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Scotland’s independence referendum 2014 in the context of devolution settlement: historical background, political framework and constitutional consequences

ABSTRACT

The paper analyses a referendum on Scotland’s independence held on 18 September 2014, in particular within the legislative and political framework of the devolution settlement, implemented across the United Kingdom since 1997.

Development of Scottish political separatism under the Scottish National Party and its long-time leader Alex Salmond has led to radical changes in the pattern of politics in Scotland. The pro-independence SNP has ruled in Edinburgh since 2007, first through a minority government and then securing an absolute majority at Holyrood. It had consistently pushed for a referendum on independence and, after several months of negotiations, managed to sign on 15 October 2012 the Edinburgh Agreement with the British government. The Agreement paved the way for legislation regarding the referendum, in the form of the Scottish Independence Referendum (Franchise) Act and the Scottish Independence Referendum Act.

“Yes” vote on 18 September would undoubtedly have enormous constitutional, political, economic, and social consequences for everyone involved, including the complex issues of Scotland’s EU and NATO membership, the exploitation of massive North Sea oil and gas reserves and retaining the British pound as future Scottish currency. But “No” vote would also mean significant adjustment of the British territorial constitution and considerable changes of Scotland’s relationship with the rest of the UK.

Keywords: Scotland, devolution, British constitution



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Referendum w sprawie niepodległości Szkocji 2014 w kontekście dewolucji: tło historyczne, ramy polityczne i konsekwencje konstytucyjne

STRESZCZENIE

Referendum w sprawie niepodległości Szkocji, przeprowadzone 18 września 2014 r., stanowiło jedno z najważniejszych wydarzeń w historii współczesnego brytyjskiego systemu politycznego. Było również wyrazem doniosłych zmian prawnych, jakim podlega ustroj terytorialny Zjednoczonego Królestwa. Celem artykułu jest przedstawienie kontekstu historycznego oraz uwarunkowań polityczno-prawnych, jakie doprowadziły do wrześniowego referendum. Proces przekształceń struktury terytorialnej państwa, określane mianem dewolucji, został zapoczątkowany w 1997 r. Szkoockie referendum stanowiło konsekwencję całego ciągu znaczących reform, które doprowadziły do transformacji państwa unitarnego, jakim Wielka Brytania była jeszcze 20 lat temu, w obecny system quasi-federalny o niezwykle silnej dynamice zmian. W artykule poddano również analizie kampanię referendalną oraz podjęto próbę sformułowania możliwych scenariuszy wydarzeń związanych z określonym wynikiem referendum.

Słowa kluczowe: Szkocja, decentralizacja, ustroj Wielkiej Brytanii



1

INTRODUCTION

In 2007 the United Kingdom celebrated 300 years of the Act of Union which combined Scotland and England into one state. On 18 September, 2014 a referendum on Scotland's independence will be held and Scottish voters will be asked a simple question "Should Scotland be an independent country?" If they say "yes" this will mark the most important constitutional event in modern British history, with fundamental consequences for the whole country. But even if they say "no" various political and legislative reforms will follow. And the relationship between Scotland and the rest of the UK has already been largely altered through more than fifteen years of major changes in the British territorial system of government. Most of those reforms fall into a category of devolution, which has already had a lasting effect upon the pattern of British politics.

This paper first introduces the phenomenon of devolution, giving particular attention to its historical context and describing the devolution settlement that has been implemented in the UK since 1997. The next section traces development of Scottish political nationalism under the Scottish National Party and its long-time leader Alex Salmond. Subsequently, the statutory framework for the independence referendum is briefly analysed and the ongoing referendum campaign is discussed. Finally, the implications of potential independence are examined. In the concluding remarks post-referendum realities of a "Yes" versus "No" vote are confronted.

2

DEVOLUTION – REINVENTION OF TERRITORY

Devolution is a process designed to give more powers to the three smaller nations of Scotland, Wales, and Northern Ireland which, together with England, constitute the United Kingdom¹. As a **term** it denotes a particular

¹ There is already a vast and quickly growing literature on the issue of devolution. The most comprehensive (to the author's knowledge) bibliography has been provided by the Centre for Welsh Legal Affairs, Aberystwyth University, Wales. It is available at <http://www.aber.ac.uk/en/is/subject/law/devolution/>.

form of political, legislative and administrative decentralisation. It provides for a second level of government below the state and above the local authorities. And it has been widely recognised as one of the most significant constitutional developments in contemporary Britain².

Historically, the term ‘devolution’ was largely synonymous with Irish “**home rule**” – the issue that arose in the late nineteenth century and produced a series of reforms, in the form of several Irish Home Rule Bills and the Government of Ireland Acts. They were intended to provide self-government for Ireland but within the then UK. However, the Irish question was resolved by the settlement of 1922, which finally led to full independence of the Republic of Ireland. And home rule sentiment in the mainland UK subsided in the interwar recession.

