

FUTURE PROSPECTS OF SCOTLAND

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Abstract

The issues of Scottish devolution and independence have been discussed in the UK for decades. Coming to power in 2007, the Scottish National Party intensified the debate on the constitutional future of Scotland promoting Scottish independence. It is argued that further devolution and independence attracted most attention within political parties as well as within the Scottish public, while the status quo or federalism did not. Independence itself then is analysed on the basis of secession theories with particular attention paid to economy, territory, negotiations between the British and Scottish governments, and referendum issues, and their embodiment into the discussion. The National Conversation debate is examined through the lenses of reports produced by the Scottish Government as well as Liberal Democrats and by the independent Commission on Scottish Devolution established by Scottish Labour, Scottish Conservatives, and Liberal Democrats. The emphasis is also put on the involvement of the public into the debate as well as on opinion polls.

Keywords: devolution, secession, independence, Scottish Parliament, Scottish Government, Scottish National Party, Calman Commission, Steel Commission, National Conversation

Almost ten years after the September 1997 referendum when people in Scotland were asked to decide whether they wanted the establishment of autonomous Scottish institutions, the Scottish National Party (SNP) won the elections to the Scottish Parliament with the promise to hold a referendum on the independence of Scotland, and thus change its constitutional status. However, the SNP did not intend to withdraw Scotland from the United Kingdom without the majority consent of the Scottish people. For that reason it initiated the National Conversation debate on the constitutional future of Scotland and sought to involve political parties and Scottish public into it.

The article focuses on the debate on Scottish future which took place between the years 2007 and 2009. Its main purpose is to demonstrate what topics were emphasized, and how political parties and the public were involved in it. The underlying thesis is that two constitutional options, further devolution of powers and independence, were at the centre of the discussion, while federalism and the status quo attracted only little attention, and if they did, it was the public in particular who discussed them. The independence option is examined through the theories of secession as they set several conditions on which the right to secede can be justifiable. Applying them to the Scottish case, four issues – economy, territory, negotiations between the British and Scottish governments, and a majority vote in a referendum – prove to be crucial. Therefore, the purpose of the article is also to analyse to what extent these four issues were accentuated in the discussion. It is argued that the economic issues as well as the referendum were discussed in a great detail, while the territory and negotiations only occasionally.

The article views the debate on the future prospects of Scotland mainly through the lenses of several reports that were produced by the political parties themselves or by the independent Commission on Scottish Devolution Commission, also known as the Calman Commission. The debate was opened by the Scottish Government's White Paper *Choosing Scotland's Future: A National Conversation. Independence and Responsibility in the modern world* published in August 2007. The unionist opposition parties – Scottish Labour, Scottish Conservatives and Liberal Democrats – responded to the SNP's proposals by setting up the Calman Commission. The peculiar role was played by Liberal Democrats. They participated in the establishment of the Calman Commission and agreed that its sole remit would be devolution, even though they have been promoting federalisation of the UK for a long time. Moreover, in 2006 they published a report (within the Commission chaired by Lord Steel) on the prospective federalisation of the UK and its implications for Scotland dealing with some key issues discussed in the National Conversation debate. Therefore, the report of the Steel Commission is included in our analysis. The discussion formally ended in November 2009 when the SNP published another white paper based on the findings of the consultation process and analysing several options for further constitutional development of Scotland.

As for the public, the government was successful in involving people, not only those living in Scotland, but also outside, into the debate on

the Scottish constitutional future. Because two constitutional options were discussed the most, the article also includes public opinion polls on devolution and independence issues, in particular focusing on the potential of getting a majority support for independence.

The article is thus divided into three main parts. The first deals with the explanation of the devolution concept generally and its implementation specifically in Scotland, and with independence as a secession issue. The other part is devoted to the debate itself analysing the approaches of individual political parties and the public. This part is concluded by the Scottish Government's response to the whole National Conversation debate. The last section then focuses on public opinion on the extension of devolution, independence as such, and on the possibility of holding an independence referendum.

Devolution, independence, and theories of secession

Devolution is about of transferring certain powers from central institutions to regional ones, while the superiority of the centre is maintained. It can also be understood as territorial decentralisation of power connected to the establishment of a more democratic and representative government.¹ Gordon Smith recognises two types of devolution – deconcentration and decentralisation. While deconcentration is about plain delegation of authority from a higher administrative level to a lower one being spatially distant from the centre, decentralisation is characterised by a certain degree of autonomy, and thus it is possible to recognize several levels of decentralisation ranging from weak (elected assembly) to strong decentralisation. We can talk about strong decentralisation only if five conditions are fulfilled: i.e. direct election of representatives to a regional or provincial assembly, control over the subordinate local government organs in the area, a provincial executive authority responsible to the assembly, an area administration under the control of the executive, and powers to finance activities in the region.² Applying these conditions to the Scottish devolution process, we can see we are not able to talk about strong decentralisation, because Scottish institutions

¹ Howard Elcock and Michael Keating, eds., *Remaking the Union. Devolution and British Politics in the 1990s* (London, Portland: Frank Cass, 1998), 8.

² Gordon Smith, *Politics in Western Europe* (Aldershot: Gower, 1989, 5th edition), 254–55.

do not possess the power to decide autonomously on fiscal issues as well as on civil service. It is thus necessary to specify in what way devolution was designed for Scotland; which powers were devolved to Edinburgh and which remained in London. It is important to do that to be acquainted with the status quo of Scottish devolution that served as a basis for the discussion on the constitutional future of Scotland.

In Scotland, devolution became a reality on 1 June 1999, when the Scottish Parliament was officially opened, and specific powers were rendered to Edinburgh concurrently. From that date the Scottish Parliament and Scottish Government³ are responsible for areas such as education, transport, fisheries, agriculture, rural communities, planning, economic development, local government, or health care. Furthermore, Scotland possesses the right to legislate on local taxes, business rates, and to change the basic rate of the income tax up to ± 3 per cent. However, the economic impact of tax-varying power is almost none, and besides there has been a general agreement between political parties that this power will not be used. The Scottish Government was also given a borrowing power. However, this power is strictly limited to the ability to borrow only from the UK Treasury and solely for the immediate improvement of cash-flow. Therefore, Scotland does not have any significant fiscal powers and continues to be financed mainly from the UK budget through a block grant which is based on the allocation to Scotland from the previous year and adjusted by the Barnett formula.⁴

³ In September 2007 the Scottish Executive was officially renamed to the Scottish Government. SNP argued that the new term better “express[ed] the corporate identity” of Scottish Ministers, and “help[ed] the public more clearly understand the role and functions of the devolved Government in Scotland”. The latter argument was supported by a public survey on the Scottish Executive perception. However, the Scottish Executive is a legal term, and as such continues to be applied in legal documents. The British government resisted using the new name originally, but with the government reshuffles it started to apply new name in October 2008. The Scottish Government – it’s official, Scottish Government Press Release, 3 September 2007, <http://www.scotland.gov.uk/News/Releases/2007/09/31160110>; Alan Trench, “Intergovernmental Relations”, in *Scotland Devolution Monitoring Report January 2009*, ed. Paul Cairney (University of Aberdeen: The Constitution Unit, 2009), 70, http://www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/Scotland_Jan09.pdf.

⁴ Barnett formula is a population based mechanism according to which is the block grant adjusted when changes are made in expenditure for England. David Bell and Alex Christie, “Finance – The Barnett Formula: Nobody’s Child?“, in *The State of the Nations 2001. The Second Year of Devolution in the United Kingdom*, ed. Alan Trench (Thorverton: Imprint Academic, 2001), 136; John Altridge, “Financing Devolution. 2008 and Beyond”, in *The State of the Nations 2008*, ed. Alan Trench (Exeter: Imprint Academic, 2008), 147, 151.

