

BEYOND SMITH:

Contributions to the continuing process of Scottish devolution

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Submissions to the Smith Commission

Future of the UK and Scotland Programme

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The report of the Smith Commission serves to shift the focus in Scotland away from what powers the country wants or needs to how those powers might work and how they will be used. The contributions contained in this ebook present opportunities to reflect on the pressures that created the commission and where Scotland's devolutionary path will go from here. Published immediately before the report of the Smith Commission, this book is intended as a contribution to the wider public discussion which, its authors believe, will and should follow the Lord Smith's recommendations.

The papers are based on submissions to the Smith Commission but have been largely updated to consider what will come next in the ongoing process of Scottish devolution. The submissions have been contributed by friends and fellows of the ESRC Centre on Constitutional Change. The centre is part of the Future of the UK and Scotland programme funded by the Economic and Social Research Council to contribute to policy and public debate around the Scottish referendum and its aftermath. Further details of the work of programme and centre can be found at:
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1. The Smith Commission: An Introduction

Professor Charlie Jeffery

The Smith Commission – in fact less a commission than a process of cross-party talks – is part of the response to ‘The Vow’ given by the David Cameron, Ed Miliband and Nick Clegg on 16 September 2014, two days before the Scottish referendum on independence. ‘The Vow’ was a statement published on the front page of the Daily Record and appears not to have been published anywhere else in any more formal way. Amongst other things it stated that ‘extensive new powers for the [Scottish] Parliament will be delivered by the process and to the timetable agreed and announced by our three parties, starting on 19 September’.

The timetable mentioned in ‘The Vow’ was first set out by former Prime Minister Gordon Brown, speaking with the agreement of the three party leaders, on 8 September. Brown’s intervention was made against the background of opinion polls suggesting the referendum race was on a knife edge. It was designed to firm up the commitment made in different sets of proposals by the three pro-union parties on additional powers for the Scottish Parliament in the event of a No vote. Brown’s timetable envisaged the ‘starting gun’ being fired on the process of legislating on additional devolution within a day of a No vote, followed by a paper published by the coalition government in October, an agreement by November, and a new Scotland Bill in January.

That timetable so far has held. The Prime Minister announced at breakfast time on 19 September that

‘Lord Smith of Kelvin ... has agreed to oversee the process to take forward the devolution commitments, with powers over tax, spending and welfare all agreed by November and draft legislation published by January.’

Subsequently Lord Smith wrote on 26 September to the five political parties currently represented in the Scottish Parliament calling for submissions on ‘further powers for the Scottish Parliament within the UK’ by 10 October (and for submissions by organisations and members of the general public to be submitted by 31 October). The parties have been engaged in formal talks since 22 October, and have committed to ‘Heads of Agreement’ being published on 27 November. While there have been 407 submissions to Smith from organisations and over 18,000 from the general public, it is the submissions by the parties involved in the talks which have dominated the agenda.

Brokered by eleven people in a few weeks during autumn 2014, the heads of agreement has implications that will reach long into the future. The negotiations and legislation may have a timescale of a few months but the process of constitutional reform it presages, its implementation and impact, will shape public life in and beyond Scotland for far longer. These chapters consider and reflect on that continuing process of change and the issues and pressures that will test and try the body politic as it addresses them.

The pro-union parties

Those submissions were in the main not new. The Liberal Democrat, Labour and Conservative parties had each set up commissions to look at additional powers in the run-up to the referendum. The Liberal Democrat Home Rule and Community Rule Commission had reported in October 2012, with a supplementary report in March 2014.

Labour's Devolution Commission had published an interim report in April 2013 and its final report in March 2014. And the Conservative's Commission on the Future Governance of Scotland was published in May 2014.

These parties' submissions to Smith were essentially the proposals of their respective commissions, though the Conservatives added, significantly, in their covering letter that their proposals were to be seen as 'a floor rather than a ceiling', suggesting an openness to go beyond their published position; neither of the other pro-union parties have made a similar statement.

The Conservatives' openness to thinking beyond their pre-referendum position has arguably established them as the 'hinge' party in the Commission, around which Heads of Agreement shared both by the pro-union parties and the other two parties in the cross-party talks, the SNP and the Greens, each formerly part of the pro-independence Yes Scotland campaign, have formed.

