



The Experiences of Scottish Devolution
Constitutional Debate up to the 2014
Independence Referendum

September 2014

Democratic
Progress
Institute



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Foreword

The Democratic Progress Institute aims to create an inclusive environment in which different parties are able to participate in frank, structured discussions on peace and democracy in Turkey and the wider region. Our work provides opportunities for state and civil society actors to share their ideas and concerns, meet with experts from Turkey and abroad, and learn from comparative experiences of conflict and conflict resolution. In these forums, DPI strives to reinforce collaboration between academics, civil society, and policy-makers in an effort to identify common priorities and devise new ways to promote peace and democracy.

To enrich these discussions, DPI conducts research on a wide range of strategic and relevant topics, including constitutional reform, governance models in conflict societies, cultural and language rights, political participation and representation, the role of women in conflict resolution, and transitional justice. Our innovative model combines research and practical approaches in order to broaden bases for wider public involvement in the promotion of peace and democracy.

This paper explores the Constitutional debate currently underway in the United Kingdom, in the run up to Scotland's forthcoming referendum on independence. It forms part of DPI's wider research into questions of devolution and governance models and their impact on democracy. The United Kingdom brings

together England, Northern Ireland, Scotland and Wales and has done so for over 300 years. Ever since, there has been debate over the appropriate way to centralise or decentralise power in this aggregated multi nation state. Devolution is one constitutional solution that resulted from this hearty debate. It has decentralised power to the component nations and created semi-autonomous structures in Scotland, Wales and Northern Ireland. This report describes the process and evolution of devolution to Scotland from the early 1970s to the late 1990s. In order to understand the Scottish independence referendum in 2014, this paper draws out important elements of the devolution process and Scottish politics. Important factors include democratic engagement, media, transparency, and intergovernmental cooperation. Each of these improved the democratic and peaceful nature of the process. This paper expands upon those themes with the understanding that they will be as important to the future of the constitutional debate in the United Kingdom as they were to its past.

With special thanks to Judith Sijstermans for her contribution to the research of this report.



Kerim Yildiz

Director

Democratic Progress Institute

September 2014

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Country Overview

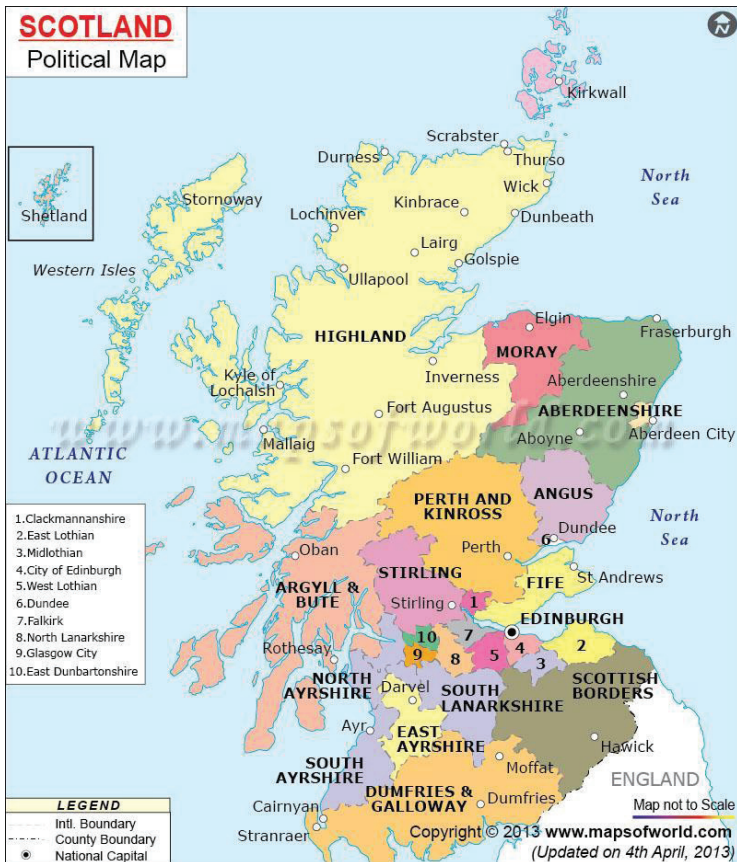
Scotland has a population of 5,062,011 people (approximately 8.2 per cent of the UK population), which is concentrated in or around its three largest cities of Glasgow, Edinburgh and Aberdeen.¹ The capital city is Edinburgh, the seat of both the Scottish Parliament and the Scottish Government, its executive branch. There are 32 Scottish local authorities that receive the majority of their funding through the Scottish Government. There are also over 790 islands in Scotland, of which 130 are inhabited. Overall, Scotland stretches 78,772 square kilometres above the border with England. That border runs between the River Tweed on the east and the Solway Firth on the west.

The Scottish Gross Domestic Product (GDP), including a population share of extra-regio income, is £127 billion. This is about 8.8 per cent of the British GDP as a whole.² Key Scottish industries include life and chemical sciences, the energy and renewables sector, business processing, financial services, food and drink, and electronics. Although Scotland used to rely heavily on its shipping industry, this declined following the Second World War. Since the discovery and extraction of North Sea oil starting in the 1960s, oil and gas has now become a large sector of the economy.

1 "Population Profile for Scotland." *Scotland's Census Results OnLine, 2001*. General Register for Scotland . Accessed August 2013.

2 "Key Economy Statistics: Gross Domestic Property." *The Scottish Government*, July 2013. Accessed August 2013. <http://www.scotland.gov.uk/Topics/Statistics/Browse/Economy>

It contributes £26 billion to Scottish GDP annually. Additionally Edinburgh is the sixth largest financial centre in Europe. Tourism makes up three per cent of Scotland's economy, with a majority of visitors coming from other parts of the United Kingdom. When disaggregating the European Union (EU), Scotland exports the most to the United States, the Netherlands, and France.



3

3 Scotland Political Map. *Maps of World*, April 2013. <http://www.mapsofworld.com/scotland/scotland-political-map.html>

Introduction

The current state of British devolution and Scottish politics cannot be understood without a look at the creation of Great Britain. Great Britain was created by the Acts of the Union in 1707, which united Scotland, Wales and England into one entity. These Acts are also called a Union of Parliaments, because as a result both the Scottish and English parliaments were dissolved and the British Parliament was formed. The Union of the Crowns had already occurred a century beforehand. Later, in 1801, the union of Great Britain with Ireland would create the state now known as the United Kingdom. The new parliament continued at Westminster, the home of the previous English parliament, which led some to comment that the union was more of absorption of the Scottish Parliament and a continuation of the English parliament. However, the House of Commons at Westminster now included 45 Scottish Members of Parliament and the House of Lords included 16 Scottish peers. Independent Scottish civil institutions remained including a unique legal system, the Church of Scotland (the Kirk), separate educational systems and certain tax exemptions.

From its creation, the union was questioned. Scots author Sir Walter Scott said, 'I ken, when we had a king, and a chancellor, and parliament - men o' our ain, we could aye peeble them wi' stones when they werena gude bairns - But naeboddy's nails can reach the length o' Lunnon.'⁴ Famously, Scots poet Robert Burns wrote

4 'I know when we had a king and a chancellor and a parliament—men of our own, we could throw stones at them when they weren't good kids. But nobody's nails can reach the length of London.'

that Scottish politicians were a ‘parcel of rogues’ ‘bought and sold for English gold.’ Other protests were severe enough to warrant the protection of armed soldiers at Scottish Parliament.⁵ Despite unrest, the struggles of the Scottish economy at the time led to the union. In 1707, Scotland could barely fund its own army and civil establishment. This was a result of the failure of the Darien Scheme⁶ and harsh tariffs applied on essential items by England. In the immediate aftermath of the Acts of Union, the Scottish economy improved dramatically, in part due to the removal of English tariffs and the opening of English colonial markets to Scottish goods.