Scottish autonomous institutions cannot thus exercise any powers in the following areas: the constitution; foreign affairs, including relations with the European Union (EU); defence; civil service, treason, registration and financing of political parties; financial and economic matters; home affairs (e.g. elections, immigration, nationality, national security); trade and industry (e.g. telecommunications, postal services, intellectual property); energy; transport (e.g. regulation and security); social security; regulation of the professions, employment, health and medicine (e.g. regulation of the main health profession, misuse of drugs, medicines, embryology, surrogacy, genetics, abortion); media and culture; as well as judicial remuneration, equal opportunities, control of weapons, ordnance survey, time and outer space. However, there are some exceptions concerning for example the European Union. Even if the European Union issues are not among the devolved powers, the Scottish Parliament is responsible for the implementation of European law in areas in which it can pass legislation (e.g. fishery).⁵

Unlike devolution, independence is about changing powers and responsibilities beyond the existing state. It concerns the secession of a sub-political unit from the state. In our case, Scotland, governed by the Scottish National Party at the moment, aims to secede from the United Kingdom. Some members of the Scottish National Party, such as Neil MacCormick for instance, do not view the process leading to independent Scotland as secession from the United Kingdom but rather as dissolution. They argue that the Union between Scotland and England established in 1707 was set up by mutual agreement of both countries and as such, therefore, can be dissolved if there is a congruence to do so. The major differences between the two above mentioned notions can be best seen in light of the continuity of the EU membership. While from the dissolution point of view both independent Scotland and the rest of the United Kingdom should continue in being members of the European Union, from the secession point of view, however, only the rest of the United Kingdom would have its membership guaranteed, while independent Scotland would have to apply for it if it wanted to be a member of the EU.⁶ Nevertheless, the more important thing

⁵ *Scotland Act 1998. Chapter 46, Schedule 5*; Peter Lynch, *Scottish Government and Politics. An Introduction* (Edinburgh: Edinburgh University Press, 2001), 161–62; Jean McFadden and Mark Lazarowicz, *The Scottish Parliament. An Introduction* (Edinburgh: T & T Clark, 2nd edition, 2000), 11.

⁶ Neil MacCormick, “Is There a Constitutional Path to Scottish Independence?”, *Parliamentary Affairs* 53, No. 4 (October 2000): 735.

is the position and views of other EU member states, because it is mainly up to them to accept a seceding region as a sovereign state or not. European law does not address the issue of secession or dissolution. Therefore, international law applies in the case. Nonetheless, the previously mentioned acceptance by other states is equally relevant.

Secession can be understood as a “withdrawal from a central political authority by a member unit or units on the basis of a claim to independent sovereign status”.⁷ There are several theoretical approaches to secession explaining why some groups seek to secede, what kind of groups have the right to secede and under what conditions. A comprehensive definition of theories of secession is offered by Allen Buchanan who defines two main types of theories of secession – remedial-right-only theories and primary-right theories. The former acknowledges the right to secede only to a group that is subject to some injustices perpetrated by the state and for which secession is “the appropriate remedy of last resort”, while the latter grants the right to secede to a group that does not suffer any injustices from the state.⁸ The primary-right theories can be further divided into two main categories. Ascriptive group theories embrace those secessionist movements that see their right to secede on the basis of being a nation. Associative group theories grant the right of secession to those who want to create their own sovereign state, i.e. they voluntarily decide to “associate together in an independent political unit of their own”. This theory includes a plebiscitary right of secession or plebiscite theory of the right to secede referring to the fact that any group is entitled to secede if it is able to form a majority for secession within a certain territory of the state. However, the plebiscitary right is mostly moderated by a formulation of certain conditions, such as for example the size of the secessionist group, under which the secessionists are not allowed to secede from the state.⁹ One of the main representatives of this approach is Harry Beran. Beran offers a liberal normative theory of secession. He argues that “secession [should] be permitted if it is effectively desired by a territorially concentrated group within a state and is morally and practically possible”.¹⁰ Beran analyses the permissibility of secession on the

⁷ John R. Wood, “Secession: A Comparative Analytical Framework”, *Canadian Journal of Political Science* 14, No. 1 (March 1981): 110.

⁸ Allen Buchanan, “Theories of Secession”, *Philosophy and Public Affairs* 26, No. 1 (Winter 1997): 34–35.

⁹ *Ibid.*, 37–39.

¹⁰ Harry Beran, “A Liberal Theory of Secession”, *Political Studies* 32 (1984): 23.

basis of freedom, sovereignty and majority rule as liberal and democratic values. According to him, people are free to leave the country where they live or to change their nationality, because the relation between the state and the individual is only voluntary. Hence, the consent of the individual to live in a certain state is necessary. Similarly, such consent is required in exercising political sovereignty, because only individuals have the moral right to determine their political relationships. By a majority principle Beran understands the respect for political rights of all individuals. If the majority does not respect these rights, a minority group living in a certain territory is entitled to secede. Such a group can also do so if it either does not want to be subordinated to the majority, or is profoundly devoted to secession, and uses adequate political action to achieve it. Nevertheless, he fails to elaborate on what he means by adequate political action. Beran also acknowledges the right of secessionists to hold a referendum, but on the condition that the territory in which the referendum is supposed to take place is specifically defined, it also must be clearly stated who is entitled to vote, and there has to be a general agreement among the people that the majority vote would be accepted in the referendum results. He concludes that secessionists would most likely give the right to vote only to those who live within the territory where they can secure the majority for secession.¹¹

Despite of such a liberal approach to the right for secession and wholly in accordance with Buchanan's postulation, Beran indicates that in some circumstances the secession may not be permitted. However, he distinguishes between several levels of barriers to secession. The right to secede should never be granted if the size of the group who wants to secede is too small, if it rejects the right for secession to other sub-groups within the group or desires to keep down sub-groups within itself. On the contrary, in situations in which the seceding group would set up an enclave, or occupies a territory that is indispensable from the existing state either economically, culturally or militarily, the secession can be allowed only on the basis of negotiations between the seceding group and the state.¹²

Another liberal theorist Anthony H. Birch criticizes Beran's theory as one with "liberal premises and conservative conclusions". Although Birch

¹¹ Ibid., 25–28.

¹² Ibid., 30–31.

refuses Beran's insistence on the majority rule as a sufficient condition for secession based on what he called a "moral imperative", he himself stresses that the majority of people living in the region that seeks to secede has to give their approval for the secession. However, this majority approval is only required when at least one out of four conditions is fulfilled. These are, according to Birch, as follows. (1) The region was included in the state by force and its people have displayed a continuing refusal to give a full consent to the union. (2) The national government has failed in a serious way to protect the basic rights and security of the citizen of the region. (3) The democratic system has failed to safeguard the legitimate political and economic interests of the region, either because the representative process is biased against the region or because the executive authorities contrive to ignore the results of that process. (4) The national government has ignored or rejected an explicit or implicit bargain between sections that was entered into as a way of preserving the essential interests of a section that might find itself outvoted by a national majority.¹³

Furthermore, Birch, unlike Beran, does not recognize the condition of territoriality as essential for the right to secede. In other words, he does not share the opinion that any territorially concentrated secessionist group is entitled to be given the right to secede. Birch also emphasises that the right to secede should not be precluded by the hesitation on the prospective workability of the new state as well as by the impact on the interests, either economic or strategic, of the existing state.¹⁴

By stipulating four injustices of the existing state towards the political sub-units that can justify the right for secession Birch's approach to the right to secede complies with the remedial-right-only theories. Similarly to Birch, Allen Buchanan advocates the right to secede on the basis of the remedial-right-only theories. According to him, a group is entitled to secede only if such a group is subjected to violation of human rights, annexation of the group's territory, and discriminatory redistribution of financial resources between the central authority of the existing state and seceding group.¹⁵ Although Buchanan considers the remedial right the only one that can vindicate the right of secession, he also acknowledges the right to secede to a group that has not suffered any injustices in the past if the secession

¹³ Anthony A. Birch, "Another Liberal Theory of Secession", *Political Studies* 32 (1984): 598–601.

¹⁴ *Ibid.*, 598, 601–2.