The question of devolution returned to the national agenda in the 1960s and the subsequent decades following the rise of Scottish and Welsh nationalism, along with the crisis of a welfare state and growing disparities between the policies of Conservative governments in London and the preferences of the electorate in the regions. The nationalistic sentiment began to grow in Scotland and, to a lesser extent, in Wales, and the central government first tried to tackle the issue in **the 1970s**. The Labour Party government produced two devolution bills, which passed with great difficulty, in the form of the Scotland Act 1978 and the Wales Act 1978. They were intended to introduce a limited form of autonomy in both regions. The statutes were subject to approval in a referendum. The first law passed in the Scottish referendum of 1979 but did not meet the 40 per cent threshold of the eligible electorate and the Welsh proposals were heavily defeated in the Welsh referendum of 1979³. The Conservative Party which regained power shortly

² For a concise overview of devolution reforms see e.g. M. Keating, *Devolution in the United Kingdom* [in:] *The Oxford encyclopedia of the modern world*, ed. P.N. Stearns, Oxford 2008; for a more detailed account see e.g. D. Birrell, *Comparing devolved governance*, Basingstoke & New York 2012; R. Deacon, *Devolution in the United Kingdom*, Edinburgh 2012; A. Blick, *Devolution and regional administration: a federal UK in embryo?*, London 2009; *Has devolution worked?*, eds. J. Curtice, B. Seyd, Manchester 2009; M. Keating, *The independence of Scotland: self-government and the shifting politics of union*, Oxford 2009; *Devolution and power in the United Kingdom*, ed. A. Trench, Manchester 2007; *Has devolution delivered?*, ed. C. Bromley, Edinburgh 2006; M. Leeke, C. Sear, O. Gay, *An Introduction to devolution in the United Kingdom*, House of Commons Library, Research Paper 03/84/2003; V. Bogdanor, *Devolution in the United Kingdom*, Oxford 1999.

³ In Scotland there were 51.6% votes in favour of devolution, with 63.6 % turnout, in Wales only 20.9 % “Yes” votes, with 58.8 % turnout; data in *Scotland and Wales: nations again?*, eds. B. Taylor, K. Thomson, Cardiff 1999, p. 5.

after the referendums was at that time strongly opposed to the idea of devolution and consequently repealed both statutes.

During the 1980s and '90s support for devolution in Scotland and Wales increased, particularly because the national government in London was for 18 years (1979-97) dominated by the Conservative Party under the leadership of Margaret Thatcher and John Major, whereas voters in both regions elected predominantly Labour candidates to the House of Commons⁴. The issue returned to the political agenda in **the 1990s**, in the context of regionalisation and the national revivals occurring across Europe and also due to the Conservative Party losses, particularly devastating across Scotland and Wales, in the 1997 parliamentary elections⁵. The Conservatives were no longer strong enough to successfully oppose devolution at Westminster or at the regional level. New legislative proposals were prepared by the Labour government of Tony Blair and approved in the 1997 Scottish and Welsh referendums⁶. Elections to the Scottish Parliament and the National Assembly for Wales took place in 1999 and both institutions were created the same year, opening a completely new chapter in the operation of the British political, legislative and administrative system.

The process of devolution in Northern Ireland followed its own, specific way, due to political constraints stemming from the long-lasting Ulster conflict. There, the 1998 Good Friday Agreement provided for a decentralised

⁴ It is worth mentioning that many of the most prominent Labour Party politicians of recent years, including two successive prime ministers (Tony Blair [1997–2007] and Gordon Brown [2007–2010]) have either been Scottish-born or resided in Scotland. Other famous Scotsmen, contributing in the past to the wealth and influence of the British Empire, include e.g. David Hume, Adam Smith, James Watt, Alexander Graham Bell, and Alexander Fleming.

⁵ Vote share of the Conservative Party in Westminster elections dropped across Scotland from around 40% in 1945–59 period, which brought 24 to 34 Scottish seats in the House of Commons out of a total of 71, to less than 18% in 1997–2010 elections, with none (in 1997) to maximum only 1 Conservative seat representing Scotland during that period (out of 59). The Labour Party's vote share in Scotland decreased over the same time from around 50% to 40%. Data in S. Alonso, *Challenging the state: devolution and the battle for partisan credibility – a comparison of Belgium, Italy, Spain and the United Kingdom*, Oxford 2012, p. 112, and A. Trench, *Devolution and the 2010 election in Scotland, Wales and Northern Ireland*, [in:] *Coalition Britain: the UK election of 2010*, eds. G. Baldini, J. Hopkin, Manchester 2012, p. 155. Also see G. Hassan, E. Shaw, *The strange death of Labour Scotland*, Edinburgh 2012; *Whatever happened to Tory Scotland*, ed. D. Torrance, Edinburgh 2012; A. Smith, *Devolution and the Scottish Conservatives*, Manchester 2011.

⁶ In Scotland's referendum 1,775,045 (74.3 per cent) voted in favour of a Scottish Parliament, with 614,400 (25.7 per cent) against, with 60.1% turnout, and 1,512,889 (63.5 per cent) supported giving the Parliament tax-varying powers, with 870,263 (36.5 per cent) against, with 60.0% turnout. In Wales an Assembly was approved by 50.3% of voters, with 50.1% turnout; data at <http://www.election.demon.co.uk/scottish.html>.

power-sharing multi-party government. Because of the restraints of the peace process the Northern Irish arrangement had to be suspended several times and came fully into operation only in 2007.