Debate about the union has continued. The debate deals with improving representation within a diverse state. The difficulty stems from balancing the decentralisation of power through disparate nations while centralising economic power. In the case of Scotland, it has occurred largely peacefully, through academia, public discussion and voting, and political consultation. As a result of discontent with the status quo, in 1999 a devolved Scottish Parliament was created. This was part of a devolution settlement which decentralised certain powers to assemblies in Wales, Northern Ireland and Scotland. Notably there was no decentralisation to an English assembly and all three devolved nations have different

5 ‘Mob unrest and disorder.’ *Living Heritage: Act of the Union 1707*. UK Parliament. Accessed August 2013. <http://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/act-of-union-1707/overview/mob-unrest-and-disorder-for-scotland/>

6 The Darien Scheme was an attempt to settle the Isthmus of Darien in Panama which ultimately failed and cost approximately 400,000 pounds or one fifth of the Scots economy at the time.

agreements, making British devolution highly asymmetrical. The new Scottish Parliament was seen by some as a continuation of the one absolved almost three centuries earlier. This is a feeling evident in MSP Winnie Ewing's opening words, 'The Scottish Parliament, adjourned on the 25th day of March in the year 1707, is hereby reconvened.' It was also seen as a renewal of the Scottish position in the United Kingdom. As First Minister Donald Dewar said, the Scottish parliament is a symbol of how Scotland 'revitalised our place in this our United Kingdom.'⁷

The following report will give an overview of the Scottish political landscape and the events leading up to the creation of the Scottish Parliament. From this, it hones in on the essential elements necessary for legitimate constitutional debate: the media, transparency, democratic engagement and intergovernmental cooperation. Devolution is an ongoing process, as shown by the recent emergence of the Scottish independence referendum, to be held on the 18 September 2014. This referendum will ask, "Should Scotland be an independent country?" and has dominated the Scottish political scene since it was announced in this referendum makes devolution's history only more relevant as commentators and scholars attempt to understand the independence referendum and make predictions. These discussions cannot be done without understanding how the 1979 and 1997 referendums affected

7 Dewar, Donald, 1999. "Speech at the opening of the Scottish Parliament 1 July 1999." *Scottish Parliament*. Accessed August 2013. http://www.scottish.parliament.uk/EducationandCommunityPartnershipsresources/New_Parliament_Levels_A-F.pdf

the Scottish political debate today.⁸ This paper and further DPI research will add to the scholarship on devolution in order to support robust study of this innovative constitutional solution. By bringing together the full range of perspectives from academics and politicians, this paper highlights the legitimising and delegitimising forces in referendums and constitutional debates.

DPI will continue to study British devolution and constitutional evolution in upcoming research papers and through its series of study visits. The British devolution case is central to DPI's work for a variety of reasons. First, the British constitutional settlements are a rich case study for DPI to use comparatively in its international work because the devolution processes have been asymmetrical and drawn out over decades. There are many expert, well-thought out analyses that allow British devolution to act as an example to others. Furthermore, DPI's work has always been firmly multi-sectoral. As this report will indicate, devolution has stakeholders from the political, academic, and civil society sectors as well as a strong media presence and regular input from the public. This multitude of voices reveals that British devolution debates are a form of democratisation. Thus, this report will highlight how devolution contains many of the issues central to DPI's work: the marginalisation of minority groups, democratic deficit in multi-nation states, language diversity, and the decentralisation of

⁸ The independence referendum will be held on the 18th of September 2014 and will ask: 'Should Scotland be an independent country?' If the result is yes, Scotland will become a separate state. For more information see section on the Edinburgh Agreement.

education and cultural institutions. As such, this report can stand alone as a history of devolution and decentralisation but may also reveal lessons relevant to those undertaking similar democratisation and decentralisation processes in the United Kingdom or abroad.

Key Political Parties throughout Devolution

Conservative and Unionist Party

The Conservative and Unionist Party is more commonly referred to as the Conservative Party or the ‘Tories’. The modern party’s history goes back to the 1830s and comes from the Tory parties of the late 1700s that were the royalist parties at the time. During the 1950s and 60s the Scottish Conservative Party regularly received over 40 per cent of the vote. The modern Conservative Party has much less support in Scotland, where it has about 15.8 per cent of the popular vote as opposed to 35.7 per cent in England.

Edward Heath, leader of the Conservative Party from 1965 to 1975, took a first step towards devolution in 1968 with the Perth Declaration. In this declaration he announced his desire to set up a Constitutional Convention and from that to create a Scottish Assembly. This announcement was a major shift in party opinion and came as a direct reaction to the electoral success of the Scottish National Party only a year earlier. Heath later wrote that ‘in the light of the evident shift in opinion since that election (1966), it would have been politically suicidal to stick to our guns.’⁹

However, Margaret Thatcher’s leadership turned against the policy. Thatcher became Prime Minister after the failure of the 1979 referendum, the vote of no-confidence in the government,

9 Heath, Edward. The Course of My Life: The Autobiography of Edward Heath. Hodder & Stoughton Ltd; October 1998.

and disunity in the Labour Party and the SNP. Thatcher ‘changed the political landscape beyond recognition.’ First Minister Alex Salmond said, ‘As an unintended consequence of some of her policies, she accelerated a move toward a Scottish Parliament. She managed to alienate a full spectrum of Scottish society.’ Thatcher’s government introduced the poll tax to Scotland in 1987, one year before it was introduced in England. The tax was highly unpopular and spurred the ‘Can Pay, Won’t Pay’ campaign. This campaign and the perception, if not reality, that Scotland was being used as a policy ‘guinea pig’ led to a dramatic decline of the Conservative Party in Scotland.

During the 1990s, Conservative Prime Minister John Major led the party. Major strongly opposed devolution, writing in his autobiography that it ‘repelled’ him. His theory relied on the idea that powers given to the Scotland Office were sufficient and that devolution was a slippery slope towards separation. He also wrote, ‘Scotland mattered to me...I could see the danger of it sliding away to independence through the halfway house of devolution.’¹⁰ As such, Major made unionism a centrepiece of his time in office. Conservatives refused to take part in the Scottish Constitutional Convention and when a referendum was held in 1997, the Conservative Party campaigned against a devolved Scottish Parliament.

10 Major, John. John Major: An Autobiography. HarperCollins, 10 November 2010.

Scottish Conservatives are now led by Ruth Davidson, a Member of Scottish Parliament (MSP) for Glasgow who was elected in May 2011. Conservatives in Scotland have 15 MSPs and one Scottish MP. The party almost took a step towards separating from its UK partner parties during recent leadership elections when Murdo Fraser MSP proposed an autonomous Scottish Conservative Party. However, Davidson won the elections and maintained the party's unity across the United Kingdom. With the backing of British Prime Minister David Cameron, Davidson instead drafted a panel of experts for a devolution commission. These measures will be included in the Conservative party manifesto for 2015. This commission includes Tory Lord Strathclyde, former Scottish Conservative leader Annabel Goldie MSP, Alex Fergusson MSP and academics Alan Trench and Adam Tomkins. Davidson's own suggestions for devolution centre on the idea of a 'more responsible' Scottish Parliament, which raises more of the money that it spends. She has said in interviews that her goal is to make Scotland a priority of the Conservative party, and that their opposition to devolution in 1997 gave voters, 'the impression we had no real faith in our own country.'¹¹ This impression is reflected in opinion polls that show only six per cent of Scots feel that the Conservative party puts Scotland first.¹²

11 Curtice, John. 'Crossing a Line.' *Holyrood Magazine*, 5 June 2013. <http://www.holyrood.com/2013/06/crossing-a-line/>

12 Montgomerie, Tom. 'Only Six Per cent of Scots Think Scottish Tories Put Scotland First.' *Conservative Home*, 11 September 2011.

Scottish Labour Party

The Scottish Labour Party was founded in 1889 and merged with the Independent Labour Party in 1890.¹³ This merged party, founded by Scottish socialist and labour leader Keir Hardie, predated the British Labour Party. It was incorporated into the British Labour Party in 1906 and Keir Hardie became a founding member of that body as well. Hardie was voted in 2008 by the Labour Party conference as the ‘greatest Labour hero.’ Hardie supported Scottish Home Rule. This was incorporated into early Labour policies and became a part of Clement Attlee’s manifesto for the government from 1945 to 1951. However, this commitment was threatened by the worry that nationalism would harm the ability of a labour movement to negotiate together. Labour MP and one time party leader Neil Kinnock said in 1975, ‘I am a unionist entirely for reasons of expediency; I believe that the emancipation of the class which I have come to this house to represent, unapologetically, can best be achieved in a single nation and in a single economic unit.’¹⁴ This same unifying concept centralised party policy during the era of the nationalisation of services. ‘The welfare state, especially under the Labour Government of 1945, was a force for uniformity,’ despite limited administrative devolution occurring, for example in the National Health Service.¹⁵

13 ‘History.’ *Scottish Labour Website*, accessed August 2011. <http://www.scottishlabour.org.uk/pages/history>

14 Bognador, Vernon. Devolution in the United Kingdom. Oxford University Press, 1999. Pg 168.

15 Keating, Michael. The Government of Scotland: Public Policy Making after Devolution. Edinburgh University Press, March 2010. Pg 8.

An important figure in the later years was Scottish Secretary Willie Ross, who served under Prime Minister Harold Wilson from 1964-70 and then again from 1974-1976. Labour MP Tam Dalyell said, 'as a representative of Scotland Willie Ross was impeccable.'¹⁶ Ross served as an MP for Kilmarnock from 1946 to 1979. Ross and Wilson both opposed devolution but with the rise of the Scottish nationalists they saw the necessity of addressing decentralization to prevent the erosion of Labour's power in Scotland. As such, in 1968, Wilson instituted the Royal Commission on the Constitution, more commonly known as the Kilbrandon Commission. This was described by historian Duncan Tanner as a 'delaying tactic.' Upon completion, action was subdued because of the change to a Conservative Government in 1970.