¹⁵ Buchanan, "Theories of Secession", 37; Allen Buchanan, "Self-Determination and the Right to Secede", *Journal of International Affairs* 45 (1992): 353–56.

is an outcome of a negotiated agreement between the state and a seceding group.¹⁶

Theorists of secession differ in their views on what basis the secession can be granted to a seceding group or region. Some of them, Beran for example, put an emphasis on the territory question, respect for political rights of individuals, and a majority approval for secession in a referendum, while others, such as Birch or Buchanan, stress violation of human rights, discrimination in the distribution of financial resources or annexation as necessary conditions for allowing secession. However, all of the above mentioned theorists admit that the right to secede can be influenced by circumstances that would be in contradiction to their postulates. For instance, Beran argues the secession cannot be accepted if the secessionist group is not big enough to create its own state or does not recognize the rights of its sub-groups. On the other hand, Buchanan is willing to grant secession if it results from negotiations between secessionists and representatives of the existing state.

Given this theoretical framework the article from now on focuses on the debate concerning the constitutional future of Scotland; whether Scotland should be given more powers under devolution, or whether it should become an independent state. As for independence, attention is paid to issues which theories of secession define as crucial for justifying such a step. Therefore economic matters, referendum and territory issues, and the question of negotiations between the British and Scottish governments are examined from the perspective of their embodiment into the debate. The violation of human rights is omitted in this analysis because in the case of Scotland we cannot talk about any persecution of the Scottish people from side of the British state or any violation of human rights generally.

The National Conversation – the starting point of the debate

Coming to power in May 2007, the Scottish National Party was firmly committed to fulfil its election promises. One of them, and at the same time the most delicate, was a pledge to hold a referendum on the independence of Scotland. A wide-ranging public debate on this issue was

¹⁶ David Gauthier, "Breaking Up: An Essay on Secession", *Canadian Journal of Philosophy* 24, No. 3 (September 1994): 358; Michael Seymour, "Secession as a Remedial Right", University of Montreal, 3, <http://www.philo.umontreal.ca/documents/cahiers/SecessionasaRemedialRight.pdf>.

supposed to precede the referendum itself. Therefore, shortly after the new government was set up, the SNP leader and also the Scottish First Minister, Alex Salmond, launched the “National Conversation” by publishing a White Paper on Scotland’s future in August 2007.¹⁷ Despite the fact that the Scottish National Party has favoured independence, it offered two options to the Scottish people for discussion. The first option referred to the extension of the Scottish devolution. Because Scotland lacks important fiscal powers, the SNP paid a great deal of attention to the devolution of such competences and proposed to grant Scotland fiscal autonomy, including responsibility for financial services, oil and gas reserves. The aim was to decrease Scottish dependency in the area of economic issues on the UK government; moreover, the SNP argued that if Scotland was given the right to decide independently about its economic and fiscal policies, this would enable Scottish autonomous institutions to match these policies with specific Scottish conditions.¹⁸ In addition to fiscal autonomy, other areas such as anti-terrorism legislation, employment and trade union law, all aspects of energy policy, Scottish Parliament elections or civil service, etc., were emphasised to be ceded to Scotland.

The White Paper also focused on intergovernmental relations requiring these relations to be put on a more formal basis and to use adequately the tools of cooperation between the Scottish and British governments that were set within the framework of two institutions – the Joint Ministerial Committee (JMC) and the British-Irish Council (BIC). Both of them have served as a platform for the exchange of ideas, best practices, and for the sharing of topical information. They have also offered an opportunity to discuss the central government’s proposals for reforms that would have effect on the devolved administrations. The problem of cooperation within JMC and BIC, at the time when the government document was published, was that members of British Government who convene the meetings avoided doing that, because they got used to cooperate with their Scottish counterparts informally. This was possible mainly due to the fact that the same party was in power both in London and in Edinburgh.¹⁹

¹⁷ For the text of the White Paper, see Scottish Executive, *Choosing Scotland’s Future: A National Conversation. Independence and Responsibility in the modern world* (Edinburgh: Scottish Executive, 2007), <http://www.scotland.gov.uk/Resource/Doc/194791/0052321.pdf>.

¹⁸ Scottish Executive, *Choosing Scotland’s Future*, 10.

¹⁹ The Joint Ministerial Committee involves representatives of the British, Scottish, Welsh, and Northern Ireland governments. It is a consultative body on devolved and reserved

The other option proposed by the SNP for public discussion was granting independence to Scotland. The SNP emphasised that Scotland had always been a nation “with its own legal system and borders”. It also underlined that the territory of Scotland was clearly set and as such had not been questioned – except for the maritime boundaries and share of the continental shelf that had to be straightened out. However, according to the SNP, the negotiations on the latter with the British Government should not cause any problems as “there are well-established legal principles” that have to be followed.²⁰ The delineation of the continental shelf is closely related to the North Sea oil question. Because at present, in Regional Accounts, the UK Continental Shelf represents a special separate region, so called the extra-regio territory, and is thus geographically excluded to belong to any UK region, as a result, the North Sea revenues are allocated to the UK government and not to Scotland.²¹

The SNP also outlined how the negotiations on independence with the British government should proceed, and specified the role of the Scottish Parliament and the Scottish Executive as well as the impact of independence on defence matters and foreign affairs. As for the deliberations, the SNP stressed that the Scottish and British governments should negotiate about economic issues such as apportionment of the national debt, UK official

powers; dealing with disputes between the governments is within its remit too. Decisions of the JMC are adopted by consensus, and are not binding. The committee operates at two levels – plenary and functional. Plenary meetings should have been held annually, but in the period between 2002 and June 2008 there was none. Functional meetings, on the contrary, in which specific areas of interest such as EU affairs, poverty or health are discussed, have taken place more frequently. The British-Irish Council includes not only central, Scottish, Welsh and Northern Ireland governments, but also the Irish government, and representatives of the Channel Islands and the Isle of Man. The BIC focuses on issues that are topical and of great importance to individual members, such as drugs, environment, health, social inclusion, minority languages, tourism, or financial crisis. Its meetings have been held on regular basis, at least once a year. See “Agreement on the Joint Ministerial Committee”, in *Devolution: Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee*, SE/2002/54, <http://www.scotland.gov.uk/library2/memorandum>; Trench, “Intergovernmental Relations”, in *Scotland Devolution Monitoring Report January 2009*, 71–72; Alan Trench, “The More Things Change, The More They Stay the Same. Intergovernmental Relations Four Years On”, in *Has Devolution Made a Difference? The State of Nations 2004*, ed. Alan Trench (Exeter: Imprint Academic, 2004), 180.

²⁰ Scottish Executive, *Choosing Scotland's Future*, 20.

²¹ Scottish Government, *Government Expenditure & Revenue Scotland 2007–2008* (Edinburgh: Scottish Government, June 2009), 38, <http://www.scotland.gov.uk/Resource/Doc/276248/0082927.pdf>.

reserves, future liabilities on public sector pensions, and social security benefits, as well as on defence matters such as for example the division of the defence estate, and on foreign affairs. Moreover, special negotiations between both British and Scottish governments and the representatives of international institutions should take place on the position of Scotland in the European and the international arena. The SNP argued in favour of continuing membership of Scotland in the European Union, United Nations, Commonwealth, NATO, OECD, WTO, and World Health Organisation.²²

Because the SNP promised to hold a referendum on Scottish independence, the White Paper included also a draft Referendum (Scotland) Bill asking the Scottish people whether they agree or not with that “the Scottish Government should negotiate a settlement with the Government of the United Kingdom so that Scotland becomes an independent state”. The reason for such wording of the question is to avoid potential interference with the 1998 Scotland Act which forbids the Scottish Parliament to adopt legislation on constitutional matters including the 1707 Union between England and Scotland. Therefore, special measures have been embodied in the 1998 Scotland Act in order to prevent the autonomous Parliament from passing laws in areas in which it is not allowed to do so. And as independence means abolition of the above mentioned Union, the Scottish legislative body cannot approve any bill referring directly to the independence of Scotland.²³ On the other hand, a question arises whether such wording is sufficient to be regarded as non-violating the Scotland Act 1998.

Moreover, the SNP defined who can participate in the referendum. It gave the right to vote to those who were entitled to vote in Scottish

²² Scottish Executive, *Choosing Scotland's Future*, 20–23.