The positions of the three pro-union parties had quite some overlap. The core issues was around tax devolution. The main emphasis was on income tax devolution, with the Liberal Democrats and Conservatives proposing near-complete income tax devolution, including the ability to vary tax rates, compared to those in the rest of the UK, at all bands. Labour proposed less extensive devolution of income tax, covering 75% of the standard rate tax band (and smaller proportions of higher bands) and an ability to vary rates compared to those in the rest of the UK only at the higher bands, and then only upwards, not downwards. All three parties were open to the devolution of a number of minor taxes. Both the Liberal Democrats and the Conservatives were open to an element of tax 'assignment', that is the allocation of the receipts generated in Scotland from taxes set in a uniform way across the UK to the Scottish Parliament's budget. The Liberal Democrats envisaged tax assignment in relation to corporation tax and the Conservatives in relation to VAT.

Both Labour and the Conservatives set out a number of commitments to welfare devolution (the Liberal Democrats are less specific in this field). Both advocate devolution of attendance allowance and housing benefit. The Conservatives also proposed a more general power to supplement UK-level benefits in Scotland. Labour proposed devolution of the Work Programme, but to local government in Scotland rather than the Scottish Parliament. This is one of a number of measures they proposed to strengthen the powers of local authorities in Scotland, an area where they share considerable common ground with the Liberal Democrats. The Conservatives also favoured further decentralisation within Scotland, but are less specific in their recommendations. There was little focus on other areas for possible additional devolution except in Labour's proposals, which recommended devolution of a number of specific issues: powers over the Scottish Parliament election process, health and safety, employment tribunals, equalities policy, consumer advice and the railways.

The SNP and the Greens

Though the emphases differ, each of the pro-union parties have made proposals for a significant extension of devolution, though most of the attention has focused on tax devolution, where Labour lags some way behind the Conservatives and the Liberal Democrats. The Greens and the SNP each have much further-reaching proposals. Only the Greens – of all the five parties – offered new thinking to Lord Smith. Just as the pro-union parties' submissions were the results of their earlier commissions' deliberations, so is the SNP's submission (to be more precise, the Scottish Government's submission, as endorsed by the SNP) a rehearsal of an earlier position.

In the SNP's case the earlier position was that set out in the 2009 White Paper, *Your Scotland, Your Voice* which concluded the 'National Conversation' launched after the SNP's first election victory in 2007. The White Paper set out an initial prospectus for Scottish independence, but also explored the option of 'full devolution', that is the maximum possible devolution consistent with continuing membership of the UK. That option, now described as 'maximum self-government within the Union', was set out more systematically in the Scottish Government's submission to the Smith Commission. In this situation the UK Parliament would have powers in relation to Scotland in only a small number of areas: aspects of the UK constitution, monetary policy, aspects of citizenship, defence, intelligence and security, and foreign affairs.

The Greens do not have such a sweeping vision of additional devolution, but proposed significantly more than the pro-union parties. They had a fuller commitment to tax devolution (including full devolution of income tax and tax assignment) and to full welfare devolution (likely excepting pensions). They also emphasised strongly the need for devolution in a number of fields that have a particular resonance in the Green tradition, including quality of democracy, human rights, energy policy and immigration.

Towards Agreement?

All five parties have nominated high profile figures to the Smith process and signalled a commitment to work constructively towards agreement. In practice it would not be possible to reconcile, say, Labour's position with that of the SNP. Labour may be pulled beyond its starting point to accept more than its own Devolution Commission had proposed. The SNP will not achieve maximum devolution (and it remains to be seen to what extent they will publicly agree with the 'Heads of Agreement'). It may well be that an unusually configured centre-ground in the Commission revolving around the Conservatives and encompassing the Liberal Democrats and the Greens is where the consensus will be made. It is, to say the least, a novelty that the Conservatives, once so hostile to devolution, may now be the essential component of a cross-party compromise on additional devolution.

2. Key Themes¹

Tax and Welfare Devolution: How Did We Get Here?

Professor Charlie Jeffery, Director of the ESRC Future of the UK and Scotland Programme, Senior Vice Principal at the University of Edinburgh

The scope for agreement in the cross-party talks convened by Lord Smith is limited by the different purposes the parties see in tax and welfare devolution. An overarching difference is between parties seeking continuation of the UK union and those maintaining a longer term goal of independence. On tax, differences range from positions seeing tax devolution as a way of making Scottish Parliament decision-making more accountable and those looking to use fiscal powers to enhance the competitiveness of the Scottish economy. On welfare some approaches are about tidying up the devolution settlement by devolving welfare powers which connect to current devolved responsibilities and others are about asserting (what are seen as) Scottish welfare values distinctive from those pursued by UK governments. Nonetheless there are points of agreement between these differences which should enable a reasonable level of compromise, and the pro-independence position is a pragmatic one which is likely ultimately to accept additional powers - even if of less scope than desired - as steps towards a longer term ambition of independence.