However, the SNP's gains in 1974 reinforced the threat of nationalism. As such, when Labour came back into power in 1974, devolution was a manifesto commitment. The Scotland Act 1978 was based on the Commission's report. This act led to the 1979 devolution referendum, which failed partly because of the 40 per cent rule introduced by devolution sceptic and dissenting Labour MP George Cunningham.¹⁷ However Labour's commitment to home rule seemed electorally popular and led to two wins in the Hamilton and Glasgow Garscadden by-elections.

16 'Road to Referendum,' Documentary. Directed by Ian MacWhirter. STV, July 2013.

17 For more on the Kilbrandon Commission and the 1979 referendum, see part 2 of this paper.

Labour also had a strong hand in the 1997 referendum. Prime Minister Tony Blair has been called the ‘Godfather of devolution’ because he ‘cut through the haggling and got things done.’¹⁸ He originally argued that it was the measure to ‘save’ the United Kingdom. However, in his memoirs he wrote: ‘I was never a passionate devolutionist. It is a dangerous game to play. You can never be sure where nationalist sentiment ends and separatist sentiment begins. I supported the UK, distrusted nationalism as a concept, and looked at the history books and worried whether we could get it through.’¹⁹ Despite misgivings, the referendum was seen as a way to deal with nationalism. Additionally it was necessary to carry on the legacy of late Labour leader John Smith, who had originally committed the Labour Party to the devolution referendum. As such, after the Labour Party came to power in 1997, Tony Blair called for a referendum. The Labour Party joined the Liberal Democrats and the Scottish National Party (SNP) to campaign for a ‘yes’ vote to establish the Scottish Parliament.

Importantly, Labour saw the referendum as a way to improve governance in the UK but not as a step towards independence. Former Labour Cabinet Minister George Robertson even predicted that ‘devolution will kill nationalism stone dead.’ Meanwhile,

18 Taylor, Brian. “The Scottish Legacy of Tony Blair.” *BBC News*, 10 May 2007. http://news.bbc.co.uk/2/hi/uk_news/scotland/6639997.stm Accessed 22 August 22, 2013.

19 “Tony Blair memoirs: ‘I was never convinced on devolution - it was dangerous’”. *The Scotsman*, 2 September 2010. <http://www.scotsman.com/news/tony-blair-memoirs-i-was-never-convinced-on-devolution-it-was-dangerous-1-808145> Accessed 22 August 2013.

independence through devolution was the explicit goal of the SNP. This disconnect continues to drive conflict in Scottish politics today.

The Scottish Labour Party is currently led by Johann Lamont, MSP for Glasgow Pollok. She leads the second largest party in the Scottish Parliament, with 37 MSPs. Lamont and the Scottish Labour Party oppose Scottish independence and campaign against it through two organisations: Better Together and United with Labour. Lamont has also commissioned the Scottish Labour Devolution Commission which includes MSPs, MPs, MEPs, and a labour union leader. The commission released a full report in March 2014 which suggested enhancing taxing and funding powers in order to ‘enhance responsibility’ in the Scottish Parliament. It suggests allowing the Scottish Parliament to raise 40 per cent of its budget from its own resources and to control of three-quarters of basic income tax to Edinburgh. They also suggest increasing powers for local government and increasing intergovernmental cooperation between the Scottish and UK governments. The report notes that ‘Scottish Labour is the party of devolution’ and its union supporters rely on this reputation. Jackson Cullinane, of Unite union noted that union members are dissatisfied with the current devolution settlement and said, ‘The labour and trade union movement in Scotland has historically been a movement for devolution and this commission provides an opportunity to explore the options for decentralisation of powers to give ordinary people a greater say and influence over decisions affecting their lives.’

Scottish National Party

The Scottish National Party (SNP) was created in 1934 with the union of the National Party of Scotland and the Scottish Party which had been founded six and four years earlier respectively. However, the party did not see electoral success until 33 years later in the Hamilton by-election when SNP candidate Winnie Ewing won. The party has been continuously represented at Westminster ever since.

The SNP has consistently seen an internal conflict between those supporting gradualism (the road to independence through intermediary steps like devolution) and those advocating an immediate push for independence. In the 1970s SNP leader William Wolfe attempted to move the party away from its stereotypical ‘Brigadoon’ image and towards ‘a left-of-centre party of peaceful protest.’²⁰ Wolfe also led the party on the path towards the gradualist approach. This was concretely achieved at the party’s 1976 conference when a motion passed accepting campaigning for a Scottish Assembly as a step towards independence. Wolfe also warned, ‘We must avoid projecting an aggressive or destructive image...It is safer to risk provoking impatience among our dedicated supporters than to try to satisfy nationalist sentiment at the risk of alienating new support.’²¹

20 “Obituaries: William Wolfe.” *The Telegraph*, 21 March 2010. Accessed August 2013. <http://www.telegraph.co.uk/news/obituaries/politics-obituaries/7494353/William-Wolfe.html>

21 Bennie, Lynn; Johns, Rob and Mitchell, James. [The Scottish National Party: Transition to Power](#). Oxford University Press. December 2011.

The 70s brought the discovery of oil in the North Sea which led to the 'It's Scotland's Oil' campaign, which attempted to prove the viability of Scotland's economy as an independent state. Labour's Michael Kelly criticised the slogan, calling it 'greedy' and 'selfish' but the SNP achieved 30 per cent share of the Scottish vote in October 1974. This success led Labour to push for the 1979 devolution referendum. SNP opinion was split on this referendum. Some members campaigned for devolution but some refused to campaign because they felt it did not go far enough in devolving powers. After the referendum, the SNP saw an electoral downturn and internal dissent which led to the expulsion of future leader Alex Salmond as part of the left wing 79 Group.

In the late 1980s and the 1990s, the party saw a return to prominence through its support of the 'Can Pay, Won't Pay' campaign against Margaret Thatcher's unpopular poll tax. The campaign was carried out through non-violent disobedience and brought back William Wolfe's image of a peaceful protest party. Its 1988 conference also firmly established SNP opposition to nuclear weapons, particularly the Trident missiles and the dumping of nuclear waste in Scotland. Alex Salmond was elected as an MP for Banff and Buchan for the first time in 1987 and became party leader in 1990. During the 1990s, the party became more of an established force in Scotland. In 1994 they were the second most popular party in Scotland and at 1995 local elections they won control of three local authorities (Angus, Moray, Perthshire and Kinross). When the 1997 referendum campaign emerged, SNP members voted at conference

to support it as long as it was clear that the independence campaign was the ultimate priority.

After devolution, the SNP eventually formed a minority government, with the support of Green MSPs, in 2007. In the 2011 elections, the SNP won an absolute majority in the Scottish Parliament with 69 seats. The win was highly unprecedented in a single transferrable vote system which usually leads to coalition governments. As such, the Scottish Government was able to legislate for an independence referendum and negotiated the Edinburgh Agreement in 2012 with the UK government to ensure that the referendum would be respected by both the UK and Scottish governments. The SNP is campaigning for a 'yes' vote in the referendum by supporting Yes Scotland as well as through its own party structures.

Scottish Liberal Democratic Party

The Liberal Party was formed in 1859 and ruled Britain for much of the next three decades. After this, dissension within the party and turmoil out with it (the First World War and increasing political polarisation) reduced Liberal support among the public. The Liberals had between five and 12 MPs until the 1970s, polling stronger in peripheral areas like the north and east of Scotland and southwest England. As such, community politics and 'pavement politics' began to define the Liberal Party. Despite the success of this strategy in increasing numbers of Liberal voters, the first past the post system (FTPT) and its bias towards two party systems meant Liberals increase in voters did not correlate to more elected

members. The Liberals became Liberal Democrats in 1988 when they merged with the Labour offshoot, the Social Democratic Party. After this merger, the Liberal Democrats saw an improvement in political fortunes. In 1997, the Liberals had the highest number of MPs elected since 1920s. They also gained power in 55 local councils. During the 1997 referendum campaign the party supported Scotland Forward and campaigned for a yes vote for the Scottish Parliament. Their opposition to the War in Iraq raised their popularity and set them apart from the Labour Party. Even after the establishment of the Scottish Parliament, they continued to agitate for more home rule. In 2006 they created the Steel Commission which suggested that a substantive portion of revenue raising powers be devolved to the Scottish Parliament in order to solve the democratic deficit. Many of the ideas put forth by the Steel Commission were later used in the SNP ‘full devolution’ model.

