

# Has the Scottish referendum thrown the UK into a political and constitutional crisis?

## *The first in a series on the consequences of the Scottish referendum*

Writing in the Observer Anne McElvoy said: "...this is not a victory, just an avoidance of disaster for the main parties at Westminster." Except it may yet turn into a disaster for them in any case. Although it's a cliché Pandora's box has definitely been opened. The consequences of this 'victory' are far reaching. Why? Because the three wise men (Cameron, Clegg and Miliband), desperate at the possibility of 'losing the union', offered increased powers in their 'vow' to Scotland. They did so without any mandate from their political Parties. They have failed to think through the consequences of their actions. Peter Hennessy has ventured that the manner of the referendum pledges have left "a constitutional building site, devoid of a construction plan".

Having 'saved the union' the man from Eton then proceeded to try to turn the result to his advantage by linking these increased powers with 'English Votes for English Laws'. What concerns him is not a discussion on 'a new constitutional settlement' but saving his own bacon. This tactical ploy was designed to put Labour on the spot, mobilise 'English nationalism' and outmanoeuvre UKIP by presenting the Tory party as the one 'standing up for the English'. As reports in the media over the weekend indicate Cameron not only didn't get the agreement of the Liberal Democrats, he didn't even get the agreement of Tory Cabinet members.

Instead of a national debate Cameron is proposing to pass the issue to Hague and a Cabinet sub-committee to come up with proposals in a time-scale which is absurdly short. As the Observer editorial commented: "What started out looking like a plan to save the union ended up looking like a device to entrench the Tory Party in power..."

Andrew Rawnsley reported that the PM's allies don't bother to deny that the gambit was designed "to put Labour in a corner". One of them told him: "We made life difficult for Ed Miliband on the even of the Labour conference. It is the equivalent of letting off a massive bomb in enemy territory. The Labour Party did not see it coming."

The problem is that the issues posed by 'a new constitutional settlement' are profound and complicated and require the widest possible debate. Miliband is right on one thing, the punters cannot be excluded. Even those who agree on only English MPs voting on 'English matters' should oppose this attempted stitch-up based on party political advantage. There can be no new constitutional set-up based on the interests of the Tory leadership and Cameron's quest to stay in Downing Street.

Paradoxically, although it lost the vote the SNP has undoubtedly been strengthened by the process. It may well prove to be the case that the losers turn out winners and the winners, losers. More than 20,000 members in a couple of days would seem to indicate as much. Likewise thousands of others have joined the Green Party and the Scottish Socialist Party in the wake of the referendum.

Whilst there were genuine issues around the question of a shared currency, the 'Better Together' crowd used the most shameful of tactics in building their campaign of fear, resting on the 'united front' of the Tory, Lib Dem and Labour leaders refusal to even negotiate around the issue of the currency. Labour in particular has increased the alienation of many of its traditional supporters in Scotland by its alliance with the Tories. An estimated 40% of its supporters voted for independence in the face of all the threats.

If many of those who voted No on the basis of Cameron's 'vow' of extended powers believe that the commitment is not going to be kept, then this will have consequences at the General Election in 2015. It is highly likely that the SNP will increase the number of Westminster MP's it has. When you take into account other possibilities, such as a UKIP presence in parliament, it is not beyond the bounds of possibility that any government, especially if it's a coalition (Tory/Lib Dem or Labour Lib/Dem), might depend on SNP votes or abstention to form a government. If the SNP gains a significantly increased block at Westminster it would undoubtedly use it to leverage deeper concessions of increased powers in order for it not to vote against the

formation of a new government.

### **Who will debate what?**

Given the “vow” that the three wise men gave to the people of Scotland should they vote 'No', Scots will want to ensure that this commitment is stuck to. However, exactly what was promised is not so clear, other than the continuation of the 'Barnett allocation for resources'. The 'permanent and extensive new powers' for the Scottish Parliament are undefined.

In May of 2014 Alistair Carmichael, Secretary of State for Scotland, gave notice of his intention to host what he described as a conference on the new Scotland, in the event of a 'No' vote. The intention would be to invite all political parties to join such a conference. According to the House of Commons Library the timing of this followed from a recommendation made by the Liberal Democrats in their proposals on devolution, that a cross-party process should begin not more than a month after the vote.

In June of this year the leaders of the Scottish Conservative, Scottish Labour and Scottish Liberal Democrat parties issued a joint statement which pledged “to strengthen further the powers of the Scottish parliament, in particular in the areas of fiscal responsibility and social security”. On August 5<sup>th</sup> the UK Conservative, Liberal Democrat and Labour parties issued a combined declaration echoing the 16 June statement by their Scottish parties.

On September 7<sup>th</sup> George Osborn made commitments about the pace of change, following a No vote. Speaking on the Andrew Marr show he said: “You will see in the next few days a plan of action to give more powers to Scotland, more tax powers, more spending powers over the welfare state.”