²³ In order to prevent the Scottish Parliament from adopting legislation outside its remit, the following measures were approved. Before the Bill is debated in the Parliament, member of the Scottish Government has to make a statement that the proposed Bill does not overstep Parliament's legislative powers. The Presiding Officer of the Scottish Parliament has to review any Bill to make sure it is within the powers devolved to the Parliament. After the Parliament approval, a four-week period starts within which Advocate General for Scotland, Lord Advocate, Attorney General for Scotland can submit the whole Bill or any provision of it to the Judicial Committee of the Privy Council to decide whether it is within the legislative competence of the Scottish Parliament. Also Secretary of Scotland can intervene if the Bill is not compatible to reserved matters or international obligation of the United Kingdom. If there are no objections, the Bill is submitted for Royal Assent, otherwise is sent back to the Scottish Parliament. See *Scotland Act 1998. Chapter 46*, Sections 31–35. For areas in which the Scottish Parliament cannot adopt any legislation – reserved powers – see *Scotland Act 1998. Chapter 46*, Schedule 5.

local elections.²⁴ This means that only people who have their residence in Scotland can vote in a Scottish referendum whatever their nationality is while Scots living abroad cannot. The precise definition of electors is entirely in accordance with Harry Beran's assumption that those who want to secede on the basis of an independence referendum would limit the franchise to people living in the prospective seceding territory.

The Calman Commission

The reaction of the three main opposition parties – Scottish Labour, Conservatives, and Liberal Democrats – to the Scottish Government's White Paper was immediate. All of them refused the SNP's proposal and initiated the establishment of the Scottish Constitutional Commission (it was Wendy Alexander, the then leader of the Scottish Labour Party, who publicly announced this initiative) which should have a mandate from Holyrood instead.²⁵ The Scottish Parliament gave green light to the initiative and approved the establishment of the Commission on Scottish Devolution in November 2007.²⁶

The Commission started to work under the chairman, Sir Kenneth Calman, in April 2008, and, as had been promised, it consisted of politicians, business, media, and academia representatives. Unlike the Government's White Paper its aim was only to review the existing devolution arrangements and examine possibilities for further devolution of powers to Scotland.²⁷ The issue of the Scottish independence was entirely excluded from the Commission's remit which made the debate on the future of Scotland a bit peculiar. It is supposable that members of the Commission would reject independence of Scotland as an adequate option but it would be interesting to compare their arguments to those embraced by the SNP.

After months of gathering evidence and thorough analysis, the Commission published its final report in June 2009 emphasising that the Scottish

²⁴ Draft Referendum (Scotland) Bill, in Scottish Executive, *Choosing Scotland's Future*, 44.

²⁵ Holyrood means the Scottish Parliament, because the Parliament sits at the foot of Royal Mile in front of the Holyrood Park and Salisbury Craigs.

²⁶ Peter Jones, "Scotland. The Nationalist Phoenix", in *The State of the Nations 2008*, ed. Alan Trench, 52–53.

²⁷ Commission on Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, Final Report, 15 June 2009, 3, <http://www.commissiononscottishdevolution.org.uk/uploads/2009-06-12-csd-final-report-2009fbbookmarked.pdf>.

devolution had been successful so far. It defined areas that could be transferred from London to Edinburgh as well as a number of areas in which the reform was needed to improve the present system. It also proposed to give Scotland a certain degree of fiscal autonomy, and thus to increase the financial accountability of the Scottish autonomous institutions. The Commission recommended replacing the existing tax varying power of the Scottish Parliament by a reduced UK basic rate and higher rates of income taxes in Scotland by 10 pence in the pound including a corresponding reduction in the block grant. Furthermore, it specified the following economic powers – the Stamp Duty Land Tax, Aggregates Levy, Landfill Tax, and Air Passenger Duty – as subject to devolution; again the Scotland’s grant should be reduced accordingly. On the other hand, the Commission rejected to devolve the corporation tax and North Sea oil and gas taxes. Its main argument to keep the North Sea revenues at the centre was high volatility of these revenues. They themselves are dependent on oil prices which are determined by the global market, not by the UK or Scotland. The Calman Commission also recommended the continuation of using the Barnett formula to set the amount of financial resources to be spent in Scotland. In addition, the Commission proposed an extension of borrowing powers of Scottish Ministers. However, only in order to increase capital investments, the amount of financial resources would be limited by their capacity to repay debts.²⁸

Apart from certain fiscal powers, the Commission also suggested the devolution of responsibilities in areas concerning the administration of the Scottish Parliament elections (while legislation for these elections should remain reserved), airgun regulation, drink driving limits, determination of the national speed limit, the appointment of the Scottish member of the BBC Trust, animal health funding, marine nature conservation, or the Deprived Areas fund. The Calman Commission went even further and emphasised the necessity to improve the existing procedures of cooperation in reserved areas that have effect on Scotland. This provision mainly relates to issues such as local variations in immigration law implementation or the operation of the Crown Estate.²⁹

The Commission, as the “National Conversation”, paid attention to relations between the British and Scottish Parliaments and governments. It recommended improving relations between the Parliaments by strengthening

²⁸ Ibid., 69–112.

²⁹ Ibid., 157–214.

communication mechanisms, better usage of the Sewel convention,³⁰ and by establishing ad hoc joint committees. As for intergovernmental relations, it strongly criticised the current arrangements of the Joint Ministerial Committee and outlined how the JMC should work. Generally, it stressed that the formality of these relations had to be restored. The Commission also proposed better involvement of Scottish Ministers in negotiations on EU matters related to the devolved areas.³¹

Some of the Calman Commission's recommendations for further devolution and for the improvement of relations between the centre and the devolved bodies coincide with the SNP views. Despite the SNP had not participated in the Commission's work and had been rather critical of it, it called for fast implementation of some of its recommendations, especially those concerning the devolution of powers. The Scottish Government officials even drafted orders relating to the administration of Scottish parliamentary elections, regulation of airguns, licensing and control of substances used in the treatment of addiction, drink driving limits in Scotland, and national speed limits. These draft orders were published in the Scottish Parliament Information Centre in June 2009. Moreover, the Scottish Government committed itself to enforce the proposed changes in areas such as the development of UK policy towards the EU, Scottish Ministers' involvement in the EU business, agreement on local variations of immigration policy, consultation on welfare of working programmes, appointments to the BBC Trust and to the Crown Estate. The SNP also welcomed proposals to devolve taxes and to give the Scottish Government borrowing powers but it rejected restrictions on the use of these powers. In general, the Scottish Government was very critical of the recommendations on finance and economic issues stressing the lack of efficiency, accountability and transparency of the proposed measures.³²

³⁰ Sewel Convention refers to the adoption of legislation on devolved issues in Westminster. Because the British Parliament did not lose its sovereignty with the establishment of the Scottish Parliament, it has retained the power of passing laws even in areas devolved to Scotland, but with the consent of the Scottish Parliament. It was assumed that the British Parliament would legislate under Sewel Convention rarely; however, the opposite has proven to be true. The Sewel Convention is used quite regularly. The name of this agreement is derived from Lord Sewel – The Minister of the Scottish Office – who first proposed it. See Paul Bowers, *The Sewel Convention* (London: Parliament and Constitution Centre, 25 November 2005).

³¹ Commission on Devolution, *Serving Scotland Better*, 141–56.

³² Scottish Government, *The Scottish Government Response to the Recommendations of the Commission on Scottish Devolution* (Edinburgh: The Scottish Government, November 2009), 2–6, <http://www.scotland.gov.uk/Resource/Doc/291162/0089439.pdf>.

