

The Issues Raised by the Scottish Referendum and its Impact on the Future of the United Kingdom and Europe

Introduction

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The Scottish referendum on independence was held on 18 September 2014 and it is no exaggeration to say it has had a huge impact on politics in the United Kingdom (and also to a certain extent in the rest of the EU). It is obviously too soon to understand fully its wider implications, yet already, in the aftermath of the campaign and vote, there are signs of major changes beginning to take shape in the constitutional arrangements of the UK. The high turnout (84.6%) and the vibrant debate both within Scotland and also in the United Kingdom as a whole showed very clearly that the questions of devolution/independence, of national identity and of political representation were still important for ordinary people, who, according to the pundits and doomsayers, were said to be increasingly put off by politics. Was it not true that turnout at British General Elections had been falling? Turnout was 72.8% in 1945 and reached a postwar peak in 1950 (83.9%); the low point came in 2001 with a turnout of 59.4% (UK Political Info, 2015). Membership of the three biggest UK political parties – Conservative, Labour and the Liberal Democrats – had also fallen to a historic low: in 2011, only 0.8% of the population were members of these parties, compared to 3.8% in 1983 (House of Commons Library, 2015). How could people be re-energised to participate fully in the political debate?

The Scottish referendum was undoubtedly a popular success. The fact that the Scots voted to remain part of the United Kingdom did not bring an end to the questions of governance and political responsibility. In fact it marked another stage in the process that began with the 1997 devolution referendums in Scotland and Wales and raised further questions that will take years to find answers satisfactory to all parties. Just a few months later, on 7 May 2015, a General Election was held in the United Kingdom and, contrary to what the psephologists had predicted, the Conservative Party was victorious, with an overall majority of seats in the House of Commons. Yet while the party of David Cameron was the clear winner in England, in Scotland the election was won by the Scottish National Party and in Wales by the Labour Party¹.

Referendums in the UK: a new form of popular political expression?

In the context of British constitutional history, it is perhaps surprising that it should be a referendum which has had such an important role in raising so many key questions about the future of the United Kingdom and the relationship between national, sub-national and local government.

¹ In Northern Ireland, which has its own political parties distinct from the British parties, no party won an overall majority of seats; the Democratic Unionist Party came first with 8 seats out of 18, and Sinn Féin came second with 4 seats.

Local referendums have been held in the United Kingdom for a century, often on moral issues such as whether local areas should allow the sale of alcohol. More recently, local referendums have been organised on the subject of directly-elected city mayors.

There have also been a number of referendums in the constituent nations of the United Kingdom (see Table 1). The very first took place in Northern Ireland in 1973 and concerned Ulster's political future either as part of the UK or else as part of the Irish Republic². The second Northern Irish referendum was held in 1998 to ratify the Good Friday Agreement, designed to introduce devolved government for the province.

Table 1:
Referendums across the United Kingdom

Date	Constituency	Question	Turnout	Yes	No
8 March 1973	Northern Ireland	Proposal 1: Do you want Northern Ireland to remain part of the United Kingdom?	58.7%	98.9%	
		Proposal 2: Do you want Northern Ireland to be joined with the Republic of Ireland outside the United Kingdom?		1.1%	
5 June 1975	United Kingdom	Do you think that the United Kingdom should stay in the European Community (the Common Market)?	64%	67.2%	32.8%
1 March 1979	Scotland	Do you want the provisions of the Scotland Act 1978 to be put into effect?	63.6%	51.6%	48.4%
1 March 1979	Wales	Do you want the provisions of the Wales Act 1978 to be put into effect?	58.8%	20.3%	79.7%
11 September 1997	Scotland	Q1: I agree that there should be a Scottish Parliament/I do not agree that there should be a Scottish Parliament.	60.2%	74.3%	25.7%
		Q2: I agree that a Scottish Parliament should have tax-varying powers/I do not agree that a Scottish Parliament should have tax-varying powers.		63.5%	36.5%
18 September 1997	Wales	Do you agree that there should be a Welsh Assembly as proposed by the Government?	50.1%	50.3%	49.7%
22 May 1998	Northern Ireland	Do you support the agreement reached at the multi-party talks on Northern Ireland and set out in Command Paper 3883?	81%	71.1%	28.9%
3 March 2011	Wales	Do you want the Assembly now to be able to make laws on all matters in the 20 subject areas it has powers for?	35.6%	63.5%	36.5%
5 May 2011	United Kingdom	At present, the UK uses the 'first past the post' system to elect MPs to the House of Commons. Should the 'alternative vote' system be used instead?	42.2%	32.1%	67.9%
18 September 2014	Scotland	Should Scotland be an independent country?	84.6%	44.7%	55.3%

Source: see The Electoral Commission Website (<www.electoralcommission.org.uk>) and House of Lords (2010).