The following day Gordon Brown made his speech declaring that work on the new legislation would begin on September 19<sup>th</sup>, that is the day after the referendum. A “command paper” published by the UK government would set out all the proposals by the end of October. A white paper will be drawn up at the end of November “after a period of consultation” and a draft Law for a new Scotland Act in January 2015. This rather swift timetable was endorsed by the leaders of the Scottish Labour, Conservative and Lib Dem parties in a press statement on September 9<sup>th</sup>. Hague confirmed in the House of Commons that all three main parties had endorsed that timetable. According to him this proved that the Scots “could have change without irreversible separation”.

The problem with this, of course, is that there is very little time to discuss differences over the details of such a Bill. It's questionable whether agreement can be reached between the three main parties. Moreover, the SNP having lost the referendum will now have to bring forward its proposals for the extension of powers. On September 23<sup>rd</sup> Nicola Sturgeon and John Swinney met with Lord Smith to discuss the details of the Smith Commission which the UK government has set up to look at “strengthening the powers” of the Scottish parliament. A spokesperson for Sturgeon said that the SNP confirmed it would participate fully in the process he has set out.

“As the First Minister said in his statement we welcome Lord Smith's appointment and we have made clear to him our belief that there must be meaningful consultation not only with civic Scotland but also with all of those who have become so engaged in the political process as a result of the referendum. It is vital that the Westminster parties honour their vow to the people of Scotland to deliver substantial more powers to our national parliament.”

However, to consult meaningfully all these people in the proposed timetable is impossible. Swinney has picked up Brown's formulation of a modern form of 'Home Rule'. As to what “substantial more powers” means the SNP has not yet clarified.

### **An EVEL tactic opening up a constitutional minefield**

What are the consequences of the referendum for England? 'English votes for English laws' is being being touted as a question of 'fairness' for the English. It has a certain credence because of the experience of Scottish Labour MPs supporting Blairite laws (e.g. student fees, Foundation Trusts in the NHS) in the full knowledge that they wouldn't apply in Scotland. Yet EVEL is a cynical ploy designed to keep Cameron in

Downing Street. The idea of English MP's only voting on 'English laws' might sound logical, but if you think about the implications, it's not such a straight-forward issue. If Cameron was proposing an English assembly that would be one thing, but he's not. EVEL if applied to the UK Parliament could mean that a Party standing in UK elections won a mandate at that level but could not apply it because they did not have a majority amongst the MPs elected in England. This alone would precipitate a constitutional crisis where an elected government could not govern. Vernon Bogdanor, David Cameron's tutor at Oxford is not a great admirer of his former student on this one, saying

"You can't have two governments, jumping between the government and opposition benches depending on the subject being discussed."

The Economist has described this as "a Washington style perma-deadlock". To this you can add a constant battle over exactly what constitutes 'England only laws', since most of them are UK laws with variations according to the current devolution arrangements. Even the Telegraph has written:

"Sounds simple enough. Any snags? One very big one: how do you decide which laws affect England only. Even decisions that appear to affect England only can have indirect effects on Scotland. Shouldn't the Scots have a say?"

### **No devolution without proportional voting?**

If the Tories are suggesting a form of 'devolution' to England (or rather its MPs) then they have forgotten one significant accompaniment to devolution: the operation of a form of proportional representation. Perhaps the Tories think that they can maintain a majority in England by this constitutional trick. However, what sense would it make to have proportionality in elections in every country except England? The Economist has pointed to this anomaly. In its article "The Lesser EVEL" it has offered Labour a response to EVEL, suggesting the operation of proportionality in this de facto English assembly. Somewhat cumbersome it would mean including representatives of Parties without MPs, in proportion to their votes. In fact the obvious thing to do would be to introduce a form of PR in the UK elections. Here is Labour's answer to EVEL if they had the courage. It makes no sense to have a form of PR in the devolved assemblies but not in the UK Parliament. It's ironic that supporters of the 'free market' and 'competition' so fiercely oppose competition in the political system by clinging to 'first past the post' (FPP).

There is no justification for the continuation of FPP from any democratic standpoint. It is simply a means of preserving the domination of the major parties by maintaining a system which makes it very difficult for smaller parties to make a breakthrough. It means big sections of the electorate have no representation of their views in Westminster. It was in part the introduction of proportionality in the electoral system which blew open the political system in Scotland and Wales. It meant that Labour, pretty much the Establishment party in both countries, was challenged on its left by Parties that took on a social democratic colouration as in the case of the SNP and Plaid Cymru. That's why the worst excesses of Blairism were not introduced there. We need an end to FPP to help open up the political system in the UK.

### **'Devolution' in England**

News of more powers being granted to Scotland has led to talk of 'devolution' to either the regions or city/metropolitan areas of England. Most of this hot air comes from politicians who can see the prospect of gaining more power *for themselves*. However, when votes were held on regional assemblies in 2004 they were rejected. Most people don't see the need or the benefit of another layer of professional politicians, no doubt together with their expenses.