Unlike the SNP Government, the unionists' parties have neither specified their positions on the recommendations yet, nor how the findings of the Commission would be reflected in their politics. Instead, a working group, consisting of members of the Scottish Labour Party, Liberal Democrats and Conservatives, was set up to address the recommendations.³³

The Steel Commission

Political parties directed the debate on the constitutional future of Scotland to two options only – to devolve more powers to Scottish autonomous institutions or to have an independent Scotland. This is understandable in case of the SNP who argue in favour of independence, as well as Labour and Conservatives who prefer the devolution option, but not so much in case of Liberal Democrats. LibDems have been advocating federalisation of the UK for a long time, however, with no success in stimulating a sound public discussion about it. It is interesting to note that they did not use the opportunity of the debate on future prospects of Scotland to promote their views on the question. Nevertheless, that does not mean that the LibDems would give up specifying their proposals. Those were outlined in the Final Report of the Commission chaired by Lord Steel and published in March 2006, over a year before the National Conversation debate was launched. In spite of the fact that the report of the Steel Commission did not directly result from that debate, it is important to examine its findings as it addressed some of the key issues that were being discussed, such as fiscal powers of Scotland, albeit within a federal framework of the UK.

In general, Liberal Democrats advocated the establishment of a Constitutional Convention as the main body where to discuss the Scottish future between all political parties and representatives of the civic society. LibDem thus referred to the Scottish Constitutional Convention that was set up in 1989 to enforce the establishment of the Scottish Parliament. The Steel Commission recommended the transfer of more powers to Scotland from the central government. These responsibilities included the electoral system to the Scottish Parliament, the operation of the Scottish

³³ Cairney, "The Scottish Constitutional Debate", 10–11; Scottish Government, *A National Conversation – Your Scotland, Your Choice* (Edinburgh: Scottish Government, November 2009), 13.

Parliament, transport, medical contracts, energy policy, and civil service. Moreover, the Commission listed some other areas, such as for example betting and gaming, marine policy, regulatory powers, employment law, and broadcasting, which should be devolved to Scotland in result of the debate within the Constitutional Convention.³⁴

The Commission also devoted itself to the very much discussed topic of the potential impact of the North Sea oil revenues on Scottish economy if Scotland was entitled to use them. It came to the conclusion that if Scotland was responsible for the allocation of the North Sea oil revenues it would reduce the deficit of Scottish public finances, but not “eradicate” it.³⁵ The findings of the Steel Commission support the argument of the SNP that the North Sea oil revenues would help to improve the economic situation of Scotland.

As for fiscal powers, the Commission argued against full fiscal autonomy or fiscal freedom regarding it as “no more and no less than a Trojan horse for independence”.³⁶ Instead, LibDem promoted so called fiscal federalism, a system that was to be created to the benefit of all the constituent parts of the United Kingdom, while it focused more on Scotland. The Steel Commission avoided stipulating specific fiscal powers to be transferred to Scotland as a subject of further discussion; instead, it outlined general issues which should be devolved to Scottish autonomous institutions. According to the Commission, the Scottish Government should possess borrowing and increased tax-raising powers which most influence the development of the Scottish economy. However, all of these powers would have to be accommodated to the UK system. The Commission therefore proposed a new formula on which the redistribution of financial resources between individual parts of the United Kingdom should be based on, and which should replace the currently used Barnett formula. This needs-based equalisation formula should allow for some indicators, such as for example geography, rurality, state of infrastructure, distance from markets, poverty, housing, and employment, to be used for allocating funds from the London government.³⁷

³⁴ Scottish Liberal Democrats, *The Steel Commission: Moving to Federalism – A New Settlement for Scotland* (Edinburgh: Scottish Liberal Democrats, 2006), 66–73, <http://www.scotlibdems.org.uk/files/steelcommission.pdf>.

³⁵ *Ibid.*, 81–84.

³⁶ *Ibid.*, 91.

³⁷ *Ibid.*, 90–105.

The problem with the proposed measures and provisions is that they are projected for a federal state. However, some of the proposals can be and already are used by some parties, especially by the SNP, to outline their position to the further devolution of powers. On the other hand, if we assess the LibDem report from the perspective of federalism, it lacks clear specification for the other parts of the United Kingdom than Scotland. The explanation that most issues would be resolved within the Constitutional Convention cannot be regarded as sufficient. The whole issue of the prospective federalisation of the UK leads to questions on the position of England and as such cannot be discussed without a comprehensive concept that would include all parts of the United Kingdom. However, it should not prevent Scottish political parties or public from discussing this option as one of the possible alternatives for the future development of Scotland.

Public involvement into the debate

The National Conversation on the two options lasted over two years. People from Scotland and the UK as a whole as well as from abroad had a chance to participate in the debate. It was possible mainly due to the fact that the Scottish Government created a special website where the public could express their opinions on governmental proposals and constitutional preferences.

Over 10,000 people took part in the National Conversation, contributing to the discussions either online or during almost 200 events all over Scotland. However, not only individuals participated in the debate on Scottish future; it was also the civil society – representatives of culture institutions (e.g. Aberdeen Performing Arts, Whitehall Theatre), local governments (e.g. Argyll & Bute Council, Girvan Community Council, Stirling Council), churches (e.g. Scottish Episcopal Church, Church of Scotland, Free Church of Scotland, Christ Church or Trinity Church), universities (e.g. Stirling University, University of Dundee, University of Strathclyde), business organisations (e.g. Glasgow Chamber of Commerce, Highlands and Islands Enterprise), trade unions, police, and many others.³⁸

³⁸ Scottish Government, *A National Conversation – Your Scotland, Your Choice*, 5–6, 140–51.

Devolution vs. independence

Public discussion on extending devolution and independence offered a wide range of opinions and views. The discussion on the preferred constitutional option was often accompanied by economic arguments supporting either devolution or independence. A considerable number of people who had participated in the debate gave their preference to devolve more powers to Scottish autonomous institutions including full fiscal autonomy. There were also voices that required more detailed specification of powers that would be transferred to Scotland. Only a minority of people did not make any difference between further devolution and independence and claimed that they would support both options. The opposing views regarded devolution as a whole as a failure and insisted that only independence was “the right answer to the Scottish question”.³⁹

Interestingly, not only Scots supported independence for Scotland but also some English expressed their support for it, arguing that they were tired of being blamed for everything wrong. Those who were in favour of independence emphasised the economic potential of Scotland as an independent country while opponents highlighted that Scotland has economically benefited from being part of the UK and argued that North Sea oil and gas supplies have been running low – that is not an irrelevant argument.

People also paid particular notice to the economic crisis and its consequences for Scotland. Advocates of independence articulated a clear opinion that only independent Scotland could deal with the crisis sufficiently while opponents stressed that only within the UK Scotland could get over the unfavourable economic situation. Economic arguments played a role in the discussion on continuing membership of independent Scotland in the EU. Many proponents of independence argued that by being member of the EU, the situation in Scotland would be even worse than under the UK while those supporting the Scottish EU membership argued that Scotland could not prosper without the EU.⁴⁰ Although the majority of contributions

³⁹ “Extending devolution”, Official Site of the Scottish Government. Scotland’s Future: A National Conversation, <http://www.scotland.gov.uk/Topics/a-national-conversation/Tell-us/commentIssue/extending-devolution>.

⁴⁰ “Economics and Constitutional Change”, Official Site of the Scottish Government. Scotland’s Future: A National Conversation, <http://www.scotland.gov.uk/Topics/a-national-conversation/Tell-us/commentIssue/economics>; “An Independent Scotland”, Official Site of

were about extending devolution or independence, a few people argued in favour of a federalised Britain in which each constituent part would have its own parliament in order to avert the breaking up the United Kingdom, or supported the status quo.⁴¹

Referendum

The debate on the referendum was not less interesting and recorded the same or even bigger diversity of views on this issue than the case of devolution or independence. Attention was paid to the issue who is entitled to vote, where and when the independence referendum should take place, whether there should be only one ballot or more, and how many questions should the referendum include.

The Scottish Government proposed that only residents in Scotland should be allowed to vote in the independence referendum. Scots, especially those who live in Scotland, agreed with the governmental proposal while those who live abroad did not. According to them the right to vote should be given to all Scots, not only to those who have residence in Scotland. There was also an opinion that the referendum should take place not only in Scotland but also in England so that the English could express their view on the future of the United Kingdom.