The Scottish Liberal Democrat Party is currently led by Willie Rennie, MSP for the Mid Scotland and Fife Region. He leads the fourth largest party in the Scottish Parliament, with 5 MSPs. The Liberal Democrats oppose Scottish independence and campaign against it in concert with the cross-party organisation Better Together. In particular, Liberal Democrat Alistair Carmichael, MP for Orkney and Shetland, is the current Secretary of State for Scotland. However, Carmichael has not taken as prominent a role as predecessor Michael Moore in pro-union campaigning. Danny Alexander, MP for Inverness, Nairn, Badendoch and Strathspey, is

Chief Secretary to the Treasury has taken a key role in the campaign. In September 2011, at the UK Liberal Democrats conference Willie Rennie announced a Home Rule and Community Rule Commission. It was led by Sir Menzies Campbell MP. The October 2012 report, 'Federalism: the best future for Scotland' supported a more equal level of responsibility across the United Kingdom. It reiterated support for tax raising powers for the Scottish Parliament as well as going further to support more autonomy for Scottish local authorities. They have pledged to make this a priority in the next election if Scotland does not become independent.

Important Events in Devolution

Former Secretary of State for Wales Ron Davies is quoted as having said, ‘Devolution is a process not an event.’ Davies’ statement also speaks to the slow nature of devolution as a gradualist process that requires frequent reassessment, studies and consultation with politicians, civil society and the public. The gradual nature of British devolution is also a product of the UK’s constitution which is an incremental and informal one. However, events can be signposted as major indicators of developments within the devolution process. The events described below attempt to give an overview of the ever-changing relationship between the UK and Scotland and the creation of a devolved Scottish Parliament.

Royal Commission on the Constitution (1973)

The Royal Commission on the Constitution (also known as the Kilbrandon Commission) was created by Harold Wilson’s Labour government in order to deal with the rise of nationalism in Scotland and Wales, namely the success of Winnie Ewing in 1967 and Margo MacDonald in 1973. The report set the precedent of asymmetrical devolution by recommending full Scottish and Welsh assemblies and only advisory councils for the English regions. The Commission was not able to come to a unanimous opinion, reflecting conflicted public opinion.

Some members wanted a federal system for the entire United Kingdom and some wanted only limited administrative devolution to lighten the workload of the UK Parliament. This disunity was

significant in its statements about the lack of organisation or synchronisation by main parties on the constitutional question.

The Commission did agree that the UK's unitary status is based on 'economic as well as political terms. It has, for example, a single currency and a banking system responsible to a single central bank. Its people enjoy a right of freedom of movement of trade, labour, and capital and of settlement and establishment anywhere within the Kingdom.'

When it was released in 1974 there were few responses. The reception from Edward Heath's Conservative government was weak, mostly because of three distractions: the European Community, miner's strikes and the rise in North Sea oil. In fact Conservative MP Ivor Stanbrook asked in a question and answer session:

'Will the Prime Minister bear in mind that after the convulsion of the reorganisation of local government the last thing people want is another change of this kind? Would it not be preferable decently to bury this report and forget it?'²²

Heath replied that he thought it essential to reach conclusions from the paper but refused to put a time limit on this discussion. Ultimately it was Labour, who had commissioned the report, who also followed through on its conclusions. Under electoral pressure, Labour's 1974 manifesto included promises to deliver a devolution

22 "Royal Commission on the Constitution." *House of Commons*, 31 October 1973. <http://hansard.millbanksystems.com/commons/1973/oct/31/royal-commission-on-the-constitution> Accessed 22 August 2013.

bill. Once in power, they used the Kilbrandon Report to write the documents ‘Devolution within the United Kingdom: Some Alternatives for Discussion’ and ‘Our Changing Democracy.’

The Scotland Act of 1978 and the 1979 Referendum

The Kilbrandon Report and Labour’s subsequent devolution promises became the basis for the Scotland Act of 1978. The Act transferred some powers from the Scotland Office to a devolved Scottish legislature and enumerated the responsibilities that would be left to the proposed Scottish Assembly. The Act was seen as overly complicated and specific. For example, the Act enumerated, which Parliament had authority over venison sales and stray dogs. The Act ‘is a strange document bearing the scars of its parliamentary experience.’²³ The act was extremely controversial, but it passed with 307 votes for and 263 against. However, this passage did not come without scars of its own. The Act included an amendment by dissenting Labour MP George Cunningham that attempted (and ultimately succeeded) to limit the possibility of devolution. It read:

If it appears to the Secretary of State that less than 40% of the persons entitled to vote in the referendum have voted ‘Yes’ in reply to the question posed in the Appendix to Schedule 17 of this Act or that a majority of the answers given in the referendum have been ‘No’ he shall lay before Parliament the draft of an Order in Council for the repeal of this Act (Scotland Act 1978: 38).²⁴

23 Greer, Scott L. Nationalism and Autonomy: The Politics of Self-Governance in Scotland and Catalonia. SUNY Press, 1 January 2008.

24 “40 Per Cent Rule.” *Scottish Political Archive at the University of Stirling*.

Notably, the 1979 referendum was post-legislative—it was held to confirm or reject legislation that had already been passed through Parliament. The question was: ‘Parliament has decided to consult the electorate in Scotland on the question whether the Scotland Act 1978 should be put into effect. Do you want the provisions of the Scotland Act 1978 to be put into effect?’ This question was voted on in March 1979 and would be ratified (according to Cunningham’s amendment) if over 40% of *all* registered voters had voted ‘Yes’, not if 40% of those who actually turned out had voted ‘Yes.’

In the run up to the referendum, the ‘Yes’ side was supported by Labour Movement for Yes (LMY), the umbrella (but largely SNP-based) organisation Yes for Scotland (YFS), and the SNP’s ‘Yes’ campaign. However, Labour campaigners and SNP campaigners made radically different arguments. The SNP argued that devolution would lead to independence, precisely what Labour suggested devolution would work to avoid. Even within the SNP, devolution was still seen as a second best option and thus there was opposition to campaigning for it. There was also considerable distrust between the two sides. According to Jim Sillars MP, ‘Labour was actually playing a double game. Officially, it was in favour of a Yes vote but many MPs and leading activists, such as Brian Wilson, and constituency parties, were campaigning on the No side.’²⁵

Accessed 22 August 2013. <http://www.scottishpoliticalarchive.org.uk/wb/pages/referendum/1979/40-rule.php>

25 “Campaigners.” *Scottish Political Archive at the University of Stirling*.

Accessed 22 August 2013. <http://www.scottishpoliticalarchive.org.uk/wb/pages/referendum/1979/campaigners.php>

These internal conflicts made the Yes campaign weaker and more fractured and confused the message passed onto the voter.

The ‘No’ campaign was run by a visible, opposition Labour group against devolution and ‘Scotland Says No’ which was composed of Conservatives and business leaders. ‘Scotland Says No’ evolved from the previously established ‘Scotland is British’ group. Their campaign focused not only on convincing people to vote ‘no’ but also relied on people not going out to vote, in order to activate the 40 percent amendment. They incorporated an argument sometimes called the ‘vote no and get a better Act’ technique which suggested that a more acceptable agreement could be reached if the 1979 referendum failed than if it passed.²⁶

When opening discussion on the Act, Lord Kirkhill said, ‘I hope your Lordships will keep in mind that the 40 per cent test does not of itself determine the final decision on the implementation of the Scotland Act. This will fall to Parliament.’ Additionally he detailed the discounts that would make the rule fairer—including removing those who had died or were registered in multiple addresses. By pointing out the problems with gaining 40 per cent of the registered vote, Kirkhill tried to circumvent the 40 per cent rule.

Despite Kirkhill’s arguments, the controversial 40 per cent rule did lead to the failure of the 1979 referendum. A majority 52 per cent

26 “Campaigners.” *Scottish Political Archive at the University of Stirling*. Accessed 22 August 2013. <http://www.scottishpoliticalarchive.org.uk/wb/pages/referendum/1979/campaigners.php>

of voters supported devolution but this only amounted to 32.9 per cent of eligible voters. The Scotland Act of 1978 was repealed on 26 July 1979 and a devolved Scottish Parliament was not established.

Scottish Constitutional Convention

The Scottish Constitutional Convention was formed in 1989 with the goal of Scottish home rule. The Convention was established after influential Scots (including all but one Labour MP and all Liberal Democrat MPs at the time) wrote 'A Claim of Right for Scotland' in 1988. It stated Scotland's right to sovereignty. At first the Convention was comprised of all Scottish political parties (Conservative, Green, Labour, Liberal Democrat, and Scottish National Party), the Small Business Federation, the Scottish Trade Union Congress, and other civil society organisations. All involved individuals supported home rule for Scotland. The SNP later left the Convention because of the Convention's refusal to discuss Scottish independence as a feasible constitutional solution.