What is happening elsewhere?

Professor Michael Keating, Director of the ESRC Centre on Constitutional Change, Professor of Scottish Politics at the University of Aberdeen

The UK is not unusual in reviewing the distribution of powers between its central and devolved political institutions. Nor are the emphases in the proposals put by the main parties to the Smith Commission, focused on the division of roles of statewide and devolved governments and tax and welfare devolution. Other states too focus on income tax devolution, but typically extend the discussion into other major tax bases. And while welfare benefits are often seen as appropriately handled statewide, there are also examples where the devolved level has the scope to vary or supplement statewide benefits.

So How Much More Devolution Does Scotland Want?

Professor John Curtice, Professor of Politics at the University of Strathclyde

There is now considerable survey evidence, extending back over many years, that suggests Scots think the current devolution settlement does not go far enough. Scots generally seem to approve of the devolution of powers in domestic policy, including tax and welfare, while seeing foreign affairs and defence as better handled at the UK level. However it is less clear that Scots welcome some of the associated consequences of devolving tax and welfare powers, showing concern about the need to fund additional devolved policies through resources raised in Scotland alone, and about the possibility of variation in policy outcomes, for example if pensions differed in Scotland compared with the rest of the UK.

¹ The key themes were authored by Charlie Jeffery and reflect his understanding of the issues raised in the various contributions.

The Case for Scottish Borrowing

Dr Angus Armstrong, Director of Macroeconomic Research, National Institute for Economic and Social Research (NIESR) & Dr Monique Ebell, Research Fellow at NIESR

Fiscal devolution is important to reduce the gap between responsibilities for devolved spending and responsibilities for generating the income to finance that spending through tax and/or borrowing powers. In closing that gap the devolved institutions need to have the autonomy to succeed (that is to reap any benefits from tax and borrowing decisions) but also to have the autonomy to fail (that is not to expect to be bailed out of things go wrong). This means, for example, that the Scottish Government should be able to borrow on its own responsibility on the financial markets - and not from the UK Treasury - and should bear the consequences of its decisions, positive or negative, without Treasury support.

The Potential Economic Impacts of “DevoSmith” Powers

Dr Patrizio Lecca, Professor Peter McGregor & Professor Kim Swales, Strathclyde International Public Policy Institute & Fraser of Allander Institute

It is possible to begin to model possible economic consequences of using additional taxation powers. Modelling shows that an increase in taxation to finance additional public spending may not lead to a general boost to the Scottish economy (in particular because high earners may migrate out of Scotland to protect their incomes) unless spending is used to invest in infrastructure which has wider and longer term economic benefits.

Maximal Devolution

Dr David Comerford, Research Fellow in Economics, Scottish Fiscal and Economic Studies and University of Stirling

This contribution presents a case against ‘Devo-max’ or full fiscal autonomy. It argues that the incentives that would accrue to Scottish decision-makers with additional tax devolution need to be balanced by some level of fiscal transfers (or fiscal equalisation) from the UK level in the absence of other mechanisms (such as exchange rate adjustments that jurisdictions with their own currency can have) to act as shock absorbers for economic shocks that would affect Scotland disproportionately.

Devolution and Welfare

Professor Nicola McEwen, Associate Director ESRC Centre on Constitutional Change, Professor of Territorial Politics at the University of Edinburgh

The debate on welfare devolution needs to be clear on the level of autonomy particular choices would bring to Scotland. Devolution of implementation responsibilities (for example as proposed for the Work Programme) brings autonomy only within the limits set by the UK-level policy. Full legislative devolution may not bring autonomy in practice if funding arrangements remain aligned with the UK-level policy (as can be seen in Northern Ireland currently in debates around the implementation of the ‘bedroom tax’). Legislative devolution requires full devolution of funding (that is an appropriately calculated addition to the Scottish block grant) if autonomy in practice is to be realised.

It may also require distinct administrative arrangements, as sharing arrangements across the wider UK could limit the scope in practice to vary from UK-wide policies.