² The 'Border Poll' was held on 8 March 1973. The SDLP boycotted the vote as did the vast majority of Catholics.

In Wales there have been three referendums: the first, in 1979, on the question of the setting-up of a Welsh Assembly; the second, in 1997, also on the question of Welsh devolution; and the third, in 2011, on increasing the law-making powers of the Welsh Assembly. In Scotland, as in Wales, there have been three referendums: the first was held in 1979, on devolution, the second, in 1997, also on devolution, and the third, in 2014, on Scottish independence.

National UK-wide referendums are exceedingly rare in British political life. The first one was held in 1975 on whether the United Kingdom should remain in the European Community. The second took place in 2011 and concerned a reform of the British electoral system. The 2016 EU referendum is therefore only the third national referendum to be held in the UK.

Nationwide referendums have now become a means not only to measure as accurately as possible public opinion on important constitutional issues, but also, in practical terms, to allow the public will to decide in place of Parliament.

When the first national UK referendum was held in 1975, it was seen “as setting no precedent” (Bogdanor, 2009, 173). Edward Short, Lord President of the Council and Leader of the House of Commons, claimed in the preface to the 1975 Referendum White Paper that the referendum was being held “because of the unique nature of the issue” (HM Government, 1975). Even at the time, numerous politicians of various political persuasions, among whom Roy Jenkins and Margaret Thatcher, surmised shrewdly that once the genie was out of the bottle there would be no means of going back to the days before national referendums.

Short also believed that holding a referendum did not deprive Parliament of its sovereignty: “This referendum is wholly consistent with parliamentary sovereignty. The Government will be bound by its result, but Parliament, of course, cannot be bound by it. Although one would not expect Members to go against the wishes of the people, they will remain free to do so. One of the characteristics of this Parliament is that it can never divest itself of its sovereignty” (House of Commons, 1975). This issue is complex and even today divides opinion. Is a referendum “advisory” or “binding”? Many constitutional specialists, such as Stephen Tierney or John Curtice, consider that the sovereignty of the British Parliament implies that all referendums held in the United Kingdom are technically “advisory” but politically “binding” (House of Commons Scottish Affairs Committee, 2012a and 2012b). The only situation where the Government might ask Parliament to disregard the result would be when either the result was extremely close and/or the turnout was very low.

If Parliament is sovereign, how is it possible to justify constitutionally a decision taken by referendum? According to Matt Qvortrup (Qvortrup, 2015, 8), the philosophical basis for accepting the will of the people over the will of Parliament goes back to John Locke: “If a Controversie arise betwixt a Prince and some of the People, in a matter where the Law is silent, or doubtful, and the thing be of great Consequence, I should think the proper *Umpire*, in such a Case, should be the Body of the *People* (Locke, 1690, Chapter XIX, Paragraph 242)”.

A. V. Dicey, despite strongly defending the pre-eminence of Parliamentary sovereignty, also advocated the use of the referendum as a means of popular expression on questions of major constitutional issues though he saw it as “a strictly negative political instrument” (Qvortrup,

2015, 12). It was the only means the people had to control and possibly veto important political actions carried out by parties and their leaders in Parliament by putting the national interest first.

The popular success of the Scottish referendum in 2014, the holding of the 2016 European referendum and the readiness of British Governments to allow further referendums if EU treaties are amended or replaced (HM Government, 2011) undoubtedly show an evolution of British Parliamentary sovereignty and of the political balance of power throughout the four nations, even if Parliament could theoretically repeal any of the laws achieved through referendums.