Opinions differed also in the question when the referendum should be held. Some proposed that it should be connected with the next Scottish Parliament elections which will take place in 2011 while others claimed to hold the referendum as soon as possible. As for the number of referenda, the discussants suggested that the first ballot should ask the people of Scotland whether they wanted a referendum or not. The other option was that the first referendum should give the SNP Government the right to negotiate the conditions of Scottish independence with the British Government, and then there should be another referendum on the settled conditions because only then the Scottish people would know what to expect from independence.

the Scottish Government. Scotland's Future: A National Conversation, <http://www.scotland.gov.uk/Topics/a-national-conversation/Tell-us/commentIssue/independence>.

⁴¹ "An Independent Scotland", Official Site of the Scottish Government. Scotland's Future: A National Conversation, <http://www.scotland.gov.uk/Topics/a-national-conversation/Tell-us/commentIssue/independence>; "Extending devolution", Official Site of the Scottish Government. Scotland's Future: A National Conversation, <http://www.scotland.gov.uk/Topics/a-national-conversation/Tell-us/commentIssue/extending-devolution>.

Regarding the question to be asked in the referendum, there was no agreement at all. The views differed from the support of a single-question referendum as proposed by the SNP in the National Conversation White Paper, or a two-question referendum involving independence and further devolution to a multi-option referendum with three questions – the status quo, independence and extending devolution of powers that were to be specifically formulated. Not surprisingly, there were also views refusing holding a referendum all together. One contributor also suggested that the independence referendum should be watched by the UN observers to ensure its results would be respected by political parties.⁴² The issue of whether the referendum results should be binding was also discussed. However, in the British political system the referendum results are not mandatory for the government, nevertheless, politicians respect them and act accordingly.

Public discussion on Scottish constitutional future proved the existence of a big diversity of views on what option Scotland should choose. The most supported options were further devolution and independence while preserving the status quo or federalisation of the UK attracted only little attention. The debate also indicated that people were not quite certain what powers were to be further devolved to Scotland, and thus demanded more detailed specification. To a certain extent, the same was required in the case of independence. In relation to constitutional options the economic issues as well as the question of holding a referendum were discussed in depth. On the other hand, the question of negotiations between the Scottish and British governments seemed to be marginal for those who participated in the discussions because they were mentioned only rarely. The same is true for the territory issue which was discussed solely within the context of franchise in the referendum.

The Scottish Government's response

The SNP Government tried to accommodate most of the suggestions that were put forward within the public debate as well as to react to the proposals made by the Calman Commission and it specified its proposals in several statements and documents.

⁴² "Referendum and Voting Rights", Official Site of the Scottish Government. Scotland's Future: A National Conversation, <http://www.scotland.gov.uk/Topics/a-national-conversation/Tell-us/commentIssue/A-Referendum>.

At the beginning of September 2009 the Scottish Government confirmed that the referendum on independence should take place on 30 November 2010 and announced that the Referendum Bill would be introduced in the Scottish Parliament in 2010. However, unlike its previous statements, the SNP admitted the “possibility of multi-option referendums”, and that it “[was] open to the possibility of the fiscal proposals in Calman being on the referendum ballot”.⁴³

The issue of how many options would a prospective referendum include was indicated by the SNP in the White Paper *Your Scotland, Your Voice* that was published in November 2009 as an official conclusion of the National Conversation debate. The Scottish Government stipulated four options for the future of Scotland: the status quo, the implementation of the Calman Commission’s recommendations, full devolution, and independence for Scotland. However, the SNP stressed that not all of these options should be included in the referendum. It was especially against the embodiment of the recommendations of the Calman Commission as such, because the sponsors of the Commission were against it and the political parties that initiated the establishment of the Commission did not explicitly support its recommendations. The SNP also argued that it already made an effort to implement some of the recommendations and it would thus be rather confusing for the Scottish electorate what has been put into practice and what has not. Therefore, the Scottish Government proposed that the most relevant option could be full devolution – an alternative offering the extension of powers of Scottish autonomous institutions. However, in spite of the fact that SNP expressed its willingness to deal with a multi-option referendum, it clearly stated that the proposal for a multi-option referendum had to be raised by other political parties in the Scottish Parliament during negotiations on the Government’s Referendum Bill and declared that its preferred choice was to have a single option referendum.⁴⁴ To a certain extent, the Government reflected the National Conversation public debate in which some people expressed their preference to have more than just a single question in the ballot. But it let other political parties to promote it. The SNP avoided providing details on its proposed Referendum Bill, but at the same time it indicated that the referendum would be organised

⁴³ Scottish Government, “Referendum Bill”, *Scottish Government News Release*, 3 September 2009, <http://www.scotland.gov.uk/About/programme-for-government/2009-10/summary-of-bills/referendum-bill>.

⁴⁴ Scottish Government, *A National Conversation – Your Scotland, Your Choice*, 136–38.

in a similar way as the 1997 referendum in which only those who were residents in Scotland possessed the right vote.⁴⁵

Therefore, the question remains whether there will be only one option in the ballot, perhaps the one formulated in the 2007 Draft Referendum Bill, or whether there will be a multi-option referendum including three questions – the status quo, full devolution and independence. Moreover, the important issue is how the opposition parties in the Scottish Parliament would deal with the Referendum Bill. Two scenarios are possible. First, they will refuse to debate about it in the chamber and vote it down, or second, they will use the opportunity the SNP offered and will promote a multi-option referendum in order to demonstrate that majority of the Scottish people do not wish to have an independent Scotland. However, the reactions of leaders of unionist parties⁴⁶ suggest the first scenario is more likely to happen. On the other hand, public statements could differ from those being made in the Parliament. As Paul Cairney puts it: “While the main opposition parties were quick to announce that they would not support the bill, whispers continue about various members of various parties being keen to see it go ahead.”⁴⁷

It was mentioned above that the Scottish Government in its White Paper concluding the National Conversation debate analysed four options for the possible future development of Scotland. The options of the status quo and the implementation of the Calman Commission’s recommendations were already discussed in the paper as well as independence. The only option left to be analysed is full devolution which goes much further than the Calman Commission. However, the independence option cannot be omitted either, because the SNP, unlike in the previous White Paper in 2007, specified in more details what independence would mean for Scotland, and even modified some of its proposals. It is also important to show what difference is, according to the SNP, between full devolution and independence because in some areas, such as transport for example, the distinction between these two options is none.

⁴⁵ *Ibid.*, 139.

⁴⁶ See for example “SNP sets out Scottish independence white paper”, *BBC*, 30 November 2009, http://news.bbc.co.uk/2/hi/uk_news/scotland/8385425.stm.

⁴⁷ Cairney, “The Scottish Constitutional Debate”, 11.

Full Devolution

Full devolution means that the maximum range of powers would be ceded to Scotland from the central government. In the economic area, the SNP stressed the necessity to devolve such powers that would ensure the responsibility of Scottish autonomous institutions for levying all taxes in Scotland such as for example the inheritance and corporation taxes, North Sea tax regime, Fossil Fuel Levy fund, and for spending. Furthermore, Scotland would pay a certain amount of money to the UK Government for public services provided and financed by the centre; this concerns mainly defence matters or foreign affairs. However, the whole issue of remittance would be specified during the negotiations between the Scottish and UK Governments. Under full devolution, Scotland should be given the right to decide on employment and competition law, regulation of companies, health and safety issues. The SNP also acknowledged the limitation of the proposed measures because the main instruments of macroeconomic policy would remain in hands of central government.⁴⁸ These proposals indicate that the Barnett formula as well as the block grant would not be used under the full devolution. However, the proposed scheme would need precise specification of working mechanisms in order to avoid negative consequences, either on the UK as a whole, or on Scotland itself.