What new powers does Scotland need to improve social care?

Professor Kirstein Rummery, Professor of Social Policy at the University of Stirling

While the fields of health and social care are already devolved, the scope for genuinely autonomous Scottish policies remains limited by UK policies, especially regarding disability-related benefits. Only a comprehensive devolution of all social security responsibilities - and the devolution of the funds to finance them - would bring the funding and policy autonomy that would enable a significant departure from current UK-level policy thinking and open up space to discuss radical approaches such as a Citizen's Basic Income and insurance against the costs of long-term care.

Further Devolution and Energy Policy

Professor Aileen McHarg, Professor of Public Law at the University of Strathclyde

While energy policy is not currently a fully devolved responsibility Scottish Governments have pushed the boundaries of related responsibilities, for example for climate change and in planning consents, to develop a strong profile in the field. A more comprehensive devolution of energy policy is possible, but just as important may be improved access to UK-level decision-making which impacts on the scope for autonomy in Scotland, for example in the regulation of what will remain a single UK-wide energy market. This is an area where the sharing of power may be as important as devolution of power.

The scope for a differential immigration policy for Scotland

Dr David McCollum, Lecturer in Geography, University of St Andrews

There are a number of credible arguments for a distinctive Scottish immigration policy within the UK: to counterbalance Scotland's more rapidly ageing population; to counterbalance the economic pull of talent to the economy of London and the South East of England; and because Scots are less hostile to immigration than people in England, especially regarding high value-added migrants such as those with high skill levels and overseas students. There are also well-established precedents in Australia and Canada which show that variations in immigration policy are possible within states, despite many claims that this is not the case.

The Smith Commission, top-down politics and local government

Dr Neil McGarvey, Teaching Fellow, University of Strathclyde

The devolution of powers to the Scottish Parliament does not seem to be accompanied by further decentralisation to the local councils. Local government remains but a footnote in the Scottish constitutional debate, and the inclusion of local government policy in the contributions to the Smith Commission made by Scotland's political parties seem to be an afterthought. It remains to be seen, in a time of constitutional flux, where Scotland's local communities will fit in.

Policy Capacity in the Scottish Government

Mr Richard Parry, Honorary Fellow in the School of Social and Political Science at the University of Edinburgh

The prospect of devolving significant additional powers raises the question whether the Scottish Government has sufficient capacity to handle such powers and this can generally be answered in the affirmative. The Scottish Government has relatively few officials engaged in the policy implementation tasks central to further devolution of benefits and tax administration and relies heavily on other organisations for policy delivery to service users. One way of addressing this capacity shortfall would be to enter into agreements with UK-level delivery bodies to implement distinctive Scottish policies.

The Smith Commission: will greater powers come with greater democratic accountability?

Professor Paul Cairney, Professor of Politics and Public Policy at the University of Stirling

The debate about additional powers should be flanked by a debate about how the accountability of decision-making around any additional powers should better be ensured. Accountability could be enhanced by further devolution of powers within Scotland to local government or an enhanced role for local government in holding to account other bodies delivering policies at the local level. The Scottish Parliament would also need significant additional capacities in research and analysis to hold the Scottish Government to account effectively.

‘We Have an Arrival Time, We Need a Destination’: The Runaway Train of Constitutional Change

Professor Stephen Tierney, Professor of Constitutional Theory in the School of Law, University of Edinburgh and Director of the Edinburgh Centre for Constitutional Law

It is not clear that the current process considering the devolution of additional powers to Scotland allows for due diligence. This is in part a question of the time available to the current process which may not leave sufficient scope to assess possible consequences of devolving powers. It is in part a question about process, in particular the limited capacity of citizens in Scotland to deliberate and state their views about how they should best be governed following the referendum. Nor has sufficient thought been given to wider debates about change in the rest of the UK; for example the debate on more powers in Scotland could have its counterpart in the marginalisation of Scottish representatives at the UK level. Against this background the Smith Commission process should be seen as the first step in a longer and more open process of deliberation.

3. Tax and Welfare Devolution: How Did We Get Here?

Charlie Jeffery

The starting point for the discussions in the Smith Commission is the devolution of additional powers over taxation, with a second area of emphasis around welfare powers. That starting point was set by the commitment of the Conservative, Labour and Liberal Democrat parties prior to the referendum to move quickly to establish additional powers for the Scottish Parliament, reflecting the common ground in the content of the proposals each had published in the preceding months.