The significance of the Scottish referendum in Scotland and in the rest of the United Kingdom

The Scottish independence referendum has been described as ‘historic’ on several grounds. Beside the fact that the conditions required to be entitled to vote in the referendum were the same as for the Scottish Parliament and Local Government elections, which implied that citizens of other EU countries resident in Scotland were eligible to vote, for the first time the franchise was extended to 16 and 17 year olds, as proposed by the Scottish Government in its consultation paper on the referendum published in January 2012 (Scottish Government, 2012, 6).

It is worth noting also that for the first time since the 1973 ‘Border Poll’ in Northern Ireland, a referendum held in one part of the UK only had the potential to radically change the shape of the United Kingdom. In fact, the referendum was not Central Government policy, unlike the 1979 and 1997 referendums on devolution in Scotland and Wales, or the 1998 referendum on the Good Friday Agreement in Northern Ireland. Rather, like the 2011 referendum in Wales on further devolution, the Scottish independence referendum was the policy of the devolved Scottish administration which put forward the doctrine of the mandate to organise a referendum on the constitutional future of Scotland, the SNP having won the 2011 Scottish Parliament election with an overall majority. The British Prime Minister accepted the mandate argument put forward by the newly formed Scottish Government and, since constitutional matters are reserved to Westminster under the Scotland Act 1998, his Government ensured that the power to organise a referendum on independence be temporarily transferred to the Scottish Parliament. Indeed the official agreement between the British and the Scottish Governments, signed in Edinburgh, on 15 October 2012, left the Scottish Government to decide on the wording of the question, on the franchise, and crucially on the date of the referendum which had to be held before the end of 2014 (HM Government and Scottish Government, 2012).

The referendum campaign engaged citizens in unprecedented proportions in Scotland, which was all the more remarkable in a context of widespread disillusionment in politics and politicians in the United Kingdom, like in many other western democracies. Both the ‘Yes Scotland’ campaign and the ‘Better Together’ campaign were active in engaging with citizens and encouraging them to register to vote. Local Authorities themselves organised a number of activities targeted specifically at 16-17 year olds, such as referendum debates and mock referendums in schools. Although the media focused mostly on the political parties, there

were a number of non-party organisations on either side of the debate which also campaigned actively on the ground. On the ‘Yes’ side in particular, a number of extra-parliamentary groups which emerged within the left movement in Scotland, in the wake of the SNP victory at the Scottish Parliament election of 2011, campaigned alongside party activists for a ‘Yes’ vote with a view to engaging local communities across Scotland in the debate on what kind of society they wanted Scotland to be, thereby looking beyond the referendum to the opportunity to reform Scottish society and establish a truly social democracy (Thiec, 2015).

In the end, it was undeniable that people were enthused by the debate on the constitutional future of Scotland, as evidenced by the record number of people registered on the electoral rolls (4,283,398). Indeed almost 150,000 were registered in the last month before the deadline, i.e. 2 September 2014 (Electoral Commission, 2014, 1), and the turnout itself (84.6%) was exceptionally high, “the highest recorded at any Scotland-wide poll since the advent of universal suffrage” (*ibid.*). The public opinion survey carried out by ICM on behalf of the Electoral Commission after the referendum showed that the overwhelming majority of respondents thought that they had not only found access to information easy but they had been given enough information on both sides of the debate to make an informed decision (*ibid.*, 54-57).

In many ways, therefore, there was a sense in the aftermath of the referendum that lessons could be learned from the Scottish experience and that the Scottish independence referendum could become a model for future referendums held in the UK. In this regard, it is worth pointing out that 97% of 16 and 17 year olds who had voted in the independence referendum said they would vote again in future elections and referendums (Electoral Commission, 2014, 1). Only time will tell, however, whether the high levels of citizen engagement observed during the campaign and in the polling stations can be replicated in future political consultations.