Therefore, the **devolution settlement** concerns the three regions of **Scotland**, Wales, and Northern Ireland, while keeping England under direct central rule, as opposite to the regional “home rules”. The settlement is consequently asymmetrical, first in applying only to the three smaller nations of the UK, as there has never been a serious question of a separate parliament for England, and secondly in providing different solutions among those three.

As a result of referendums and legislative changes three important domestic political institutions for the component nations of the UK were established – the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. The existence of historical and administrative variations resulted in different ways in which devolution has been applied. This paper deals predominantly with the case of Scotland, hence the following remarks will shortly describe the settlement implemented there.

The **Scottish Parliament** has been endowed with **legislative powers over all matters not expressly reserved** to the British (Westminster) Parliament⁷. They include, among others, agriculture, education, environment, health, housing, local government, policing and courts, and regional transport. The **UK government is responsible for national policy on “reserved powers”**, which mostly include defence and national security, foreign policy and international relations, energy regulation, immigration and nationality, macroeconomic policy, social security, as well as most taxation.

The Scottish Parliament, also called Holyrood, from an area in Edinburgh where the parliament building is located, is a legislation-making body, being able to pass bills in areas of its devolved responsibilities. The leading parliamentary party or coalition appoints the Scottish Executive which is headed by a first minister⁸. As far as taxation is concerned it had had the limited power to raise or lower the basic rate of income tax by three pence

⁷ Before devolution the sole legislative and executive authorities for Scotland, apart from local government, were the British government and its Scottish Office, which moved from London to Edinburgh in 1939. The Office has been headed by the Secretary of State for Scotland, who represents Scotland in the British government's cabinet.

⁸ The position of the First Minister of Scotland was created in 1999 and has been held by Donald Dewar (1999–2000, Labour), Henry McLeish (2000–01, Labour), Jack McConnell (2001–07, Labour), Alex Salmond (2007–19 November 2014, SNP), Nicola Sturgeon (20 November 2014 – incumbent, SNP).

in the pound, later increased in the Scotland Act 2012 to ten pence. These solutions seem to have been a compromise between growing demands for Scottish fiscal autonomy versus constraints epitomised by the British Treasury.

By the early 2000s there was a broad political consensus regarding devolution, as all major political parties were in favour of the devolved institutions and an overwhelming majority of public opinion also supported the settlement. It was generally viewed as a safe and effective way to avoid the disadvantages of both former centralisation and potential separation.

The devolution arrangement provides several **mechanisms and institutions for co-operation** and conflict resolution between the national government and the devolved authorities, including the Judicial Committee of the Privy Council, joint ministerial committees, memoranda of understanding and concordats, and also various informal ways of communication. The political process had also been made easier due to the fact that for a number of years the Labour Party dominated both Westminster and Holyrood. Only in 2007 the Scottish National Party replaced Labour as the largest party, forming first a minority government and, after the 2011 election victory, a majority one.

However devolution has caused some **tensions**, in particular **over public spending**. A seminal example has been the case of abolishing university tuition fees and prescription charges by the Scottish Parliament. These services are not free in England, where student tuition fees can reach £9,000 a year. At the same time Scotland's public services are generally paid for by all UK taxpayers. Under the terms of a mechanism called the Barnett formula funding is allocated around different parts of the country. The formula gives the devolved entities a proportionate share of spending on comparable functions in England. This has been seen as a way of English taxpayers subsidising free services in Scotland and has given rise to some anti-Scottish sentiment in England.

Another controversial political issue, known as the **West Lothian question** (named after Tam Dalyell, a Member of Parliament for West Lothian, who posed the question during a parliamentary debate) is the fact that Scottish members of the British Parliament (currently Scotland is represented in the House of Commons by 59 members), along with MPs from Wales and Northern Ireland, exercise – sometimes decisive – power at Westminster over English constituencies, while English MPs have no say in devolved matters regarding Scotland, Wales and Northern Ireland. In other words,

Scottish, Welsh and Irish MPs are able to vote on all laws that only apply to England but not vice versa.

There is also a heated political and academic debate **whether devolution transforms** the British state **from the unitary political system into a federal one**⁹. Another area of controversy is the relationship between the new territorial arrangement enacted through the post-1997 devolutionary reforms and the principle of parliamentary sovereignty. Given the limited space of this paper I must largely leave out of consideration the question of federalism and the challenges for the principle of parliamentary sovereignty generated by the process of devolution. Nevertheless it should be mentioned that the British polity cannot be longer explained in simple terms of a unitary entity. Considerable and diversified autonomy exercised by the three regional governments, with the lack of similar arrangement in case of England (apart from London with its democratically elected mayor and assembly) may lead to a conclusion that we are dealing with a quasi-federal system. Moreover, on the basis of political and legislative analysis, the British territorial regime can be described as a hybrid form that goes **beyond the unitary-federal dichotomy**, in which Scotland, Northern Ireland and Wales operate to a large extent as if they were federal units, whereas England retains solely unitary status.

As far as the **problem of parliamentary sovereignty** is concerned, the powers of the subnational authorities can be technically withdrawn by the central government at any time. The Westminster Parliament is still able to pass laws for any part of the UK, but in practice it does not deal with devolved matters without the agreement of and co-operation with the devolved authorities. Additionally, devolution has proved possible because of the flexibility and informality of the British constitutional order, which allows intergovernmental relations to be shaped in accordance with the current necessities and challenges of political decision-making.