There could be other ways of framing the Smith Commission discussion, for example around powers to manage the Scottish economy better, or how to improve the functioning of Scotland's democratic institutions. But Lord Smith is convening a debate that takes tax and welfare as its starting point. Recognising why this is so, and the implications that flow from it as the Smith Commission produces its 'Heads of Agreement', is important.

Tax Devolution

Tax devolution (and its counterpart in additional powers to borrow to fund Scottish policies) has been the dominant theme in the debate about how to reform devolution since soon after the Scottish Parliament was established in 1999. While much attention has been given to the recent proposals of the pro-union parties, it was the SNP that put tax devolution on the agenda. Its reasoning for focusing on tax devolution is different from the pro-union parties.

By spring 2000 the debate about the escalating costs of the Scottish Parliament building – and its knock-on effects on other areas of spending – prompted the then SNP finance spokesperson Andrew Wilson to call for more powers over tax and borrowing. SNP figures like Wilson subsequently developed a fuller rationale for tax devolution which emphasised economic arguments, claiming that Scotland's relative economic underperformance could not be addressed by the existing powers of the Scottish Parliament, would best be addressed by independence, but failing that would be addressed better by full Scottish fiscal autonomy within the union.

Following its first election victory in 2007, and as part of its 'National Conversation' on Scotland's future the SNP fleshed out a maximalist vision of 'full fiscal autonomy' (still a second-best option behind independence of course). This would involve the devolution of all possible decision-making powers on tax and borrowing (in some fields like VAT EU law makes full tax devolution impossible) and of all spending powers, including on welfare but excepting fields like defence and foreign affairs which would remain the responsibility of the UK Parliament. The Scottish Parliament would make a payment to the UK Treasury for its share of such 'shared services'. The rationale for full fiscal autonomy was primarily economic, focused on opportunities to use tax and borrowing powers to enhance Scottish competitiveness. The position put by the Scottish Government in its paper to the Smith Commission, as endorsed by the SNP, is essentially the same as that produced during the 'National Conversation' (and, indeed, that of the early 2000s).

A different rationale for tax devolution was established by the Liberal Democrats in their 2006 Steel Commission report. This proposed (without saying exactly how) that the Scottish Parliament should be responsible for 'raising the bulk of Scottish expenditure' from taxes under its control, while also being part of a UK-wide system of fiscal equalisation designed to express the solidarity and shared commitment of Scotland to the rest of the UK and vice versa.

The Steel Commission's arguments for more tax devolution were centrally about making the Parliament's spending decisions more accountable to voters. A second emphasis – which nodded a little towards the SNP's economic rationale – was on increasing the Parliament's capacity to shape and grow the Scottish economy, but also pursue other policy objectives through the tax system, such as protection of the environment.

The accountability argument was the dominant emphasis of the Calman Commission, established with the support of all three pro-union parties in 2008 to review the then devolution arrangements. The economic potential of greater fiscal powers was not a prominent theme for the Commission. What was prominent was a commitment that new powers should be consistent with 'continuing to secure Scotland's position within the union'. In mid-2009 it recommended the devolution of some borrowing powers along with decision-making powers over a range of taxes, most notably a division of powers over income tax in Scotland between the UK and the Scottish Parliaments. Much of the Commission's recommendations were taken forward in a UK Government White Paper in late 2009, which formed the basis for what became the Scotland Act of 2012. The new devolved tax powers under that Act, including partial income tax devolution, will all be in operation by 2016.

The Calman legacy can also be seen in the recent proposals of the pro-union parties, as developed before the referendum and since submitted to the Smith Commission: their common ground is income tax devolution (though there are new proposals on other taxes and on assigning some of the revenues raised in Scotland from taxes set on a continuing UK-wide basis) amid a commitment to maintain/strengthen the union. Their emphasis is on the impact of tax powers on the accountability of decision-making in Scotland. The economic implications of additional powers are at best subsidiary. The only real novelty is the Labour Party's proposal for a minor redistributive element at the upper income tax bands. No other party, including the SNP, has focused much on the redistributive possibilities of more tax powers.

So what we have, no doubt to over-simplify, is a divide between

- the SNP's emphasis on using tax powers to promote economic competitiveness, while also maximising powers available as a second-best option to, and step towards independence; and
- the pro-union parties' emphasis on tax powers as a mechanism for accountability of decision-making while preserving the union (with the Liberal Democrats pointing at least to the potential economic and other policy benefits of tax powers).