In any case, it became evident in the weeks following the referendum, that although 55.3% of the voters said ‘No’ to independence, the vote did not solve the question of Scotland’s place in the Union, as evidenced by the unprecedented rise in membership of the pro-independence parties – the SNP and the Scottish Greens in particular and to a lesser extent the Scottish Socialist Party. The promise made by the three pro-Union parties in the last days of the referendum campaign to extend the powers of the Scottish Parliament in the event of a ‘No’ vote meant that the outcome of the referendum could be interpreted as a vote in favour of more devolution for Scotland. David Cameron himself, on the morning of 19 September, acknowledged in his official statement on the Scottish referendum that the people of Scotland had voted for further devolution, hence his announcement of the setting-up of the Smith Commission in charge of supervising “the process to take forward the devolution commitments” (Cameron, 2014), and of the publication of draft legislation on further devolution to Scotland by January 2015, ahead therefore of the British General Election of May 2015.

Yet David Cameron’s promise for further devolution of powers to the Scottish Parliament was now tied to a wider plan to reform the governance of the four nations of the United Kingdom, which the Prime Minister intended to see introduced at the same time in all parts of the country:

Just as the people of Scotland will have more power over their affairs, so it follows that the people of England, Wales and Northern Ireland must have a bigger say over theirs. The right of these voters need to be respected, preserved and enhanced as well. It is absolutely right that a new and fair settlement for Scotland should be accompanied by a new and fair settlement that applies to all parts of our United Kingdom (*ibid.*).

The Prime Minister's main concern was undoubtedly to satisfy the urgent demand expressed by English Conservative MPs to get the Government to limit voting rights on 'England-only Bills', in other words Bills affecting England only, to MPs representing English constituencies in the House of Commons – a procedure better known as 'English votes for English laws' (EVEL) – as this was seen as a way of addressing the West Lothian Question³.

As the powers of the devolved institutions in Scotland and in Wales in particular have developed over the years, the West Lothian Question, renamed the 'English question', has become more salient, since England is the only nation of the UK where no devolution arrangements have been put in place. Unsurprisingly therefore, the Conservative Party manifesto for the 2015 General Election contained a commitment to giving English MPs "a veto over matters affecting England, including on income tax" as a way of addressing the West Lothian Question (Conservative Party, 2015, 69).

In addition, another way to give more power to the English could be to devolve more central power from London to the English city regions: the proposal to create a 'Northern Powerhouse', based on the city of Manchester and including the North West and North of England is a case in point. Only time will tell if this project is a serious attempt to devolve administrative, economic and indeed political decision-making in England or whether it is a tactic to camouflage public expenditure cuts, discredit the Labour Party and win more support for the Conservatives in areas of the country where they are traditionally weak.

The 2015 British General Election

The 2015 General Election took place on 7 May 2015 and, to the surprise of most political analysts and academics, the Conservative Party, led by David Cameron, won the election with an absolute majority of seats in the House of Commons (Table 2). Opinion polls had forecast a hung Parliament with both parties running neck and neck. In actual fact, the Conservatives had a larger than expected lead in votes and seats over the Labour Party even if their majority in seats over all the other parties was small. It is worth noting also, that the UK Independence Party (Ukip), whose *raison d'être* from its creation in 1993 has been the UK's withdrawal from the European Union, won 12.6% of the votes across the UK, which represented a considerable increase on its 2010 General Election results share of the vote (3.1%). Yet, under the First-Past-The-Post electoral system in place at British General Elections, the party of Nigel Farage only won one seat⁴. Of the 3.8 million votes gained by Ukip candidates, 3.6 million were cast in England, but the party obtained fairly strong results in Wales too.

³ The term refers to a paradox about devolution initially raised by Tam Dalyell, Labour MP for the Scottish constituency of West Lothian in the late 1970s. The issue raised by Tam Dalyell could be summarized as follows: with the advent of devolution how could it be fair that English MPs cannot vote on matters which have been devolved to Scotland, Wales or Northern Ireland, while Scottish, Welsh and Northern Irish MPs can vote on these matters when the Westminster Parliament is legislating for England only?

⁴ Ukip candidates came second in 120 constituencies across the UK.

Table 2:
General Election results for the United Kingdom (2015)

Party	% vote	Seats
Conservative	36.9	330
Labour	30.4	232
SNP	4.7	56
Lib-Dem	7.9	8
DUP	0.6	8
Sinn Féin	0.6	4
Plaid Cymru	0.6	3
SDLP	0.3	3
UUP	0.4	2
Ukip	12.6	1
Green	3.8	1
Independent	n/a	1
Speaker	n/a	1
Total of seats		650
Turnout	66.2	

Yet, the pattern of voting varied significantly across the different nations of the United Kingdom: while the Conservative Party won the election in England, in Scotland the election was won by the SNP and in Wales by the Labour Party (Table 3).