The simplest way to devolve power from Westminster would be to give all local authorities control over the money they raise from council tax and business rates. So long as the block grant system remains then Westminster has power over local authorities. Before Thatcher came to power local authorities used to raise about 75% of their funding locally and 25% from central government. She reversed these proportions, giving Westminster leverage over them. This needs reversing. It would make more sense, and would give more democratic power back to the localities, if local authorities kept all the money they raised and there was a central government 'top up' based on an assessment of local demographics, levels of wealth and social deprivation. Local authorities would have to justify what they did and would be unable to fall back on the "it's

not us it's Westminster responsible" line. We might also add that it's high time to get rid of one party Cabinet government with its rubber stamping of executive decisions.

The introduction of 'self-financing' for local authority housing, whereby instead of Westminster handing out what it chose to give to local authorities, they get to keep all the rent they raise from their homes, has raised a precedent that could be extended to local government General Fund spending.

### **"Re-balancing the economy"**

Since the global crash there has been much talk of re-balancing the UK economy; ending its over-reliance on Finance and, in the heroic words of Gideon Osborne, opening the way to "the march of the makers". However, the imbalance is not just related to the industrial structure, it is geographical. Some regions and localities in the UK have never overcome the catastrophic impact of the monetarist experiment introduced by Thatcher which saw a third of Britain's industrial base wiped out within four years.

There is a 'north-south' divide, of sorts, though inequality and poverty in the UK exists at all levels, both within the richest areas such as London and the South East, and within the nations and regions comprising the UK. So long as 'the market' dominates then this state of affairs will continue. 'Devolution' to the big cities and regions would most probably be based on 'levering in' private money. The Business section of the Observer made this point:

"In the midst of austerity, when the local government sector is braced for yet more funding cuts, English devolution is a recipe for beggar-thy-neighbour tax cuts to woo big business."

It added:

"Localism was supposed to be the antidote to spending cuts, allowing councils to be more entrepreneurial and collaborate. In effect, the Localism Act, allied to Local Enterprise Partnerships (LEPS) and a deregulation of planning, acted alongside the cuts as a highly political nudge, pushing councils away from providing services to facilitating business investment."

Devolution which operates on this basis would lead to a form of balkanisation where regions and cities fought each other for a bigger part of the shrinking pie. Moreover, professional politicians in these areas would see this as a chance to increase *their* power.

A "constitutional settlement" which facilitated the 'localist' agenda of the Tories would make matters worse for the working class and the poor. 'Localism', supported in 'principle' by Labour, was never anything other than the austerity programme of the coalition government imposed at the local level.

Whilst the question of the UK's constitution obviously has a democratic dimension, it also has a social and political content as well. It raises questions of who exercises power, how money is raised and how it is distributed across the nations, regions, towns and cities. I'll consider these in a further article.

Suffice it to say that the whole question of changes to the (unwritten) constitution raises a number of issues that the Establishment will not want to discuss. For instance, the anachronism of a "mature democracy" with

- Feudal remnants – an unelected hereditary monarchy and House of Lords;
- Legislation which we have recently discovered is 'run past' the Queen and Prince Charles;
- Prime Ministerial patronage whereby jobs (and more money) are doled out and used as a means of keeping MPs quiet for fear of risking their chances of 'advancement';
- The afore mentioned anachronism of the undemocratic system of FTP.

### **If only elections mattered...**

One of the most significant aspects of the Scottish referendum which has been universally recognised is the unprecedented 84% turn-out and the 'engagement' of people disaffected from the Westminster political system. Faced with an important decision that they could materially influence by their vote a phenomenal campaign was fought with the involvement of large numbers of people who would simply not have been

'engaged' in an election for the Westminster parliament.

The fundamental reason for this disaffection is that since the onset of neo-liberalism, introduced by Thatcher and Reagan, and the evolution of Labour into New Labour, millions of people have thought that they had no real choice. All the major Parties were seen to have variants of the same programme and outlook. This was exacerbated by the fact that the Westminster Parties ignored the biggest ever demonstration against going to war in Iraq.

Once upon a time it was not beyond the bounds of possibility that the membership of political parties could impose their will on their leaders. At the December 1944 Labour Party conference a resolution was passed committing Labour to a programme of nationalisation. It was carried overwhelmingly against the advice of the National Executive Committee. After the debate Herbert Morrison strode up to the mover of the resolution, a young Ian Mikardo and declared "you know that you have lost us the general election"! Even in the case of the Tory Party, at its 1951 Conference the leadership had a figure of building 300,000 houses imposed on it.

Yet the Americanisation of our electoral system, selling the Party leader like a commodity (how many more conferences do we have to see with the adoring wife coming on stage to kiss the great man?), 'triangulation' and all the rest has turned people off. Party conferences have been turned into rallies devoid of any democratic debate.

If people thought they had a real choice, of different alternatives, then they would get out and vote in the sort of numbers who turned out in the Scottish referendum. Make no mistake, whatever you might think about the choice which the Scots had, the British Establishment was given the fright of its life. We need to learn from the campaigning which was carried out and to start thinking seriously about the political and constitutional consequences of the referendum or else it will be stitched-up by the Westminster elites.

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26<sup>th</sup> September 2014