The Convention's work produced the report 'Towards Scotland's Parliament' in 1990 and 'Scotland's Parliament, Scotland's Right' in 1995. These publications built on each other and were researched by working groups of experts. Working groups were overseen by an Executive Committee and approved by plenary sessions. Each member organisation came to consensus internally and then representatives came to consensus at the plenary and executive meetings. The process was expressly done in a consensus model instead of majority rule in order to improve the democratic legitimacy of a solution. In introduction to the final report, the

Convention states that despite difficulties reaching agreement among normally combative political parties and civil groups that ‘the way in which that scheme has been hammered out is its strength, not a weakness.’²⁷

Working groups focused particularly on the form of the electoral system, gender balance, the parliament’s practices and procedures, and its relationship to both Westminster and the European Union. Proposed power sharing went largely along the lines of powers that were already attributed to the Scotland Office. The significant responsibilities left to Westminster included defence, foreign affairs, immigration, nationality, social security policy and economic and fiscal responsibilities. Notably the Convention did suggest that the Scottish Parliament should be allowed to vary tax rates. This question was directly translated into the second part of the 1997 referendum ballot. The Convention was an essential part of the devolution process because it offered a consensual and cross party platform to focus on the detailed aspects of a Scottish Parliament that are often ignored in more partisan forums. Much of this work made its way into the 1997 referendum proposals.

1997 Referendum

The 1997 devolution referendum was a pre-legislative referendum. The vote was held before legislation was put through Parliament. This vote sought to ascertain if the Scottish people supported the

²⁷ “We Commend...” *Scotland’s Parliament, Scotland’s Right*, 1995. http://www.almac.co.uk/business_park/scc/scc-rep.htm#We_Commend Accessed 25 August 2013.

establishment of a Scottish Parliament and, in a second question, whether the Parliament should have tax varying powers. These plans were laid out in a white paper, 'Scotland's Parliament', published in July 1997. Then Secretary of State for Scotland Donald Dewar published the paper and Dewar became one of the biggest advocates of the Scottish Parliament. He would ultimately become the first First Minister of Scotland. The 1997 proposals differed significantly from the 1979 referendum, which were drafted and implemented largely through Westminster. In 1997, many of the suggestions of the Scottish Constitutional Convention were incorporated and used to detail clear plans for a new Scottish Parliament. After the devolution vote, the White Paper was put into law as the Scotland Bill of 1998. The Bill enacts the mechanisms necessary to create a Parliament and the Scottish Executive. Unlike the 1979 Bill, the 1998 Bill designated areas as reserved to the UK instead of setting out all the areas that are devolved to the Scottish Parliament. This allows the Scottish Parliament more freedom to act on any issues not reserved. This Bill was passed in November of 1998 and the Scottish Parliament was opened on July 1999.

In the 1997 referendum campaign, Labour, the Liberal Democrats, the Greens, and the SNP all campaigned for 'Yes' votes on both the creation of a Scottish Parliament and on tax raising powers. The cooperation of these three parties could be seen as a 'minor miracle.' Although the Liberal Democrats and the Labour Party had cooperated in the Constitutional Convention, the SNP had abstained from this forum. However, the campaigning body

Scotland Forward included the SNP through the insistence of Donald Dewar. Dewar assured them that devolution would not outlaw independence and made the gradualist argument for independence to SNP leaders Alex Salmond and Mike Russell. Ultimately the SNP agreed. Despite inner conflict about strategy leadership, 'local parties managed to bury their enmities' which meant that 'a disciplined unity' was preserved.²⁸ This was radically different than the splintered 'Yes' campaign of 1979 and was a major element of the success of devolution in 1997. The Conservative Party campaigned for a 'No' vote on both questions, eventually through the 'Think Twice' campaign. Think Twice was established by Conservative public relations manager Brian Monteith as a non-party campaign. However, after failing to find funding or cross party support for his campaign it was officially taken over by the Conservative Party.

The 1997 referendum votes showed a decisive majority for a Scottish Parliament with 74.3% of voters marking the box 'I agree that there should be a Scottish Parliament', and 63.5% of voters agreeing that this parliament should have tax-varying powers. Only two areas, Orkney and Dumfries & Galloway, voted 'no' in this referendum. The first question was decided with 44 per cent of the Scottish electorate in favour so even if the 40 per cent rule of 1979 had been in place, this vote would have secured a Scottish Parliament.

28 Jones, Peter. 'A Start to a New Song: The 1997 Devolution Referendum Campaign'. *Scottish Affairs*, 1997(21).

The Edinburgh Agreement and the Independence Referendum Campaign Rules

The Edinburgh Agreement was signed on 15 October 2012. It legalises the independence referendum by giving limited rights to Scotland to hold a referendum under a Section 30 order. Section 30 of the Scotland Bill 1998 allows the UK Government to ‘specify functions which are to be treated, for such purposes of this Act as may be specified, as being, or as not being, functions which are exercisable in or as regards Scotland.’ The Edinburgh Agreement includes three main elements—that the referendum should: ‘have a clear legal base,’ be legislated for in Scotland, and be a fair, respected process. This is important as other countries with nationalist movements, such as the Catalonian movement, have not implemented mechanisms to allow referendums. This has led to ‘illegal’ or unsanctioned independence referendums.

Another essential provision was that it will legislate only for a one question referendum. The number of questions on the ballot was heavily debated as many Scots, particularly high ranking Liberal Democrats, supported a ‘devo-plus’ or ‘devo-max’ option. This ‘devo-max’ option devolves most powers to the Scottish Parliament but keeps UK Government control of foreign affairs and defence. The Scottish Social Attitudes Survey showed that 32 per cent of Scots supported ‘devo-max’ and 31 per cent supported independence. When asked to choose between the two, 61 percent supported ‘devo-max.’²⁹ However, the question was kept off of

29 MacNab, Scott. ‘Scottish independence: Most Scots back devo-max.’ *The Scotsman*,

the ballot perhaps because both sides were aware that a devo-max question would almost certainly win the referendum.

To ensure fairness a heavy emphasis was put on the role of the Electoral Commission. They approved the question ‘Should Scotland be an independent country?’ Additionally, the Commission set spending limits at £1.5 million for designated lead campaigners (Yes Scotland and Better Together) and capped other campaigning bodies (Business for Scotland and the GMB union for example) spending at £150,000. Each political party could spend up to their proportion of the vote share of £3 million (the total amount spent by the designated lead campaigners). As such, sharing of spending between registered campaigners is not allowed and any organization working with Yes Scotland or Better Together must take their spending from the designated spending limits.³⁰

The Scottish Parliament also passed laws setting the minimum age of the electorate at 16, younger than ever before. The legislation had the backing of the Scottish Youth Parliament, the Labour Party, the Liberal Democrats, and the SNP.³¹ Otherwise, the referendum’s franchise laws follow Scottish Parliament and council election rules which means that people living in Scotland who are British, Irish or

19 February 2014. <http://www.scotsman.com/news/politics/top-stories/scottish-independence-most-scots-back-devo-max-1-3310342>. Accessed 6 August 2014.

30 Brooks, Libby. ‘Scottish independence referendum campaigners’ donations published.’ *The Guardian*. <http://www.theguardian.com/politics/scottish-independence-blog/2014/jul/08/scottish-independence-referendum-campaigners-donations-published>. Accessed 6 August 6, 2014.

31 *BBC Scotland*. ‘Scottish independence: Referendum voting age bill passed by MSPs.’ <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-23074572>

from other EU countries, “qualifying Commonwealth citizens” and members of the armed services serving overseas who are registered to vote in Scotland will be able to vote in the referendum. This point caused some controversy³² but the Scottish Government has defended them by pointing out that they go along the lines set at the 1997 referendum.

The referendum will take place on the 18th of September 2014 and if the vote is for independence, the Scottish Government’s timeline proposes full independence by 2016.

32 Orr, Robert. ‘Scottish independence: Expats divided on who should vote.’ *Financial Times*. <http://www.ft.com/cms/s/0/f08e65b8-9e4d-11e3-95fe-00144feab7de.html#axzz39bvsRA7S>

Essential Elements of Devolution

Democratic Decision Making

The Scottish devolution process involved public opinion throughout. The votes on the 1979 and 1997 referendums allowed Scottish residents of British or EU citizenship above the age of 18 to vote on the future of their democratic arrangement. Public participation should not and did not begin at the vote but spanned through many consultations and reports. Consultations were commissioned by each UK party throughout the process and these incorporated responses from civil society organisations and public figures. In this sense, the post-legislative referendum of 1979 incorporated less public input and the contributions of the Scottish Constitutional Convention made the 1997 referendum more democratic through input from business groups and elected representatives.

Although the Scottish devolution process generally stuck to democratic principles, the 40 per cent rule was seen as a delegitimising force. The 40 per cent rule became polemic because it censured the 'yes' side of the campaign more than the 'no' side. The rule operated under the assumption that all abstentions counted as 'no' votes. Even if some of those who didn't vote didn't agree with devolution, there are many voters registered on the electoral roll who could not vote for other reasons and thus voter silence cannot be equated to approval of the status quo. Additionally, electoral rolls included deceased people, double registered students, people younger than 18 and other people unable to make it to vote.