As for specific policies to be transferred to Scotland, the SNP argued that regulation and the security of roads, rail, marine and air transport, and responsibility for Scottish broadcasting should be wholly devolved to Scotland. It also suggested that new broadcasting services should be set up, such as Scottish digital network, and called for negotiations to be held on funding Scottish public service broadcasting with the UK Government. Scotland should be responsible for all the procedures related to the autonomous institutions, such as for example the electoral system to the Scottish Parliament, and should have its own civil service. The SNP also proposed devolution in the area of national security and defence. Although it recognised the importance of this area for the UK as a sovereign state, it insisted that emergency powers could be ceded to Scotland while stressing the need of mutual co-operation between the governments.⁴⁹

The SNP also reflected the changes that occurred on the UK level, in particular those in judiciary and courts. In October 2009 the new Supreme

⁴⁸ Scottish Government, *A National Conversation – Your Scotland, Your Choice*, 16–18, 29, 42–43, 88

⁴⁹ *Ibid.*, 54, 82–84, 86–88, 117, 129, 131–32.

Court of the UK started to work addressing also appeals from civil cases in Scotland as well as criminal cases, however, only when human rights are a matter of dispute. The SNP expressed concern whether the Supreme Court would sufficiently protect the distinctiveness of the Scottish legal system. Therefore, within full devolution the Supreme Court should have a special Scottish Chamber where the majority of judges would be experts in Scottish law and practice, and such a Chamber should become an integrated part of the Scottish legal system. Furthermore, a Scottish tribunal service should be established as a part of the court system of Scotland.⁵⁰

Independence

The SNP argued that with independence the Scottish Government could adopt such an approach and tools that would best comply with the needs of Scotland. The Government would be thus able to react better to economic problems and promote long-term competitiveness of the country. Nevertheless, the SNP admitted that independent Scotland would have to follow international as well as EU rules concerning for example competition or tax harmonisation. It also stressed that independent Scotland would simplify its tax system and reduce corporation taxes in order to make the country an attractive place for business. To attract private capital, the SNP proposed the establishment of a Scottish Stock Exchange. Likewise, the creation of a sovereign wealth fund was advocated. The fund would administer North Sea oil and gas reserves and “provide an effective mechanism to insulate the economy in times of economic instability and invest for long-term sustainability”.⁵¹ The SNP has argued for a long time that revenues from the North Sea oil would help to ensure Scotland’s economic prosperity. The argument is not as strong today as it was in the 1970s because the reserves of oil have been slowly running out. However, if the revenues of the North Sea oil were allocated to Scotland, they would help decrease the deficit of the Scottish budget, the argument was also put forward by Liberal Democrats. But to what extent will the North Sea revenues really influence the budget depends on the method of calculation. If we take a per capita share of North Sea revenue, the reduction of Scottish deficit is lesser than if we use a geographical share of North Sea revenue.⁵²

⁵⁰ Ibid., 102–03.

⁵¹ Ibid., 33.

⁵² Scottish Government, *Government Expenditure & Revenue Scotland 2007–2008* (Edinburgh: Scottish Government, June 2009), <http://www.scotland.gov.uk/Resource/Doc/276248/0082927.pdf>.

However, the Government acknowledged that Scotland's average annual GDP growth rate of 2 per cent between the years 1977–2007 was lower than that of the UK economy as a whole reaching 2.4 per cent. It also rightly pointed out that the economic situation of an independent Scotland would depend on the policies adopted by the government of the day and influenced by the European and global economic situation.⁵³

The SNP specified that the relations with the rest of the UK would be based on a “strong partnership on areas of mutual interests” and that effective mechanisms of intergovernmental cooperation should be formed in order to achieve it. The Government also addresses the issue of citizenship. It argued that Scottish citizenship “will be based upon an inclusive model”, while those who have any ties with other parts of the UK could get shared or dual citizenship. As for the court system, the SNP stipulated that it would be subject to further consideration whether there should be a Scottish Supreme Court established according to the UK model, or whether the existing Scottish judicial system was to be kept. Concerning the membership of independent Scotland in international alliances such as NATO, the Government altered its position without any explanation. It did not insist on being a member of NATO, but rather it favoured co-operation with it through its Partnership for Peace programme. In general, independent Scotland should be a sovereign country with the Queen as Head of State and a member of the EU. Moreover, the SNP already indicated that once independent, the Scottish Parliament or people, in a referendum, would decide whether they wanted a codified and written constitution or to remove the religious condition of succession to the throne as it was incorporated in the Act of Union 1707.⁵⁴

Public opinion – majority for independence?

Liberal theorists of secession concede the right of secessionists to organise a referendum to let people express their support for secession. However, only if the majority of the people agree with it, the results could justify the withdrawal of the territory from the existing state, they claim. In the case of Scotland, people living in the country are likely to vote in the

⁵³ Scottish Government, *A National Conversation – Your Scotland, Your Choice*, 23, 34.

⁵⁴ *Ibid.*, 103–4, 112, 114, 120.

independence referendum that should take place in autumn 2010. Because it is still not clear whether there would be a single-option or a multi-option referendum, or a referendum at all, it is worth examining the attitude of the Scottish electorate both to independence and to devolution to see if there is a majority in favour of the independence of Scotland or not. Although people could participate in the debate on the Scottish future within the National Conversation, the opinion polls represent another approach to determine the views of the public and probably with more precise result.

Table 1 shows that the Scottish Parliament with strong powers has been the best option since 1997. It also indicates that the support for independence in the European Union has been steady at 18 per cent with the exception of the 1997 referendum when 28 per cent of the people endorsed independence in the EU. This increase of support for this option can be explained by the fact that the Scottish people were, we can say, in euphoria to be given the right to decide over the Scottish future and they did not differ much in the options of the Scottish Parliament with some taxation powers and of independence.

Table 1 Support for Various Constitutional Options, 1979–2002

	1979	1992	1997 Election	1997 Referendum	1999	2002
	%	%	%	%	%	%
Independence outwith EU	7	6	8	9	10	11
Independence in EU		17	18	28	18	18
Strong domestic parliament	26	50	42	32	50	44
Weak domestic parliament	28		9	9	9	8
No elected body	26	24	17	17	10	13
Sample Size	729	957	882	676	1482	1665

No distinction was made between the two types of independence in 1979. Strong domestic parliament was referred to in 1979 as “Scottish Assembly which would handle most Scottish affairs”, and from 1997 onwards as “Scottish Parliament within the UK with some taxation powers”. Weak domestic parliament was referred to in 1979 as “Scottish Assembly which would handle some Scottish affairs and would be responsible to Parliament at Westminster”, and from 1997 onwards as “Scottish Parliament within the UK with no taxation powers”. No distinction was made in 1992.

Don't know and not answered included in the base.

Sources: Scottish Election Surveys of 1979, 1992 and 1997; Scottish Referendum Survey of 1997; Scottish Social Attitudes Surveys of 1999 and 2002. In Lindsay Paterson, *Attitudes to Scottish Independence and to the SNP* (Dunblane: Seminar for MSPs, MPs and MEPs from the Scottish National Party, August 2003), http://www.institute-of-governance.org/publications/working_papers/attitudes_to_scottish_independence_and_to_the_snp.

The support for further devolution of powers as the most favourable option confirmed a MORI Scotland social survey that was carried out in early 2006. In this survey 48 per cent of respondents gave their preference to more powers being devolved to the Scottish Parliament;⁵⁵ three years later, June 2009 ICM/BBC survey also registered 47 per cent of answers being in favour of further devolution in the area of tax powers.⁵⁶

The endorsement for independence did not overcome a 50 per cent threshold until November 2006 when 52 per cent of respondents in ICM Research expressed their approval for Scotland becoming an independent country.⁵⁷ It was at the time when the Scottish National Party was on a roll with its campaign leading to the Scottish Parliament elections held in May 2007 and focusing on independence for Scotland and North Sea oil revenues. However, since then the support for independence has been declining. This was confirmed by the survey carried out by ICM for BBC in June 2009 that showed only 28 per cent endorsement for independence option.⁵⁸

When people were surveyed on the question of a referendum as proposed by the Scottish National Party in the 2007 White Paper and had to show the preference whether they agree or disagree that the Scottish Government should start negotiations in the question of the independence of Scotland, they would, as Table 2 implies, refuse the proposal. On the other hand, the proportion of those who would agree is not insignificant. However, this changed a several months later. In November 2009, just a few

⁵⁵ Stephen Herbert, *Attitudes to the Scottish Parliament and Devolution*, SPICe briefing 06/23 (Edinburgh: The Scottish Parliament, April 2006), 19, <http://www.scottish.parliament.uk/business/research/briefings-06/SB06-23.pdf>.