⁹ For a wider analysis see e.g. A. Blick, *A federal Scotland within a federal UK*, London 2009; V. Bogdanor, *The new British constitution*, Oxford 2009.

3

AWAKENING OF THE POLITICAL SENTIMENT IN SCOTLAND¹⁰

Scotland is generally regarded to have maintained its independence from about 843, with king Kenneth (MacAlpin) I as the first monarch of the newly united kingdom¹¹. Historically, it had long refused to consider itself as anything other than a separate state. It was an independent country until the 1707 Acts of Union, which combined England (with Wales) and Scotland and formed the Kingdom of Great Britain. For the previous century both countries remained in a personal union, since 1603 when James VI of Scotland succeeded Elizabeth I of England as James I. Under the 1707 Acts the Scottish Parliament was ended and the Westminster Parliament increased by 45 commoners and 16 peers representing Scotland, although the countries retained distinct legal and judicial systems. Economically, Scotland benefited by gaining free trade with England and its colonies.

For most of the 19th and 20th centuries Scottish political scene had been dominated by major Britain-wide political parties of conservative, liberal and labour creed. A new player, the **Scottish National Party**, was founded in 1934, with the aim of pushing for Scottish home rule but at first rejecting the goal of full independence. The party started to make substantial electoral progress in the 1960s, particularly at the level of local council elections. From that period onwards more and more people in Scotland began to demand greater control over their own affairs and this trend was reflected in a rise in support for the SNP. In the general elections of February and October 1974 they won 7 and 11 seats respectively. At that time the party was

¹⁰ There is also a parallel course of analysis regarding the revival of the Scottish national identity, with considerable academic literature; see e.g. M.S. Leith, D. Soule, *Political discourse and national identity in Scotland*, Edinburgh 2011; *National identity, nationalism and constitutional change*, eds. F. Bechhofer, D. McCrone, Basingstoke & New York 2009; *Culture, nation and the new Scottish Parliament*, ed. C. McCracken-Fletcher, Lewisburg 2007; *Devolution and identity*, eds. J. Wilson, K. Stapleton, Aldershot & Burlington 2006; C. Harvie, *Scotland and nationalism: Scottish society and politics 1707 to the present*, London & New York 2004; A. Ichijo, *Scottish nationalism and the idea of Europe*, London & New York 2004.

¹¹ A comprehensive description of various aspects of Scottish history, economy, politics and government can be found on Encyclopaedia Britannica website at <http://www.britannica.com/EBchecked/topic/529440/Scotland>. An informative re-view of political developments leading to the independence referendum can be found at e.g. <http://www.politics.co.uk/reference/scottish-independence>, <http://www.bbc.com/news/events/scotland-decides>, <http://www.theguardian.com/uk/scotland>.

already expressing its explicitly nationalist aspirations, which were complemented by social democratic left of centre political agenda.

After the failure of the 1979 referendum the SNP lost some of its impetus. Under the Conservative Thatcher government of the 1980s the devolution project was largely shelved and its full revival did not start until a decade later. The successful 1997 referendum gave a boost to morale and **support for the SNP**. But it took ten more years to achieve a historic victory in the 2007 Scottish parliamentary elections. The pre-election Manifesto clearly stated: “The 300-year old Union is no longer fit for the purpose. It was never designed for the 21st century world. It is well past its sell by date and is holding Scotland back. [...] The SNP believe Scotland and England should be equal nations – friends and partners – both free to make our own choices.¹²” Characteristically, two major British parties fought in the latest 2010 UK parliamentary elections under the banners of “Strengthening the Union” (Conservatives) and “Protecting the UK and supporting the Union” (Labour)¹³.

The pro-independence **SNP emerged** in 2007 as the largest party with 47 (36%) of the 129 seats available, with 46 Labour seats coming second. As a consequence, the SNP formed a minority government with Alex Salmond, its leader between 1990 and 2000 and also since 2004, becoming the First Minister. He was, however, unable to secure the approval at Holyrood for a referendum on independence.

In the next 2011 elections the party further increased the number of seats to 69, giving it an absolute majority in Scotland’s Parliament. The election results also gave the SNP enough political power within Holyrood to **call a referendum on independence**. What the party leaders had to do now was to convince the coalition government in London that the referendum proposal is viable. Most opinion polls suggested that an early vote on full independence would be lost, therefore Salmond’s twofold aim was to postpone the referendum towards the end of the parliamentary term and also to offer Scottish people three different options – full independence, stronger devolution within the UK, and the status quo.

In January 2012 Salmond announced his plan to hold a referendum in 2014. Following several months of discussions and negotiations between

¹² <http://www.politicsresources.net/area/uk/ass07/man/scot/snp.pdf>.

¹³ For the Conservative Party Manifesto see http://www.politicsresources.net/area/uk/ge10/man/parties/consmanifesto2010_hires.pdf, and for the Labour Party Manifesto: <http://www2.labour.org.uk/uploads/TheLabourPartyManifesto-2010.pdf>.