Are these positions reconcilable? In one sense no, because competing visions of independence vs union underlie them. In two other senses yes. First there is at least potential for discussion of the economic development implications of tax powers given that the Liberal Democrats open out into SNP territory on this point. Second, even if the SNP as a party committed to independence will likely express disappointment at the extent of additional powers that emerge from the Smith process, it is also likely in the end to endorse the outcome. On tax powers that outcome will probably converge in the range of the pro-union parties' submissions, likely at the upper end of that range marked out by the Liberal Democrats and Conservatives. Full fiscal autonomy is an unlikely outcome. But just as with the powers in the Scotland Act 2012 – which the SNP spent a long time criticising as inadequate and flawed – any substantial additional powers are likely in the end to be accepted by a party focused on adding to the powers available to the Scottish Parliament.

Welfare Devolution

Much the same could be said about welfare. The SNP will ultimately 'bank' anything that comes, whether or not a scheme of welfare devolution is compelling. The SNP's proposals on welfare devolution are, again, maximalist: all welfare powers, including the major expenditure items of disability and state pension benefits, should be devolved. This is unlikely to be a consensus view in the Smith Commission.

Beyond this 'devo-maximalism' two broad rationales for welfare devolution can be identified. The first is around so-called 'jagged edges' of the current devolution arrangements, where welfare policies decided at UK level intersect, but are often ill-coordinated, with policies devolved to the Scottish Parliament. The three main areas of possible welfare devolution highlighted by the pro-union parties fall into this category: attendance allowance (which intersects with social services and other policies like free personal and nursing care which support the infirm in their homes); housing benefit (which intersects with wider housing policy including the provision of social housing); and the work programme (which intersects with measures taken by the Scottish Parliament and local authorities to promote employment opportunities).

The second rationale lies in the argument that Scotland has different values on welfare than England/the rest of the UK, and needs scope to reflect that in devolved policies. There may be relatively limited evidence in public attitudes research on this point. However the narrative of an 'uncaring Westminster' is a powerful one. It was perhaps the most effective theme pursued by the Yes side in the later stages of the referendum campaign. And it has resonance beyond the SNP, most recently in controversies over the so-called bedroom tax, more generally around current welfare reforms, and extending back into the memory of the poll tax of the late Thatcher years. This is of course a narrative not easily endorsed by the Conservatives. But it is one capable of forging common ground among SNP, Labour and the Liberal Democrats.

So there is some scope for producing packages of proposals which bridge the often very different rationales for more devolution held by the SNP on the one side and the pro-union parties on the other. The most obvious are in the economic development possibilities of tax powers and the 'uncaring Westminster' narrative around welfare powers. But ultimately the SNP will almost certainly be prepared to 'bank' additional powers, however inadequate it finds them to be.

4. Debates on additional devolution: What is happening elsewhere?

Michael Keating

There is a broad trend across Europe towards strengthening the intermediate level of government in the form of devolution or federalism. This is driven both by the need to accommodate national diversity and by considerations of functional efficiency. The devolved level is often where different policy spheres such as welfare, labour market policies and economic development, interact. Four trends in particular are relevant to the current devolution discussions in Scotland.

The first is a move to clarify the responsibilities of the various tiers of government. After a period in which the focus was all on interdependency and intergovernmental working, there is a search for a clearer division of labour. Intergovernmentalism can lead to a lack of transparency and accountability and the emptying out of devolved competences through interventions by central government. Compared with other systems, Scotland has a fairly clear allocation of responsibilities and it is important that this feature be retained.

Second is the trend towards more fiscal responsibilities for devolved governments. This is also in the interest of transparency and accountability, although it does often happen that central governments transfer spending burdens without the requisite buoyant taxes, a poisoned gift to the devolved level. It is therefore important that proper simulations of the effects of fiscal devolution be carried out before taxes and spending responsibilities are devolved. The most prominent candidate for devolution is income tax. In several countries, income tax is now shared between central and devolved governments, with various provisions for changing tax rates and allowances. Normally, this allows for different levels of progressivity, or higher rates for higher earners. There is some devolution of corporation taxes although variation in the rate within European countries is restricted by European Union law, as reductions may be considered as state aid unless the risks of tax devolution (for example if tax take falls as a result of devolved decisions) falls clearly on the devolved government itself (which is often difficult to prove). Canadian provinces have their own corporation taxes although there are efforts to harmonize these to avoid tax competition and a race to the bottom.

