote by the Scottish people. Labour can secure a positive result for the UK by ensuring that its proposals for devolution are not a concession to nationalist sentiment, but a remodelled union into which voters can confidently opt.

# Only the Union can give Independence

**Phillip Blond**

As the referendum on Scottish independence draws near, widely anticipated to result in a vote in favour of remaining in the Union, politicians across the political spectrum and on both sides of the border are preparing for a further step down the road of devolution. The main three parties in British politics all support the Union, yet all recognise that there is a deeply felt desire in Scotland for people to have more of a say over their own lives. The mistake of many thinkers on this issue is to perceive devolution as a simply 'Scottish' issue, affecting no other part of the Union. Though the desire for sheer national autonomy is not shared (Northern Parliament/Regional Assembly schemes having stimulated violent disinterest) the desire and need for greater democracy, de-centralisation, and specificity of the provision of public services is a universal problem and hope. What Scotland wants is in one sense what we all want: a shorter path to power and a greater participation in its exercise. The problem is that neither the current settlement nor plans for 'devo-max' truly answer these things for ordinary Scots.

The difficulty with the current debate over devolution is that it fails to account for the problem that is the Union. It is a mass of contradictions, exceptions and anomalies – from the West Lothian question, the multiplicity of national churches, the parallel legal/educational establishments, and perhaps most complex of all, the individual identities and relationships of

those living within the Union. Over 400,000 English people live north of the border, and over 800,000 Scots live south of it. The Union is not a synthetic union, but an ancient and deep-seated interweaving of national stories that is not easily disentangled. The simplistic, artificially cut boundaries of Scottish independence or indeed total autonomy do not reflect the complexity of the real-life relationships between the two countries. All too often proponents of devolution are seeking to unknot and shred our social fabric, when in reality the great power of the Union is its ability to interweave identities into a coherent whole. Most countries faced with immigration and multiple regional identities seek either to ghettoise or absorb without account for the conflicting identities. The policy of multiculturalism tends to the former, whilst the latter is all too often the characteristic of societies that cannot account for the differences they contain.

The Union's greatest strength is its ability to integrate without absorbing, to preserve distinct and valuable cultures and traditions without losing a sense of national unity and identity. However the rise of the Scottish Nationalist Party and the growing demands for autonomy suggest that our current model for the Union is failing in this traditional role. If we truly believe in the Union, we can't think of Scottish devolution as a Scottish solution to a Scottish problem, but rather we should seek a Unionist solution to the problem of the Union. What we need is a holistic solution to the Union – not a nationalistic pitting of Holyrood against Westminster and Scotland versus England – but rather we need to consider how everyone, at every level of authority and in every corner of the country, can have their needs considered, have power put in their hands and have their interests forged into a common interest that genuinely works to the benefit of all. In short, how do we work together for the common good, within the structure of the Union?

Massive over-centralisation and statism has led to the worst of both worlds. We are at once robbed of distinctive regional institutions and powers, and yet ever more disunited, as resource-starved organisations and bodies (from universities, to councils, to schools) fight over ever-diminishing scraps of revenue from central government. Proposals for independence and devolution tend to be narrowly and chauvinistically economic – Scotland wants more government spending; England is subsidising Scotland; Scotland owns the oil, or possibly not; the north is taking too much; Scottish students pay too little; Scottish MP's vote for things in England they would never vote for north of the border – this is the unfortunate state to which (if you'll excuse the phrase) we have devolved. Giving Scotland total financial autonomy might seem like a solution, but presents a double problem. Firstly one destroys the idea of formal forum for managing our common needs and interests, disempowering Scotland, and diminishing England. Secondly it simply replicates the problem of Westminster dominance albeit on a smaller scale. Edinburgh has far more in common with London, in many ways, than it does with, say, the highlands and islands, which may themselves have greater affinity – in terms of problems and needs – with Cornwall or Wales. If the Scottish claim on the majority of British North Sea oil is to be considered legitimate, then what of regional claims from Scots in Aberdeenshire, Sutherland, or indeed Shetland and Orkney? Once one begins picking at the national fabric, it's hard to see where or why you would stop.