London and Edinburgh, an agreement was signed on 15 October (the **Edinburgh Agreement**) between Prime Minister David Cameron and First Minister Alex Salmond¹⁴. Both governments agreed to support legislation in the UK and Scottish Parliaments that would allow a single-question referendum to be held before the end of 2014. In particular, the parties agreed, under the terms of Section 30 of the Scotland Act 1998, to promote an Order in Council which would pass power from Westminster to Holyrood to legislate on the referendum. The SNP was successful in holding off the vote until 2014, which would allow more time to build support for their campaign. On the other hand, the UK government managed to limit the referendum to a single question (in or out of the UK), depriving the SNP of an opportunity to put forward other, less radical solutions. Opinion polls at the time when the agreement was signed showed majorities of up to two-to-one against independence.

In early March 2013 Alex Salmond declared that a referendum would be held in September 2014 and that it would contain the fundamental “Yes/No” question: “Should Scotland be an independent country?”

4

THE STATUTORY FRAMEWORK FOR THE REFERENDUM

The Edinburgh Agreement between the UK government and the Scottish Government paved the way for Holyrood legislation regarding the referendum. Consequently, **two Acts of the Scottish Parliament** have been enacted under the powers temporarily transferred from Westminster¹⁵.

¹⁴ A timeline of events regarding the negotiations, referendum campaign and electoral procedures can be found in the UK Scotland Office's Policy Paper “*Milestones in the Scottish independence referendum process*”, published at <https://www.gov.uk/government/publications/scottish-independence-milestones-on-the-road-to-the-referendum/milestones-in-the-scottish-independence-referendum-process>. For the British government's analysis on Scotland's place in the UK see <https://www.gov.uk/government/collections/scotland-analysis>. For the Scottish government's position and relevant information see <http://www.scotreferendum.com/>.

¹⁵ The case of the Scottish Parliament legislation in the context of the independence referendum is an interesting example of shaping the relationship between devolved institutions and central government in London. As H. Green, a senior lecturer in the School of Law at the University of Aberdeen, highlighted: „The Franchise Bill is the [Scottish–K.Ł.] Parliament's first experiment with designing an electorate for a national poll. Referendum law-making apart, the franchise remains a reserved matter. The Parliament's

First, the Scottish Independence Referendum (Franchise) Bill was introduced on 11 March, 2013 and, after somewhat hastily debate, the Bill was passed at Holyrood on 27 June and received Royal Assent on 7 August, 2013¹⁶. Secondly, the Scottish Independence Referendum Bill was introduced on 21 March and, after more considerable debate, was passed on 14 November and received Royal Assent on 17 December, 2013, coming into force the next day¹⁷.

The first statute defines who is entitled to vote and also provides for the establishment of a register of young voters for the purpose of the referendum. A criterion of residence has been adopted, which excluded from the vote Scots residing in other parts of the UK or overseas. The Act has also fulfilled the Scottish Government's commitment of lowering the voting age to 16. As H. Green reported, "The reduction of the age limit for referendum voting rights has raised considerable administrative and logistical challenges concerning the registration of young voters. Those were the reason that the Franchise Bill was split off from the main referendum Bill: [...] to ensure enough time to activate the special arrangements for the registration of young voters for which the Bill provides¹⁸."

Therefore, almost all residents of Scotland over 16 (approximately 4.4 million people) are eligible to vote, as long as they are British, European Union or Commonwealth citizens with permission to stay in the UK and are registered to vote. On the other hand, around 800,000 Scots who live in

devolved authority over elections is generally limited by the Scotland Act 1998 in ways that preclude amending franchise law for political elections. The Scotland Act 2012 devolves more power concerning the administration of elections, but does not grant authority to legislate on the extent of voting rights within Scotland. In passing the Franchise Bill, the Scottish Parliament has therefore engaged for the first (but perhaps not the last) time with a constitutional task that is usually the sovereign preserve of national legislatures in independent states: legislating on the general principles governing the right to vote in a national poll." [in:] H. Green, *Prisoners and other people: the right to vote in the Scottish Independence Referendum (Franchise) Bill*, posted on 18/07/2013 at <http://www.scottish-constitutionalfutures.org/OpinionandAnalysis/ViewBlogPost/tabid/1767/articleType/ArticleView/articleId/1951/Heather-Green-Prisoners-and-Other-People-the-Right-to-Vote-in-the-Scottish-Independence-Referendum-Franchise-Bill.aspx>.

¹⁶ The content of the Scottish Independence Referendum (Franchise) Act 2013 is available at <http://www.legislation.gov.uk/asp/2013/13/contents>. The detailed legislative procedure is presented at <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/60464.aspx>.

¹⁷ For the content of the Scottish Independence Referendum Act 2013 see <http://www.legislation.gov.uk/asp/2013/14/contents>. The legislative procedure at <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/61076.aspx>.

¹⁸ H. Green, *op.cit.*

other parts of the UK have been stripped of their voting rights¹⁹. It also means that roughly 400,000 people from elsewhere in Britain (mostly from England) who reside in Scotland will be able to exercise a direct say on its future. Hence, it is legitimate to say that the legislation has enfranchised the people who live in Scotland, rather than the people of Scotland.