Taxes on consumption are sometimes devolved. Value Added Tax cannot be varied within EU member states and there are limits to variation between these countries. In federal countries, including Australia and Canada, it is levied at the federal level, since it is in principle a tax on the whole of the production process. In some cases, however, the proceeds are partially assigned to the devolved governments; that is, they get the revenues without being able to set the rate. This is problematic. While it does give the devolved governments an assured source of revenue, they have no control over the burden of taxation, and the buoyancy of assigned taxes is variable and dependent on underlying economic conditions. Excise taxes are devolved in many federal systems but there are limitations imposed in Europe because of European directives on fuel duties. Vehicle registration and licence fees are another common candidate for devolution. Wealth and inheritances taxes are often devolved and there are various provisions for devolved governments to create new taxes provided the item in question is not already taxed by the central government. Hotel and tourist taxes have been an example. The general aim is that devolved governments should raise taxes to cover their share of public expenditure, but few have yet reached this level.

The question of the territorial distribution of taxes and spending has become more prominent everywhere.

Formerly implicit transfers become more visible when the relevant programme is devolved. At the same time, austerity has put budgets under pressure everywhere. Nearly all devolved and federal systems have provisions for revenue sharing and fiscal equalization but these have proved very difficult to reform. Germany has largely given up while in Spain and Italy reforms have been sequential, with the central government then trying to harmonize the various measures. Equalization formulas have been based both on the needs of different territories and on the size of their own resources. No other country has anything like the Barnett Formula although in practice central transfers to regions are often based on historic trends, with only gradual redistribution to take account of need. Contributing regions in Germany, Italy, Spain and Belgium have protested vocally against the size of transfers.

There has been a tendency over the years to consolidate grants into a single block, giving devolved governments greater discretion in spending, although this is often undermined by central regulations and decisions of line ministries. Scotland already has a block grant, which is a positive feature and should be maintained. There have been efforts in Spain and Italy to pay equalization money not on the basis of whatever the regions choose to spend, but on a given package of essential services, with the regions free to supplement from their own resources. The counterpart is a requirement to maintain agreed levels of service provision. The Labour Party's proposal that the block grant should correspond not to the level of Scottish spending but to what it sees as core UK-wide expectations (Gordon Brown has called this 'covenanted expenditure', looks like an echo of this, although Labour does not suggest any mechanism for defining state-wide minimum provision.

The devolved level of government has become an important one for active labour market and training policies. Sometimes these are managed by devolved governments, in other cases by partnerships of employers and trade unions. Some devolved governments have encouraged collective bargaining at the regional level, but these goes against the trend to bargaining at the level of the firm or the plant. There have also been efforts to create a territorial frame for industrial relations more generally, providing for devolved-level arbitration and negotiation in disputes.

Welfare states generally remain the responsibility of state-wide governments but there are variations. In decentralized federations like Switzerland and Canada, devolved governments retain important responsibilities in income and family support. Elsewhere, the main cash transfers are usually centralized, as are unemployment insurance and pensions. This is in line with traditional thinking on federalism, which prefers redistributive matters to be allocated at the highest level, to prevent welfare migration and a race to the bottom as devolved governments seek to cut taxes and discourage welfare claimants. On the other hand there is growing regional variation in the coverage of 'new social risks', including precarious incomes and employment, ageing and different family circumstances. So parallel provisions have emerged in some countries, including a 'minimum income of insertion', pioneered at the devolved level in southern European countries and then extended nationally, as well as provisions for older people, young people and families. There are significant differences within countries in the balance between universalism (in which services are free at the point of use to all) and selectivity (in which services are restricted to the needy) of public services. This includes provision for old people, child care, prescription medicines and university fees.

The UK parties' proposals for more devolution follow in the mainstream of international developments but are at the cautious end. The Conservatives and Liberal Democrats propose complete devolution of income tax although Labour does not go so far. The Liberal Democrats in addition propose to devolve inheritance and capital gains tax. On the other hand, none of the parties offers the gamut of smaller taxes that are devolved in other jurisdictions.