The more that we centralise the more we splinter the nation into atomised, squabbling fragments, and the more we insist on conformity, the less we inspire loyalty and affection. Far too many of the current devolution options consist in driving power sideways to yet another centralised elite rather than

releasing it downwards. We need an alternative model, one that delivers what people need, where they live – an approach shaped by the circumstances of individuals and their communities, and directed by them too – in short we need a holistic and more localised approach to devolution. At present the benefits of shared institutions and structures are being pitted against the benefits of self-determination and smaller-scale decision making – but this is a false choice. We imagine that our country is democratic because we make decisions democratically – yet they are implemented autocratically, with each lower level of government answering to its higher tier, its efficiency and power declining in proportion to its distance to the centre. What is needed to sustain not just the Union, but our very democracy as a mixed constitution, is a shift from regional governments being the tools of central government fiat to being its allies, friends, and when necessary, critics. If the Union is to survive it must be defined and understood as a commonwealth, an alliance and confederation of regions and cultures united by common values and interests.

England's Localism Act of 2011, albeit somewhat neutered and muted by its passage through Parliament, offers a good guide to what could and should be the case in Scotland. The principle of an active subsidiarity which genuinely devolves powers down from the centre to the localities where it is most appropriately exercised is a practice sorely needed in Scotland. If devolution just means more power in Holyrood then Scots will exchange the diversity they have for an even more centralised version of power than that currently employed. If devolution is to mean anything it must devolve past Edinburgh to the communities and localities that constitute the true Scotland. Ideas employed in England like self-defining neighbourhoods and areas would fit well north of the border and would be most likely deeply welcomed by the

towns and villages that are at present roundly ignored. Such a settlement is needed as the divisions within Scotland are there for all to see.

When Scottish Nationalists demand that Scotland be seen as more than an administrative region, but a distinct cultural and socio-economic world, with its own needs and goals, not necessarily identical to those of England, they have a very good point, but what they offer is a more centralised version of the very system they criticise in England. And there is already significant demand for greater local autonomy in Scotland. In the words of Tavish Scott, MSP for Shetland and Orkney – ‘I’m a Shetland Islander first, a Scot second and a Brit third’. Tavish has called for Shetland and Orkney to have self-determination and authority, regardless of any referendums, and argues that the oil around the Islands is neither Scottish nor British – but the property of the islanders. Alex Salmond has premised much of his arguments for a bright economic future for an independent Scotland on the nation’s ability to exploit its significant oil reserves, and massive potential for renewable energy, especially wind and wave. But the vast majority of these resources, potential and actual, lie not in the densely populated Scottish lowlands, but in the remote Highlands and Islands, on the margins of modern Scotland. Any argument, however reasonable, that the great mass of lowlanders has a right to these resources, and the central government the best ability to efficiently exploit them, are just as easily arguments deployable by defenders of Westminster as they are by self-determining Scots.

Caught between competing claims, whether Scottish or Shetlander, one’s options seem frighteningly limited to regional monopolies or central dictat. Neither approach has had a happy history in these islands. But again, we are being presented with a false choice. The desire of the Shetland and Orkney islanders for

power over their own affairs and resources, and the needs of the wider country to benefit from those resources are hardly opposed. Rather than doing deals that hand over lucrative contracts for centralised benefit, we should seek to work in partnership, giving local areas a stake in their local resources, and mobilising local areas to deliver them for the benefit of all. This kind of solution is why the Union is so vital. Look again at the words of Tavish Scott – a Shetlander first, then a Scot, then a Brit – ‘and’ not ‘or’. Being British isn’t and shouldn’t be about forcing people to choose between local and national identities, but rather it should be about uniting and harmonising those identities, pooling and balancing individual and common goods.