⁵⁶ John Curtice, "Public Attitudes and Elections", in *Scotland Devolution Monitoring Report September 2009*, 18.

⁵⁷ Sunday Telegraph Independence Poll Scottish Data, ICM Reserch, fieldwork November 2006, total number of respondents was 1003, http://www.icmresearch.co.uk/pdfs/2006_november_sunday_telegraph_independence_poll_scottish_data.pdf.

⁵⁸ Curtice, "Public Attitudes and Elections", 18.

days before the publication of the Scottish Government’s White Paper, the Daily Telegraph released a new survey on the voting intention of the Scottish people in a prospective referendum using the wording of the question as formulated in the draft Referendum Bill 2007. Majority of respondents, 57 per cent, said that they would vote no in an independence referendum while 29 per cent expressed their willingness to support independence. On the other hand, 45 per cent responded that such a referendum should take place within two or three years.⁵⁹

Table 2 Referendum on Scottish Independence Opinion Poll

		I agree that the Scottish Government should negotiate a settlement with the government of the United Kingdom so that Scotland becomes an independent state	I do not agree that the Scottish Government should negotiate a settlement with the government of the United Kingdom so that Scotland becomes an independent state
August 2007	%	35	50
Nov./Dec. 2007	%	40	44
Mar./Apr. 2008	%	41	40
June/July 2008	%	39	41
October 2008	%	35	43
Jan./Feb. 2009	%	38	40
May/June 2009	%	36	39

Question asked: The SNP have recently announced their plans for a possible referendum on Scottish independence in future. If such a referendum were to be held tomorrow, how would you vote? Respondents had to choose between two options.

⁵⁹ YouGov asked 1,141 Scottish people between November 18 and November 20, 2009, survey carried out for Daily Telegraph. Simon Johnson, “Independence and SNP support down, Telegraph poll shows”, *Daily Telegraph*, 24 November 2009, <http://www.telegraph.co.uk/news/newstoppers/politics/scotland/6637020/Independence-and-SNP-support-down-Telegraph-poll-shows.html>.

Source: TNS-BMRB System Three/The Herald, base 1000; 27. 5. – 2. 6. 09 in John Curtice, “Public Attitudes and Elections” in *Scotland Devolution Monitoring Report September 2009*, ed. Paul Cairney, http://www.ucl.ac.uk/constitution-unit/files/research/devolution/dmr/Scotland_Sept_2009.pdf.

The result of such a referendum will very much depend on the precise wording of the question or questions in case of multi-option referendum, and also on the political and economic situation not only in Scotland, but in the UK as a whole. These opinion polls also confirm the findings of researchers focusing on the dynamic of referendums that “there is a tendency for referendum voters to behave in a conservative way”.⁶⁰ Such a conservative approach to voting can be further strengthened by an unfavourable economic situation. The latest November survey showed it very clearly. 63 per cent of those polled said that the primary task of the Scottish Government should be to reduce unemployment that had increased due to the economic crisis.⁶¹ Therefore, in the current economic situation it would be very difficult for the Scottish National Party to get a majority of votes in the independence referendum, if any referendum will be held at all.

Conclusion

The National Conversation debate on the future prospects of Scotland confirmed the diversity of opinions and views on what constitutional option should be chosen to ensure a sustainable development of the country. The Scottish Government managed to involve several thousand people living in Scotland, and a remarkable number of those from other parts of the UK or abroad as well as representatives of Scottish civil society into the discussion. It was less successful in involving directly the opposition parties but, on the other hand, the SNP contrived to get a response from them within the Calman Commission.

The discussion started with two options, further devolution and independence of Scotland, but ended up by four specifically formulated options – the status quo, limited extension of powers as proposed by the Calman Commission, full devolution, and independence. The Scottish

⁶⁰ Quoted in Stephane Dion, “Why is Secession Difficult in Well-Established Democracies? Lessons from Quebec”, *British Journal of Political Science* 26, No. 2 (April 1996): 272.

⁶¹ Simon Johnson, “Independence and SNP support down, Telegraph poll shows”, *Daily Telegraph*, 24 November 2009.

Government included the status quo to emphasise the current state of devolution in Scotland as well as to reflect some of the public views. The option of further devolution was split into two because the Scottish National Party did not consider the scope of responsibilities that were to be transferred to Scotland on the basis of the Calman Commission's recommendations sufficient and wanted to put forward its alternative vision of extending devolution of powers. However, the SNP omitted the federal option. It was likely due to the fact that this option did attract only little public attention; even Liberal Democrats who had been promoting federalisation of the UK for a long time did not advance it actively in the debate.

One of the most discussed issues were economic matters that were analysed both by supporters of devolution and advocates of independence. Because Scotland was not granted any significant fiscal powers, the scope for further devolution of competences in this area was wide and political parties seized the day. Their proposals coincided in what areas the change could be made but differed in the extent of specific powers to be ceded to Scotland. The biggest changes were proposed by the Scottish National Party within full devolution and independence options. As a defender of independence, the SNP argued that Scotland would be able to adopt economic tools that would be the most convenient to Scottish needs. On the other hand, the party acknowledged that its economic growth was lower than that of the UK in the last thirty years. However, it insisted that the North Sea oil revenues would help independent Scotland to improve its economic situation, however, not to the extent as it could have in the 1970s. Under full devolution, the SNP proposed full fiscal autonomy of Scotland that would mean a complete change of the existing way of financing Scotland with no room left for the block grant as well as the Barnett formula. As a result, Scottish Parliament and Government would be responsible for raising all taxes and spending in Scotland and for the payment to the UK Government for public services such provided at the UK level.

Liberal Democrats and the Calman Commission refused to support full fiscal autonomy arguing that it was almost the same as granting independence to Scotland. On the other hand, LibDems agreed to remove the Barnett formula and to replace it by needs-based equalisation formula referring to all parts of the UK, while the Calman Commission insisted on keeping it. Both LibDems and the Calman Commission supported granting borrowing as well as increased tax-raising powers to Scotland, but to a lesser extent than the SNP.

Unlike the economic matters, the territory and the question of negotiations between the British and Scottish governments were not much discussed because there were not considered important. As for the former, the territory of Scotland is geographically clearly defined. Only the SNP pointed out that the maritime boundaries and the share of the UK continental shelf would have to be solved once Scotland becomes independent. The issue was also mentioned indirectly when the franchise in the prospective referendum had been debated by the public.

The referendum itself drew a lot of attention because it is closely related to many sensitive questions. For the SNP for instance it is the only way how to justify Scottish secession if the majority of people living in Scotland would support it. However, the opinion polls have showed prevailing support for further devolution of powers to Scotland than for independence. Moreover, according to the newest polls, the majority of Scots even refused to give the Scottish Government green light to start negotiations with the UK Government on independence as was the SNP's proposed wording of the question embodied in a draft Referendum Bill 2007. Being aware of this situation, the SNP made concession in expressing their readiness to accept a multi-option referendum including three options – the status quo, full devolution and independence. But it indicated that it would not initiate such a proposal, because of favouring a single-issue referendum, and left the whole initiative to other parties in the Scottish Parliament. Therefore, the question of the independence referendum is still open, and it is really difficult to anticipate when and under what conditions, if ever, the referendum will take place, and with what results.

In general, the National Conversation debate did not make the situation easier for the Scottish Government. The SNP has failed to secure a majority vote for independence in the public, and if it wants to enforce an independence referendum, it has to overcome its minority position in the Scottish Parliament as well as legal obstacles preventing the Members of the Parliament to legislate outside its remit.

It is thus possible to agree with John R. Wood that “predicting secession is like predicting the moves of gamblers; even if one is familiar with their predispositions, understands their rules, and knows the cards they hold, one still cannot foretell the outcome of their game”.⁶²

⁶² Wood, “Secession”, 133.