The second piece of legislation has made provisions for holding of the referendum, determining the question (“Should Scotland be an independent country?”), the date (18 September, 2014) and setting out the procedural arrangements. Voters will only be able to answer “yes” or “no” to the referendum question and only a simple majority is required to win.

5

THE REFERENDUM CAMPAIGN – “YES SCOTLAND” VERSUS “BETTER TOGETHER”

Yes Scotland is a movement representing political parties, organisations and individuals in support of a “Yes” vote in the Scottish independence referendum. By contrast, Better Together is an alliance of political parties, including Scottish Labour, Conservatives and Liberal Democrats, organisations and individuals backing a “No” vote in the referendum²⁰. Both campaigns were launched in mid-2012.

The Scottish National Party has long advocated Scotland’s independence from the United Kingdom and has managed to capture a significant share of support among Scottish voters since the 1970s. It has therefore become a major political and governmental force behind the pro-independence campaign. The 300+ year old Union between England and Scotland has been

¹⁹ As H. Green aptly observed, “So a migrant worker from Poland, living in Scotland for a few short years is enfranchised, while a Scot spending a similar spell living and working in England is not. This is a consequence of the Scottish Government’s policy choice to adopt wholesale the local government franchise rules rather than designing an entirely separate register of referendum electors. Doing so is an effective way of reducing the administrative costs of the referendum by permitting the use of existing local government electoral registers. It does, however, produce anomalies in the distribution of voting rights that could be perceived as unfair to some of those disenfranchised as a result.” *Ibidem*.

²⁰ The leader of Better Together has been Alistair Darling, a Labour Party politician from Edinburgh and a long-time member of Tony Blair’s and Gordon Brown’s cabinets, including an eminent position of the Chancellor of the Exchequer (2007–10).

presented as only a marriage of convenience²¹. **Yes Scotland emphasises** that the independence will create unique opportunities not only to be self-governed but also to establish a more affluent and prosperous society. Understandingly, it has concentrated on the prospects of making Scotland a better place to live in, in accordance with the idea that Scotland's wealth should be made and spent in Scotland. On the other hand, **Better Together points out** that the partnership between Scotland and the rest of the UK has successfully stood the test of time for more than three centuries and to change that poses substantial risks (thus it has been dubbed by the opponents as "Project Fear") for the nations involved but also for individual people. In this context Better Together has been accused of running a negative campaign and concentrating primarily on potential dangers and losses Scottish people may suffer outside the Union. Better Together campaigners fight back arguing that Yes Scotland has been overoptimistic and does not provide answers to many questions about the future of independent Scotland. The debate has also revealed a clear division between a more social democratic SNP vision of independence and a more neo-liberal approach of major British political parties at Westminster.

One of the most significant events during the pro-independence campaign has been the publication of the **Scottish Government's White Paper *Scotland's Future: Your Guide to an Independent Scotland***²². It was presented in November 2013 by Alex Salmond, the First Minister. The seminal document of some 650 pages covers almost all controversial issues associated with prospective independence. It promises to maintain and expand the welfare state policies enacted by the devolved Scottish parliament (regarding e.g. education, health care and personal care for the elderly). It also contains a 200-page separate section of 650 most commonly asked questions and answers to them, aimed at dispelling doubts about, among many other concerns, future economic situation, business, employment, welfare, external relations, citizenship, borders (particularly the land border with England),

²¹ Historically, when the 1707 Acts of Union were signed Scotland got access to English markets at home and particularly abroad at the time of economic hardship, and England stabilised its only land border and political-military relationship with a sometimes aggressive northern neighbour. At modern times strong economic ties have offered considerable financial advantages to the Scottish welfare state but also to the English economy through "Scottish" oil and gas reserves in the North Sea.

²² The document is available at <http://www.scotland.gov.uk/Publications/2013/11/9348/0> or downloadable in various formats from <http://www.scottishindependencereferendum.info/whitepaper.html>.

and the independence referendum itself, along with the issues of future constitutional order and governmental institutions of sovereign Scotland.

At the time of the White Paper publication the then current data suggested that almost half of voters were still in favour of retaining the Union, while little more than a third supporting independence. A number of explanations can be put forward to interpret **scepticism of so many Scottish people**²³. First, some Scots are satisfied with the devolution settlement or expect enhancing it but within the Union. Secondly, they already think of themselves as a separate nation and do not see the need for a new and radical constitutional arrangement. Thirdly, they are simply worried about legal and practical consequences of independence and do not want to step into the unknown, as breaking up the Union is a complicated and burdensome process. Finally, the referendum is sometimes perceived as the politicians' game and expression of their ambitions and antagonism, not necessarily conducted in the public interest.

Interestingly, one of the most sceptical groups is the business community. The separate surveys carried out by Professors David Bell and Brad Mackay have shown that "Businesses tend to see significantly more risk and uncertainty associated with Scottish independence than they do opportunity"²⁴.