Some categories were taken out of the electoral numbers by Secretary of State for Scotland Bruce Millan. These discounts accounted to 90,002 voters-- 49,802 voters who would reach 18 years old after 1st March, 26,400 voters dead since registration, 11,800 students who were double-registered and 2000 prisoners.³³ However these discounts did not take into account all issues. Professor Vernon Bogdanor brought up many more categories including hospitalised, seriously disabled and ill voters as well as those who have moved house. Millan's discounts set the '40 per cent of voters' number at 1,498,845 votes but Bogdanor would have set it lower.

Arguments for the rule centred on the idea that the devolution referendum was an irreversible constitutional change that would need broad support among Scottish people. Tam Dalyell wrote in a newspaper article, 'If 60 per cent or more of the electors either positively do not desire an Assembly or can't be bothered to go out and vote for it why should we bring the union to an end, which, warts and all, has served the people of Scotland well for 270 years?'³⁴ Low voter turnout could have threatened legitimacy but the 40 per cent rule ultimately drew accusations of a rigged election. Supporters of devolution felt cheated and 'there was a suspicion of referendums and of qualified majorities in particular.'³⁵ This was reflected in the

33 "40 Per Cent Rule." *Scottish Political Archive at the University of Stirling*. Accessed 22 August 2013. <http://www.scottishpoliticalarchive.org.uk/wb/pages/referendum/1979/40-rule.php>

34 "40 Per Cent Rule." *Scottish Political Archive at the University of Stirling*. Accessed 22 August 2013. <http://www.scottishpoliticalarchive.org.uk/wb/pages/referendum/1979/40-rule.php>

35 Bochel, Hugh, Denver, David, Mitchell, James and Pattie, Charles. Scotland Decides: The Devolution Issue and the 1997 Referendum. *Routledge*, March 2000.

‘Scotland said ‘yes’’ campaign led by the SNP. Additionally the SNP tabled a ‘no confidence’ motion in Parliament which was upheld, although not only on the issue of devolution.³⁶

The 40 per cent rule had more drastic consequences. The Scottish National Liberation Army was created after the failure of the 1979 referendum. These extremists, a very small movement, implemented violent measures included letter bombs, poisonings and threats. Terrorism expert David Capitanchik, of Robert Gordon University, said: ‘It is a very small group. It is on the extreme of the extreme fringes of the Scottish nationalist movement. Compared with terrorist organisations such as al-Qaeda or the IRA they are the bottom of the league - they are not even in the league.’³⁷ Although the SNLA does not and has not posed a considerable threat, the use of measures which are seen as undemocratic can have harsh consequences, even in the incredibly non-violent environment of the Scottish devolution process.

Another democratic issue comes to the fore with the necessity for elite and private negotiations. Despite the importance of high level connections and networking to negotiate, it can disenfranchise elected members and members of the public. When earlier stages of devolution debate occur in private, later ones taking place in

36 “20th Century Scotland--An Introduction.” *BBC History*. http://www.bbc.co.uk/history/scottishhistory/modern/intro_modern3.shtml Accessed 25 August 2013.

37 “Small but deadly: a forgotten terror cell flexes its muscles.” *The Scotsman*, 3 March 2002. <http://www.scotsman.com/news/small-but-deadly-a-forgotten-terror-cell-flexes-its-muscles-1-1360900>

public (often in Parliament) are devalued. MPs can be left feeling that input is not being taken into account at a meaningful level and thus the representative of the people is barely present in negotiating devolution. Welsh MP Daffyd Elis Thomas lamented a lack of devolution debates during a discussion about the Kilbrandon Commission. He said:

‘Perhaps the most powerful argument for devolution to Scottish and Welsh parliaments is that the Government in this Parliament has not been able to find the time to debate devolution. The Government seemed anxious to get involved in rounds of discussion outside the House, with local government, national organisations and, indeed, political parties...If this were in reality the great exercise in participatory democracy which it is made out to be, why does the Government have talks with all forms of bodies outside the House but does not find time for a full debate on the report of the Royal Commission in this Chamber?’³⁸

Despite reluctance from governments to publicise the difficulties with devolution, not doing so could be more dangerous. As suggested by Thomas, a lack of Parliamentary consultation suggests the prioritisation of private communications and back channel agreements. While these negotiations play an essential part in policy formation, the involvement of Parliament should aim to include democratic and representative input at all stages of

38 “Kilbrandon Report Debate.” *House of Commons*, 29 July 1974. Volume 878. <http://hansard.millbanksystems.com/commons/1974/jul/29/kilbrandon-report-1> Accessed 25 August 2013.

the process. This includes releasing documents promptly, holding public forums, frequent Parliamentary debates, and consultations. Public discussion ensures inclusion of a wide variety of opinions, accountability of elected officials and informational equality between campaigners on either side.

Media Strength

Although many media sources exist in the United Kingdom and Scotland, there remain questions about the diversity and strength of Scottish media sources. The main broadcasting companies in Scotland are STV, ITV Borders, and BBC Scotland/BBC Alba. Despite having five per cent of the population and consuming on average more television than the rest of the UK, Scotland only produces 3.6 per cent of network programming. This speaks to the centralised nature of British television.³⁹ This bias towards the United Kingdom-wide nature of media coverage was also shown in the protests against the BBC that took place in Glasgow towards the end of June 2014. Organiser Moira Williams explained, “We organised this event because we are witnessing increasing discontent over BBC referendum coverage and we felt we needed to stand against this unhealthy bias. Whether Scotland votes ‘Yes’ or ‘No’, let it be based on facts provided in a fair and accurate way, not because people have been misguided.”⁴⁰

39 “The Communications Market Report: Scotland.” *Ofcom*, 2010. <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr10/scotland/> Accessed 23 August 2013.

40 *BBC Scotland*. ‘Scottish independence: Hundreds protest over ‘BBC bias.’ <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-28079812>

There are some national newspapers produced in Scotland: the *Herald* and the *Scotsman*, and the *Daily Record*. There are more ‘Scottish versions’ of UK national papers, namely the *Scottish Sun*, the *Daily Telegraph*, the *Times*, and the *Daily Mail*. These Scottish editions alter the front few pages, and tend to cover different sports news. There are also regional presses. The Press and Journal newspapers put out six versions of its newspapers in the north and the *Edinburgh Evening News*. Independent regulator Ofcom defines plurality in media as ‘ensuring there is a diversity of viewpoints available and consumed across and within media enterprises.’⁴¹ In the 2010 elections, the *Scotsman* and the *Herald* refused to take a political position although they are respectively seen as being more right wing and left wing. Additionally, there are supporters of Liberal Democrats (Scotland on Sunday) and supporters of the SNP (the *Scottish Sun*, the *Sunday Herald*). In May 2014, the *Sunday Herald* came out with an editorial supporting the independence referendum. Additionally, a series of debates will be held. The first debate, on 5 August 2014, had a viewership of 1.7 million.⁴²

Much of everyday news readership is now online and parts of Scotland still struggle to access the internet. The Scottish Government has criticised Ofcom’s regulation of telecommunications. They said it focuses ‘on the most cost effective deployment rather than

41 “Summary and Report.” *Ofcom’s Report on Measuring Media Plurality. Ofcom 2012.* <http://stakeholders.ofcom.org.uk/consultations/measuring-plurality/statement> Accessed 23 August 2013.

42 *Daily Record*. ‘Independence referendum debate: 1.7m viewers tuned in to watch televised showdown between Alex Salmond and Alistair Darling.’ 6 August 2014. <http://www.dailyrecord.co.uk/news/politics/independence-referendum-debate-17m-viewers-3998595>

maximising access’ which is to say that areas like the Highlands and Islands are more neglected because of costs, like postal delivery charges and difficulties with broadband access.⁴³ However, Ofcom notes that from 2011-2012 Scotland increased its broadband accessibility by seven per cent, growing faster than any other British nation.⁴⁴

Delivery mechanisms are improving but investigative journalism is facing a crisis in Scotland. Funding for journalism, digital and paper, reduced dramatically over the last few years. In 2011, 90 jobs were cut from the Glasgow based Daily Record and Sunday Mail.⁴⁵ In 2012, BBC Scotland cut 35 jobs, with half of those coming from the crucial ‘News and Current Affairs’ department. In early 2013, 30 jobs were cut from Johnston Press, which owns the Scotsman.⁴⁶ Dramatically, one Guardian journalist writes, ‘The Scotsman and the Herald are in their death throes.’⁴⁷ Circulation

43 “The Vision for Regulation.” Economic and Competition Regulation in an Independent Scotland. *Scottish Government*, February 2013. <http://www.scotland.gov.uk/Publications/2013/02/1911/2> Accessed 23 August 2013.