Table 3:
General Election results for England, Scotland and Wales (2015)

Party	ENGLAND		SCOTLAND		WALES	
	% vote	Seats	% vote	Seats	% vote	Seats
Conservative	41	319	14.9	1	27.2	11
Labour	31.6	206	24.3	1	36.9	25
Lib-Dem	8.2	6	7.5	1	6.5	1
SNP	-	-	50.0	56	-	-
Plaid Cymru	-	-	-	-	12.1	3
Green	4.2	1	1.3	-	2.6	-
Ukip ⁵	14.1	1	1.6	-	13.6	-
Total of seats		533		59		40
Turnout	65.9%		71.1%		65.6%	

The election results in Scotland were remarkable: not only did the SNP win a British General Election in Scotland for the first time in its history but it won by a landslide. With 50% of the

⁵ Ukip put up 624 candidates all over the UK in 2015.

vote, which was the highest share won by a single political party in a General Election in Scotland since 1955, when the Conservative Party obtained 50.1% of the vote, the party of Nicola Sturgeon won 56 of the 59 Scottish seats, and became the third party in the House of Commons. Less than 8 months after the independence referendum therefore, the SNP increased its representation at Westminster by 50 seats. The Labour Party suffered the heaviest defeat in the election as it registered its lowest share of the vote in Scotland since 1918 and lost 40 of the 41 seats it previously held to the SNP. The results were also a setback for the Liberal Democrats – though not the first in Scotland – as they lost 10 of their 11 seats to the SNP, while the Conservative Party held on to the one seat they previously held, with a slightly lower share of the vote across Scotland, however (-1.8 percentage points compared to the 2010 General Election).

In its British manifesto, the Conservative Party proposed strengthening the union of nations for the 21st century by giving the Scottish Parliament and Welsh Assembly more tax-raising powers, by finding a solution to the on-going West Lothian Question through the implementation of EVEL and by developing localism.

It was clear that devolution, in its varying forms, was still an important issue for all the nations of the United Kingdom. Centralisation was attacked in the manifestos of all the major political parties in Great Britain – as each party vied with the others to show it was putting the people first and diminishing the power of a London-based political and administrative establishment. Now it was up to the Conservatives, with a real if small absolute majority, to put these promises into practice.

Another promise made in the Conservative manifesto was to bring in legislation in the first session of Parliament to organise, after a period of renegotiation, a referendum on Britain's continuing membership of the European Union. The Act received Royal Assent in December 2015 and the referendum was fixed for 23 June 2016. The question to be asked was: "Should the United Kingdom remain a member of the European Union or leave the European Union?" The alternative answers to that question were as follows: "Remain a member of the European Union" / "Leave the European Union". Once again the questions of governance, sovereignty and identity are at the forefront of the political debate.

The impact of the referendum on the European Union

The Scottish referendum was followed with great attention throughout the European Union, where there is a real fear of demands for popular consultations of a similar type spreading to other regions and nations in a domino effect. As a result, European leaders expressed their relief the day after the referendum, at the outcome of a vote that could have eventually been the first signs of a future reconfiguration of the European Union. José Manuel Barroso, the President of the European Commission from 2004 to 2014, welcomed the result, saying it was a boost for a "united, open and stronger Europe". The President of the European Parliament, Martin Schultz, said he was "relieved" by the vote. The German Foreign Minister, Frank-Walter Steinmeier, said that the result was "a good decision for Scotland, Britain and also for Europe" (Deutsche Welle, 2014).