It is worth mentioning that a critique of independence approach and consequent willingness to retain Scotland within the Union have led to a plethora of proposals concerning the transformation of the current devolution settlement in a way that might be satisfying for the population of Scotland and convince them to say "no" on 18 September, for example:

- ☒ the Scottish Liberal Democrats' Home Rule and Community Rule Commission report *Federalism: the best future for Scotland*, published in 2012;
- ☒ the Institute for Public Policy Research paper *Funding devo more: fiscal options for strengthening the union*, published in January 2013;
- ☒ the Scottish Labour Party's Devolution Commission report, published in March 2014;

²³ Cf. e.g. some academic websites with plentiful in-depth analysis of the Scottish independence question: <http://www.futureukandscotland.ac.uk/>, <http://www.referendum.ed.ac.uk/>, <http://theconversation.com/search?q=scottish+independence>, and *Devolution Matters* blog by Professor Alan Trench: <http://devolutionmatters.wordpress.com/>.

²⁴ See Professor Charlie Jeffery's analysis at <http://www.futureukandscotland.ac.uk/blog/scottish-businesses-and-referendum>, posted on 04/09/2014.

- ☒ the Strathclyde Commission report, published by the Scottish Conservatives on 2 June, 2014;
- ☒ the Devo Plus (a cross-party and non-party grouping, set up by a think tank Reform Scotland) reports.

All the above-mentioned documents have two things in common – they promote greater financial powers of the Scottish Parliament, particularly in the area of taxation, and also all included propositions are feasible only as long as Scotland stays within the UK.

Finally, it must be noted that over time the race has become much tighter and recent **polling has shown** either precarious balance between both sides or even a slight pro-independence majority²⁵. This had some immediate consequences, in the form of the current Conservative Chancellor of the Exchequer George Osborne’s announcement. He responded to the unfavourable polls and declared that further powers for Scotland will be devised. However, this should arise a question about the rationale behind the UK government’s policies. As Charlie Jeffery noticed, “some kind of firmer pledge on enacting more powers quickly could have been given months ago. Edging towards this pledge only after the most influential pollster in UK-level politics reports a significant Yes advance smacks of a transition from earlier complacency to knee-jerk reaction. It might well be asked whether this transition is credible. It certainly seems to lack any sense of clear strategy²⁶.”

6

THE IMPLICATIONS OF INDEPENDENCE

Scotland is the most northerly of the four parts constituting the United Kingdom. It occupies about one-third of the state’s territory (almost 80,000km²), on the island of Great Britain. Scotland has a population of

²⁵ A YouGov poll conducted for *The Sunday Times* just 12 days before the referendum showed – for the first time – a 2 point lead (51 to 49%, excluding wouldn’t votes and don’t knows) of the independence camp; see <http://yougov.co.uk/news/2014/09/06/latest-scottish-referendum-poll-yes-lead/>.

²⁶ C. Jeffery, *Responding to the polls*, posted on 07/09/2014 at <http://www.futureukandscotland.ac.uk/blog/responding-polls>.

roughly 5 million (8% of the UK) and it contributes some 8% to the country's GDP.

"Yes" vote on 18 September would undoubtedly have far-reaching constitutional, political, economic, and social **consequences** for everyone involved²⁷. But as far as specific effects are evaluated only educated guesses can be made. It has been often emphasised in the referendum debate that uncertainty is in the nature of the forthcoming decision. The choices to be made if Scotland declares independence will depend not only on internal circumstances but also on the reaction of the British government and international partners across the EU, NATO and other organisations. As Professor Neil Walker of the University of Edinburgh Law School described, "we are talking about the deeply embedded and closely enmeshed political and economic infrastructure of a 300 year old state; about its common monetary and fiscal framework and financial institutions, its National Health Service and wider system of social welfare, its dense network of common regulatory agencies, its armed forces, its global diplomatic presence, and its membership of key international institutions from the EU to the UN Security Council, and from NATO to the G8 and G20²⁸." Additional difficulty stems from the fact that both sides of the debate often refer to the same authoritative sources of information but then interpret the data differently.

Generally the **economic issues** have taken centre stage in the referendum campaign so far, with two major concerns – oil and currency. Massive North Sea oil and gas reserves that currently belong to the UK would fall under Scottish jurisdiction. Their exploitation is vital to prospects for economic growth and to the Scottish government's case for independence. Its

²⁷ An illuminating assessment of potential consequences of Scotland's independence can be found in I. McLean, J. Gallagher, G. Lodge, *Scotland's choices: the referendum and what happens afterwards*, Edinburgh 2013. A convincing case for independence, with a section including responses to some of the most commonly expressed doubts about Scotland's viability in this respect, has been put forward in S. Maxwell, *Arguing for independence: evidence, risk and tackling the wicked issues*, Edinburgh 2012. Comprehensive, although potentially overly optimistic, answers to all the popular questions at the heart of the debate have been given in the afore-mentioned Scottish Government's White Paper *Scotland's Future: Your Guide to an Independent Scotland*.

²⁸ *The uncelebrated Union*, posted on 12/08/2014 at <http://www.referendum.ed.ac.uk/the-uncelebrated-union/>. With regard to NATO accession, a potential area of conflict would include the future of the UK's nuclear deterrent in the form of Trident missiles, which are currently placed in Coulport storage facility and Faslane naval base, both in Scotland. The SNP and its government have repeatedly opposed the presence of the Trident system on the Scottish soil and declared in the above-mentioned *Scotland's Future...* White Paper their commitment to secure the earliest safe withdrawal of all elements of the Trident system from independent Scotland (Q&A 328).

opponents argue the resources are overestimated and will not solve all the economic problems that independent Scotland will be confronted with. Currency has been another point of disagreement. The SNP wants to retain the pound as part of a currency union with the UK, while Westminster has already declared its veto to the would-be common currency. In conclusion, there is no certainty – again – whether independent Scotland would be more or less prosperous.