44 “The Communications Market Report: Scotland.” *Ofcom*, 2012. <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr12/scotland/> Accessed 23 August 2013.

45 Greenslade, Roy. “90 Jobs to go at Trinity Mirror’s Scottish newspapers.” *The Guardian*, 8 June 2011. <http://www.theguardian.com/media/greenslade/2011/jun/08/trinity-mirror-downturn> Accessed 23 August 2013.

46 Lambourne, Helen. “Up to 30 Journalists Jobs to Go at Scottish Titles.” *Hold the Front Page*, 27 March 2013. <http://www.holdthefrontpage.co.uk/2013/news/up-to-30-journalists-jobs-to-go-at-scottish-titles/> Accessed 23 August 2013.

47 Luckhurst, Tim. “Save Scottish newspapers.” *The Guardian*, 23 February 2009. <http://www.theguardian.com/commentisfree/2009/feb/23/scotland-newspapers>

is down for the Scotsman which in October 2012 sold 48 per cent fewer copies than in October 2005⁴⁸, and the Herald saw an eight per cent drop from December 2011 to December 2012.⁴⁹

While ‘death’ claims may be exaggerated, the reduced circulation of these newspapers threatens funding and jobs in Scottish journalism. This is an area for concern as information on devolution is best spread through the press. Professor Philip Schlesinger of the Centre for Cultural Policy Research at the University of Glasgow said, ‘The debate over devolution was driven to a large extent by press interest, notably so in the 1990s. The post-devolution decline of print journalism has occasioned only sporadic commentary but it has not gained traction as an issue.’ In fact, neither the Scottish Affairs Committee at Westminster or MSPs in Edinburgh have substantially dealt with the issue of Scottish media. One solution in Sweden has been to give government subsidies totaling £50 million to newspapers in order to stimulate journalism. Although this may not be necessary in Scotland, discussion around the issue must occur as the independence referendum challenges the robustness of Scottish media.

48 MacMillan, Arthur. “The sad decline of *The Scotsman*.” *British Journalism Review*

Vol. 23, No. 4, 2012, pages 64-69. http://www.bjr.org.uk/data/2012/no4_macmillan Accessed 23 August 2013.

49 “Scottish regional newspaper sales continue to slide.” *BBC Scotland*, 27 February 2013. <http://www.bbc.co.uk/news/uk-scotland-scotland-business-21606419> Accessed 23 August 2013.

Transparency

With the passage of Freedom of Information acts and the passage of time, documents from the original devolution referendums are being revealed. In the United Kingdom a strong system of information release is in place. However information release may reveal government secrets that drive accusations of dishonest campaigning in the Scottish devolution process. As such, prompt non-sensitive information release and distribution must occur to improve accessibility by the media and the public. This is particularly important in devolution processes because pro-devolution groups are often under or not represented in the central government and may have less access to information or expert research.

During both the 1979 and 1997 campaigns there were claims that devolution would lead to independence. Anti-devolution activists countered that Scotland could not afford to be independent, particularly working against the 'It's Scotland's Oil' claims of the SNP. However, the release of the McCrone Report (1974) discredited the government's claims. The Report was classified and withheld from the public until 2005. It was written for a Conservative government to explore the possibility of an independent Scotland. It found that Scottish oil could give independent Scotland strong economic prospects with a budget surplus. In his conclusion to the report McCrone writes, 'For the first time since the Act of Union was passed, it can now be credibly argued that Scotland's economic advantage lies in its repeal.' The UK government kept this report classified because of its 'sensitive' nature and because they felt, as

Labour MP Tam Dalyell said, that ‘It could have tipped the balance in a number of seats including mine. Oil was very much a totemic issue. It was new and it was dramatic.’⁵⁰

In response to the McCrone Report, former SNP leader Billy Wolfe claimed that ‘if that information had been published before the October 1974 election, we would have won Scotland.’ MSP and Justice Minister Kenny MacAskill said, ‘This is a fundamental lie that the people of Scotland have been spun for 30 years.’

More dishonesty was revealed when former Labour Chancellor Denis Healey revealed that the British government had intentionally misled the people about the value of North Sea oil in order to further political aims. He said, ‘I think we did underplay the value of the oil to the country because of the threat of nationalism but that was mainly down to Thatcher.’⁵¹ His revelations pointed to a very intentional element behind the deception which suggests that, unless dangerous for security reasons, expert reports should be made public so as not to be manipulated for political purposes. Similar issues arose when Scottish First Minister Alex Salmond was criticised for dishonesty over sources of his European Union legal

50 Kelbie, Paul and Russell, Ben. “How black gold was hijacked: North Sea oil and the betrayal of Scotland.” *The Independent*, 9 December 2005. <http://www.independent.co.uk/news/uk/this-britain/how-black-gold-was-hijacked-north-sea-oil-and-the-betrayal-of-scotland-518697.html> Accessed 23 August 2013.

51 Carrell, Severin. “Denis Healey, Scottish Independence and the black, black oil.” *The Guardian*, 29 May 2013. <http://www.guardian.co.uk/politics/scottish-independence-blog/2013/may/29/scottish-independence-oil-healey> Accessed 23 August 2013.

advice. In a BBC interview in March 2012, Salmond implied that the SNP government had sought legal advice that suggested EU entry after independence would be expedited. He later withdrew this implication and stated in Parliament that the Scottish Government did not seek legal advice on the issue. For discrepancies on an issue central to the independence referendum, he was reported for a violation of the ministerial code. Although Salmond was cleared, Labour MSP Paul Martin pointed out, ‘Alex Salmond misses the point. The point isn’t whether he broke a ministerial code – which he writes. The point is: did he mislead the people of Scotland when he said he had legal advice? He clearly did.’

Finally, there was controversy over the use of the British intelligence service. Reports suggest that agents were concealed within Scottish National Party branches and kept records of member names. The agents were in place to root out militant sections of the party yet mainstream members like leader Robert McIntyre also had their phones tapped. Former leader Billy Wolfe said, ‘It is quite, quite wrong for a legitimate and democratic party to be put under surveillance in this way. I have absolutely no doubt that the UK Government will have several files on me, but I have nothing to hide.’⁵² During the time of tapping, there were rumours of foreign powers supporting the independence movement and there was a clear focus in the reports on more radical elements. Additionally, the SNP has refused to extend the Wilson Doctrine, which outlaws

52 “Files prove that MI5 spied on SNP.” *The Scotsman*, 16 September 2007. <http://www.scotsman.com/news/politics/top-stories/files-prove-that-mi5-spied-on-snp-1-1423283> Accessed 23 August 2013.

the tapping of MPs' phones, to the Scottish Parliament. Justice Minister Kenny MacAskill has said, 'The Scottish Government has no plans to seek to extend the Wilson Doctrine to cover MSPs, nor to introduce a convention to prevent police Special Branches carrying out covert surveillance in circumstances that meet the strict tests of necessity required by law.'⁵³ As such, there is no illegality involved in tapping the phones of Scottish politicians.

In the United Kingdom, transparency is assured through the process of Freedom of Information (FOI) requests. These allow the public to access government documents and reports. However, these requests were not enshrined into law until 2002 in Scotland and 2000 in Westminster. In addition to this formal mechanism for members of the public, journalists and businesses to gain information on government communications, there should also be an understanding about which information and reports are made widely available. One way this is done in the UK is that documents are released after 30 years. This was lowered to 20 years in 2010. However in Scotland, the date of release is 15 years. This discrepancy meant that when Scottish documents from the 1997 referendum were released, a number of them were held back by the Scotland Office. Their explanation was that these documents still fall under UK law so they will be released 30 years after 1997.⁵⁴

53 "Files prove that MI5 spied on SNP." *The Scotsman*, 16 September 2007. <http://www.scotsman.com/news/politics/top-stories/files-prove-that-mi5-spied-on-snp-1-1423283> Accessed 23 August 2013.

54 Hutcheon, Paul. "Westminster blocks moves to release secret devolution files." *Herald Scotland*, 6 January 2013. <http://www.heraldsotland.com/news/home-news/westminster-blocks-moves-to-release-secret-devolution->

A further unification of release laws across the UK would benefit transparency and clarity in governance.

Transparency will be a particularly relevant issue in the 2014 referendum, in which at least ten but as many as 30 per cent of Scots were undecided a year before the vote.⁵⁵ Forty days before the vote, the undecided vote still falls at 14 per cent.⁵⁶ As Dr Liz Fisher from Oxford University wrote, ‘No transparency mechanism is about making everything visible all of the time. Decisions have to be made about what is to be made visible, when it is to be visible (and for how long), and what the triggers for making something visible are.’⁵⁷ While the visibility of documents should be understood as a balancing act, the process for decision making should be clearer on what information is ‘sensitive’ and what information should rightfully become public knowledge.