Could the result of the Scottish referendum incite other regions or nations in Europe, such as

Catalonia, the Basque Country or Flanders, to be satisfied with a limited degree of autonomy within existing states? In a veiled warning to Catalan nationalists, the Spanish Prime Minister Mariano Rajoy had claimed during the Scottish referendum campaign that Scotland would have to reapply to join the EU from outside if there was a vote to leave the United Kingdom. This was seen as an implicit threat to veto such an application should it come to pass. In fact, the 'No' vote removed the need for this threat to be carried out. Nevertheless, the mere fact that the British Government had allowed such a referendum to take place has certainly inspired Catalan secessionists to be allowed their own vote. Despite the opposition of the Spanish Government, the Government of Catalonia went ahead and organised a non-binding popular consultation on self-determination on 9 November 2014. Catalan residents massively voted in favour of independence (80.8%) even though the turnout was low (no official figure was provided but estimates vary from 37% to 42%).

The Scottish referendum has certainly given ideas to nationalists in other parts of Europe even if in the end, the Scots voted to remain in the United Kingdom. The fact that the referendum took place and was popular makes it even more difficult to refuse such referendums in other European countries with dissatisfied national minorities. A precedent has been set and its implications may well affect the constitutional arrangements of other countries in Europe besides the United Kingdom.

May 2016

Bibliography

(all internet sites were accessed 1 May 2016)

- BOGDANOR, Vernon (2009), *The New British Constitution*, Oxford, Hart Publishing.
- CAMERON, David (2014), *Scottish Independence Referendum: statement by the Prime Minister*, 19 September 2014.
<<https://www.gov.uk/government/news/scottish-independence-referendum-statement-by-the-prime-minister>>
- CONSERVATIVE PARTY (2015), *Strong Leadership, A Clear Economic Plan, A Brighter, More Secure Future*, General Election manifesto 2015.
- DEUTSCHE WELLE WEBSITE (2014), "EU Leaders Welcome Scottish Referendum Result", *Deutsche Welle*, 19 September 2014.
<<http://www.dw.com/en/eu-leaders-welcome-scottish-referendum-result/a-17934837>>
- ELECTORAL COMMISSION (2014), *Scottish Independence Referendum - Report on the Referendum Held on 18 September 2014*, ELC/2014/02, December 2014.
- HM GOVERNMENT (1975), *Referendum on United Kingdom Membership of the European Community*, Cm 5925, London, HMSO, February 1975.
- HM GOVERNMENT, *European Union Act 2011*, Chapter 12, London, TSO, July 2011.
- HM GOVERNMENT and SCOTTISH GOVERNMENT (2012), *Agreement between the United Kingdom Government and the Scottish Government on a Referendum on Independence for Scotland*, Edinburgh, 15 October 2012.
- HM GOVERNMENT, *European Union Referendum Act 2015*, Chapter 36, London, TSO, December 2015.
- HOUSE OF COMMONS (1975), *Hansard Debates*, col. 292-293, 10 March 1975.

HOUSE OF COMMONS, SCOTTISH AFFAIRS COMMITTEE (2012b), *The Referendum on Separation for Scotland: Making the Process Legal*, Second Report of Session 2012-2013, London, TSO, HC 542, July 2012.

HOUSE OF COMMONS, SCOTTISH AFFAIRS COMMITTEE (2012a), *The Referendum on Separation for Scotland*, Session 2002-2012, Oral and Written Evidence, London, TSO, HC 1608, May 2012.

HOUSE OF COMMONS LIBRARY (2015), *Membership of UK Political Parties*, 11 August 2015.

<<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05125>>

LOCKE, John (1988) [1690], *The Second Treatise of Government* in: LASLETT, Peter (ed.) *Two Treatises of Government*, Cambridge, CUP.

QVORTRUP, Matt (2015) *A Tale of Two Referendums: Elite Manipulation or Civic Engagement?* London, The Constitution Society.

<http://www.consoc.org.uk/wp-content/uploads/2015/09/COSJ3706_Referendum_report_COMPLETE_18.09.15.pdf>

SCOTTISH GOVERNMENT (2012), *Your Scotland, Your Referendum*, January 2012.

THIEC, Annie (2015), “ ‘Yes Scotland’: More than a Party Political Campaign, a National Movement Fostering a New Active Citizenship”, in: *The Scottish Independence Referendum of September 2014*, Revue Française de Civilisation Britannique, XX-2/2015.

<<http://rfcb.revues.org>>

UK POLITICAL INFO (2015) *General Election Turnout 1945 – 2015*.

<<http://www.ukpolitical.info/Turnout45.htm>>