Another issue dominating the debate has been the **international relations**, particularly with the EU²⁹. Independent Scotland would have to re-apply for membership in international organisations and re-negotiate at least some of the existing treaties. Scotland as a new state would not automatically become a member of the EU and during the process of accession would most likely not be offered any rebate that had been earlier negotiated by the UK. However, as part of the EU for over 40 years it is already fully compliant with the *acquis communautaire*, meets the Copenhagen criteria and might be admitted on an accelerated basis. On the other hand, the independence opponents have suggested that countries like Spain might either veto Scottish accession, for fear of creating the precedent in cases like Catalonia, or present difficulties during the membership negotiations, to demonstrate that secession is costly. But it must be noted in this context that in the case of Scotland the whole process is consensual and based on mutual agreement between the British and Scottish governments, which does not apply to the relationship between authorities in Madrid and Barcelona. As Professor Keating put it, “Scotland would be recognised by the UK. There is no reason for any of the other EU members to refuse recognition. There is no precedent for a seceding state, recognized by the host state, not being recognized by others. [...] As the UK Government noted in one of its papers, the Nordic states completed negotiations in 1–2 years³⁰.” And during the process of accession European law would be binding until repealed, as it has already become part of the law of Scotland.

²⁹ For a wider analysis of the issue see e.g. M. Keating, currently Professor of Scottish Politics at the University of Aberdeen, *Scottish independence and the EU*, posted on 17/02/2014 at <http://www.futureukand-scotland.ac.uk/blog/scot-tish-independence-and-eu>; idem, *Scottish independence: simple question - but no easy answers*, posted on 03/07/2013 at <http://theconversation.com/scottish-independence-simple-question-but-no-easy-answers-15316>.

³⁰ M. Keating, *Scottish independence...*, *op.cit.*

Another interesting point regards the Conservatives' proposals for a referendum on the UK's membership of the EU by the end of 2017. The SNP has taken advantage of David Cameron's pledge and proclaimed that the only way for Scotland to stay in Europe is to vote for independence. And recurring public opinion surveys found that Scottish voters are less Eurosceptic than those in England.

Finally, the **consequences for the rest of the UK** should be considered. Apart from the obvious constitutional and legislative challenges, some political repercussions should be evoked here. Currently Scotland is represented in the House of Commons of the British Parliament by 59 members. In the 2010 elections 41 Labour MPs but only 1 Conservative were sent to Westminster, the remaining include 11 Liberal Democrats and 6 SNP Members. Without Scotland the UK's Parliament and British politics are likely to move rightwards. This might mean better chances for long-lasting Tory majorities, but also an ideological shift to the right of the Labour Party and the Liberal Democrats to appeal to new voters.

7

CONCLUDING REMARKS

A vote in the independence referendum means a momentous decision for the Scottish electorate. First, because they will be given a chance to create a new state, and secondly because such decision will be practically irreversible. The residents of Scotland are exercising their democratic rights of territorial and political self-determination, which has been refused to so many other nations and ethnic groups. And the way both sides have been resolving the dispute of such fundamental character stands as **a model** for dealing with the issue in a democratic society.

It might be now considered what happens after 18 September. If a "Yes" vote prevails the Scottish government will start negotiations with the UK government. Mr Salmond wants to reach a final agreement by early 2016 to be able to observe Independence Day in March 2016 and the first elections to an independent Scottish parliament to be held later in May. But first, extremely challenging negotiations to form an independent state will follow the referendum. There is a large number of highly conflicting issues to be determined and there is obviously no precedent in British constitutional

practice (most of Ireland left the Union after World War I under entirely different circumstances).

However, if there is a majority “No” vote and Scotland stays in the UK there will still be adjustment of the British territorial constitution, in line with the recommendations of the Calman Commission on Scottish Devolution and conforming to the regulations of the Scotland Act 2012. There is a range of options for further devolution, including the so-called “Devo Max” (“devolution-max”) and “Devo Plus” proposals. First and foremost, they all boil down to giving the Scottish Parliament more tax powers. But for Scotland itself shifting still more power from Westminster to Edinburgh may mean less influence at the centre, with diminishing number of Scottish MPs in the British Parliament, and worsened access to common resources.

Therefore, it can be concluded that regardless of the referendum outcome, Scotland’s relationship with the rest of the UK will change considerably.

8

POSTSCRIPT

The above text was written shortly before the referendum date but it has been scheduled for publication after the date, hence the following update seems essential. On 18 September, 2014 Scotland has voted against becoming an independent country, with 2001926 (55,3%) “No” votes against 1617989 (44,7%) “Yes” votes, 191969 votes short of independence, with the distinctively high turnout of 84,59%³¹. On 19 September, following the results of the referendum, Alex Salmond announced his plans to resign and consequently stepped down from the positions of the leader of the Scottish National Party and the First Minister of Scotland in November, 2014.

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