Why is the Union so special? Despite shared or overlapping histories and cultures, the Ukraine split from Russia, Norway from Sweden, and Slovakia from the Czech Republic. Whatever the benefits of these national unions, they clearly did not outweigh the pull of self-determination for distinct and proud cultures. The difference is with the deep-rooted and organic nature of the British union. Firstly it did not come about through conquest, but through a union of crowns, that was itself the culmination of centuries of cultural, economic and indeed, marital, exchange and mixing. Essentially the British ‘state’ is but a reflection of a deeper and older union that pre-dates the emergence of the modern nation, and thus nationalism itself. That older union became physically embodied in the monarch with the accession of James I (VI of Scotland), and his successors. As a result of the Union of the Crowns in 1603, the Monarch is now and at once the Queen of England and the Queen of Scotland, at once the head of the Church of England and the Church of Scotland – and recognised by both English Common Law and the hybrid (Common and Civil) Scots Law. All this buzzing mass of contradictions, paradoxes and

exceptions are somehow harmonised by the Union because it is the product of evolution not artifice. It is a reflection of the real-life complexities of human identities and lives - how many people fit comfortably into one absolute identity? It is changing again and that is no problem, every organic polity must change to reflect our common needs rather than the abstract desires of policy makers.

Britain is one of the only countries in the world to have no written constitution. In part because our constitution is organic and paradoxical – it is what political thinkers call a 'Mixed Constitution'. It has a parliament, a monarchy, three different legal codes and two national churches. It is oecumenical not secular, parliamentary not republican, dialectical rather than rhetorical. Its constitution is an interweaving of law, religion, culture and royal blood. It is ancient, near impossible to eradicate and immensely adaptable. The present debate, shaped by the referendum, is a false one. The union is a present and lived reality, of which the formal legal union is but one aspect. The union of peoples is inextricable and likely irreversible, and is embodied by those 800,000 Scots and 400,000 English either side of the border. But even the more formal types of autonomous Scotland seem to give formal independence but actual dependence – an independent Scotland would have both pound and Queen. In fact independence would not destroy the Union at all, but rather it would massively change the balance of power – away from Scotland towards an even more unaccountable England.

Much has been made by the Unionist side of Scotland's parlous economic and diplomatic situation should it declare independence. Most of these critiques are fair. But the reason for this vulnerability would be the *loss* of independence resulting from all recognition of Scottish institutions, customs, and interests being stripped by the British state from the British state

– at Scotland's own request. Shorn of electoral and constitutional reasons to consider Scottish interests, Scotland would lose its say over its economy and foreign policy, caught between an unsympathetic England and an indifferent EU. Rather than this disastrous course, for both England and Scotland, we need to promote greater regional and local powers and democracy, a bigger civil society, and a mutualised economy. We need to support a true Scottish independence and the Union which would facilitate it. In this sense the demands for a greater power for Scottish localities will not be met by Holyrood but they would be recognised by Westminster. Let us redefine the Union in this regard as the defender of localised participation in power and the cultural and constitutional variation from which liberty and commonality flow. The nationalism independence offers is but a new centralism and statism without even the mitigation of the other countries of the Union. Assuming independence is rejected the Union needs to avoid the status quo and to think and offer a devolution beyond independence, passing power back not to Holyrood but to the locality and communities that are Scotland herself.



# If Scotland says 'No'

*What next for the Union?*

Edited by James Hallwood

If we are to believe the polls, Scottish voters will reject independence in September 2014. If so, what happens next? A 'no' vote will not mean 'no change', and it is very likely that the unionist parties will head into the 2015 general election with proposals for further devolution. What will these policies look like? Is the inevitable 'next step' a transfer of significant tax-raising powers to Holyrood? And what are the consequences for the Union as a whole?

The Constitution Society has brought together three leading think tanks from across the political spectrum to explore these questions and propose some possible answers.

With contributions from Professor Michael Keating, Magnus Linklater, Jim Gallagher and Phillip Blond, this collaboration with CentreForum, the Fabian Society and ResPublica sets the scene for the post-referendum debate.

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