Inter-governmental Cooperation

Intergovernmental political cooperation and discussion have been robust throughout devolution settlements. It should continue after devolved assemblies are set up. In many ways, the cooperation that existed before has continued. In a Justice Committee Memorandum

[files.19837622](#) Accessed 23 August 2013.

55 “Support for Scotland remaining part of the UK increases.” *Ipsos Mori*, 9 May 2013. <http://www.ipsos-mori.com/researchpublications/researcharchive/3172/Support-for-Scotland-remaining-part-of-the-UK-increases.aspx> Accessed 23 August 2013.

56 Survation poll for Mail on Sunday, 3 August 2014.

57 Fisher, Liz. “Transparency.” *UK Constitutional Law Group*, June 2011. <http://ukconstitutionallaw.org/2011/06/27/liz-fisher-transparency/> Accessed 23 August 2013.

Professor Charlie Jeffrey emphasised that, ‘arrangements for expressing and reconciling different territorial interests were largely projected forward from the pre-devolution era: collegial problem-solving by civil servants (though these are now responsible to different governments) supplemented where necessary by brokerage by ministers (though these are now members of different governments).’⁵⁸

Although this communication exists, the Barnett Formula poses a consistent problem for all governments involved. The Formula, which the Justice Committee has said is insufficient and unclear, is informal and controlled by the Treasury. As such, the Formula is often misunderstood and seen as inequitable by all constituent parts of the United Kingdom.⁵⁹ Additionally, ‘this lack of transparency has already caused political disputes between the UK Government and the devolved administrations. These difficulties are only likely to intensify in the current economic climate.’⁶⁰ Despite Committees and Commissions reviewing the Formula, no substantive changes have been made. It is an issue that needs to be addressed and elucidated to the public urgently as budget cuts become controversial.

58 Jeffrey, Charlie. “Memorandum submitted by Professor Charlie Jeffrey, University of Edinburgh. [Written Evidence], 2007”. *Justice Committee Publications*, Session 2008-2009. House of Commons.

59 Justice Committee. “Devolution: A Decade On, Conclusions and recommendations.” *Justice Committee Publications*, Session 2008-2009, House of Commons.

60 Justice Committee. 2009. “Devolution: A Decade On, Conclusions and recommendations.” *Justice Committee Publications*, Session 2008-2009, House of Commons. Paragraph 254.

There are some ways in which intergovernmental communication can be improved. The Royal Society of Edinburgh, in a response to the Scottish Affairs Committee, outlined areas of opportunity to improve relations between the Scottish and UK Governments.

One positive mechanism is the Joint Ministerial Committees, which bring together Ministers from Wales, Northern Ireland, Scotland and the UK Governments annually in plenary and at different times throughout the year for certain departments. JMC's are seen as places for 'frank confidential discussion'⁶¹ and the UK Government Select Committee on Justice recommended that Joint Ministerial Committees take a 'more active and systematic role' in intergovernmental relations.⁶² Despite the importance for privacy, the RSE suggests these become 'serious political forums' by creating more publicity. This public interest will hold JMC's more accountable. Additionally JMC's are seen as less meaningful because many decisions discussed there, like those on Europe, are actually discussed at fortnightly UK Government officials meetings—which do not include officials from devolved governments.⁶³ Devolved government officials must be invited to have input not just after

61 "Joint Ministerial Committee." *About: Government in Scotland*. <http://www.scotland.gov.uk/About/Government/Inter-Governmental/Joint-Ministerial-Committee> Accessed 23 August 2013.

62 Justice Committee. "Devolution: A Decade On—Inter-governmental relations". *Justice Committee Publications*, Session 2008-2009, House of Commons. <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/529/52906.htm> Accessed 23 August 2013.

63 Birrell, Derek. "Introduction", *Comparing Devolved Governance*. *Palgrave MacMillan*, 2012.

decisions have been made but during decision making. To solve this, JMC's must become more meaningful and frequent.

Another proposed measure to improve devolution is expanded civil service knowledge on devolution. The Welsh Affairs Committee concluded in a report on 'Wales and Whitehall,' that 'after an initial burst of concentration, Whitehall has lost a focus on the devolution settlement and too often has displayed poor knowledge and understanding of the specificities of the Welsh settlement.'⁶⁴ The Scottish experience has been similar. The Calman Commission⁶⁵ noted that two submissions, that of an MSP and a Lord, suggested 'that civil service, and in particular Whitehall, understanding of devolution had weakened since 1999'⁶⁶ and that any problems which arose were more an issue of ignorance than uncooperative attitudes by civil servants. Sir John Elvidge was a civil servant and then became Permanent Secretary to the Scottish Government from July 2003 until his retirement in June 2010. In his reflections 'Northern Exposure: Lessons from the first twelve years of devolved government in Scotland,' he writes that, 'an exchange of experience between London and Edinburgh should be straightforward...It is my belief that, after twelve years of devolution, Westminster and Whitehall now have more to learn

64 Welsh Affairs Committee. "Wales and Whitehall". *Welsh Affairs Publications*, Session 2009-2010, House of Commons.

65 The Calman Commission, officially the 'Commission on Scottish Devolution' was established by the opposition parties in the 2007 Scottish Parliament to review the Scotland Act of 1998.

66 Calman Commission. "Serving Scotland Better: Scotland and the United Kingdom in the 21st Century." *Commission on Scottish Devolution*. <http://www.commissiononscottishdevolution.org.uk/>

from recent experience in Edinburgh than vice versa.’⁶⁷ As such, an increased focus on reciprocal learning and understanding in the British civil service could benefit a closer relationship between its constituent governments.

67 Elvidge, Sir John. “Northern Exposure: Lessons from the first twelve years of devolved government in Scotland”. *Institute for Government*, 2011. <http://www.instituteforgovernment.org.uk/sites/default/files/publications/Northern%20Exposure.pdf>

Consequences of Devolution

Devolution led to the Scottish Parliament and the Scottish Government. Initially, Scotland continued its history of voting for Labour with a coalition between the largest party, Labour, and the fourth largest party, the Liberal Democrats. Labour continued to be in power under Donald Dewar, Henry McLeish and Jack McConnell until 2007. The drop in Labour power in 2003 allowed for the inclusion of smaller parties like the Scottish Green Party and the Scottish Socialist Party into the Scottish Parliament. This so-called ‘Rainbow Parliament’ was enabled by the proportional representation voting system of the Scottish Parliament, intended to necessitate coalitions and represent smaller parties more fairly. In 2007 the SNP formed a minority government and in 2011 they won an unprecedented majority of the seats in the Scottish Parliament, forming a non-coalition SNP Scottish Government. With this majority government, the Scottish Government has set a date for an independence referendum, 18 September 2014 which will become the next large milestone in Scottish constitutional history. Professor John Curtice said, ‘Devolution has so far done little to strengthen support for the maintenance of the United Kingdom in its current form. Equally it is difficult to argue that it has done much damage.’

Curtice also said: ‘Devolution is a constitutional experiment whose eventual consequences are far from certain.’⁶⁸ The consequences

68 Curtice, John. “Hopes Dashed and Fears Assuaged? What the Public Makes of it So Far”, The State of the Nations 2001: The Second Year of Devolution in the United Kingdom. *Imprint Academic*, January 2001.

are uncertain in the long term but also uncertain in the case of the independence referendum. While polls show the 'No' campaign ahead, the result of the independence referendum is still 'too close to call' when one takes into account general trends towards 'Yes.'⁶⁹ Regardless of the result of the referendum, research on devolution continues to be an important area of study. It can be seen as both a pertinent political issue within the UK and as an exemplary process from without. The peaceful path of Scottish devolution and the high level of academic analysis in the aftermath of each referendum make Scotland a significant case study for nationalist political movements and conflict resolution professionals.

69 Wisnioski, Arkadiusz. 'Scottish independence vote is too close to call.' *The Washington Post*. <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/07/30/scottish-independence-vote-is-too-close-to-call/>

Conclusion

This working paper has demonstrated the ability of devolution to deal with differing political identities within a state. Its study of the 1979 and 1997 referendums can inform the debate to come. Over many years the development of British devolution offered a flexible solution to layered identities within states and did so in a gradual and peaceful way. Overall, devolution has provided spaces for Scottish politicians and academics to improve local democracy and to decentralise British politics. The frequent use of consultations and commissions within and between parties and the role of Parliamentary debate and inter-governmental cooperation strengthened the democratic process in the United Kingdom. British devolution faces a significant development in September 2014 with the independence referendum. The referendum process has shown the challenges of ensuring a legitimate and respected process which is open, inclusive and accessible at all stages. Regardless of the outcome of the 2014 referendum, devolution and decentralization are an opportunity to drive British and Scottish democratic participation. Devolution's takes a strong role in defining what democracy is and how it is supported. This critical view of democracy continues to drive positive reform and good governance on the British Isles.

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