The Liberal Democrats were the only party to propose a reform of the Barnett Formula and its replacement by a needs-based system, as in other devolved and federal states but in the course of the referendum campaign they changed tack and in the famous 'vow' agreed to retain Barnett. The parties also follow the European mainstream in keeping the essentials of the welfare state at the centre with only minor variations, including devolving Housing Benefit. Labour explicitly justifies this by arguing for common UK standards which seem to include matters already devolved. This is common to the more centralist strands in other European countries, which insist of a degree of policy uniformity along with political devolution. The Conservatives, on the other hand, would consider allowing Scotland to supplement existing welfare benefits at its own expense, allowing for more experimentation and variation. All the parties but especially the Liberal Democrats, emphasize cooperation between levels of government. While this sounds like a good idea in principle, such devices have elsewhere led to a recentralization of policy in the name of harmonization, as the two levels are rarely equals in power.

All three pro-union parties stress the need to revive local government in Scotland. Again, this is unexceptionable. More problematic is the suggestion, most explicit in the Labour proposals, that it is Westminster that will be responsible for this. Experience elsewhere suggests that devolution works more effectively where the devolved level has responsibility for the structure and competences of local government. Otherwise, central government uses the local level to by-pass the devolved authorities and undermine their policy capacity. This happens in Spain, Italy and France, leaving the regions in a weakened position and the centre stronger. Labour's proposals to devolve the administration of the work programme to local authorities in Scotland, with the Scottish Parliament having only a vague watching role, is a potential example of this problem, likely to create confusion and lack of clear accountability.

Countries across Europe and beyond are struggling with the new territorial division of power and none have got the balance just right.

5. So How Much More Devolution Does Scotland Want?

John Curtice

Devolution was meant to be the ‘settled will’ of the Scottish people. Yet in practice the constitutional settlement that was put in place in 1999 has seemingly failed to meet the public’s aspirations. The Scottish Social Attitudes survey has repeatedly found that between three-fifths and three-quarters feel that the Scottish Government ought to have most influence over the way that Scotland is run, but that, even after a decade and a half of seeing devolution in action, only 30% actually believe that it has most influence (Reid et al., 2014). There is an apparent feeling that devolution has not gone far enough, a mood that has already been reflected in the provisions of the 2012 Scotland Act, under which, in particular, the Parliament is being given some fiscal power and responsibility of its own for the first time, and is now being addressed once again by the all-party Smith Commission on more devolution.

But how far do the public really want devolution to go? In this chapter we assess the evidence from surveys and opinion polls on what powers and responsibilities Scots think the Scottish Parliament should have, and what they think should be left to Westminster to decide. We then consider what implications these findings might be thought to have had for the work of the Smith Commission and subsequent legislation.

Public Support for Devo-max

At first glance the research evidence suggests that the answer to our question is straightforward. More than one survey exercise has indicated that a majority of Scots are inclined to feel that domestic matters should be decided in Edinburgh and that the country should only rely on Westminster to settle its foreign and defence affairs.

The Scottish Social Attitudes survey has, for example, asked people on a number of occasions since 2007 which level of government (Europe, Westminster, Holyrood or local government) they think should make the important decisions for Scotland about five key policy areas – the health service, schools, taxation, welfare benefits, and defence and foreign affairs. The first two of these are, of course, already devolved, and in these cases consistently around two-thirds to three-fifths say that the Scottish Parliament should indeed be the principal decision maker. Only around between one in eight (in the case of schools) and one in four (the health service) would assign that role to Westminster (Ormston and Curtice, 2013; Curtice et al., 2013). Taxation and welfare benefits, on the other hand, are the two areas of domestic policy that are still primarily the responsibility of the UK government. Yet, consistently, around three-fifths say that the most important decisions about these should be made at Holyrood too. Only around a fifth to a quarter believe that welfare benefits should be the preserve of the UK government, while even in the case of taxation the figure is no more than around a third (Curtice, 2014a). Only when it comes to defence and foreign affairs is there less than majority support for placing responsibility in the hands of the devolved institutions.

This picture has been confirmed by other exercises. Probably the most detailed was a poll conducted by Ipsos MORI for the Future of Scotland initiative in 2012. This asked whether the Scottish Parliament or the UK Parliament should be primarily responsible for each of eleven policy areas (Ipsos MORI, 2012). Eight of these were areas of domestic responsibility ranging from macro-issues such as taxation and economic policy to more micro ones such as sports/cultural and housing policy.

In each case a majority felt that responsibility should lie with the Scottish Parliament, with support for that view ranging from 57% in the case of both taxation and economic policy and 67% on the issue of welfare benefits to no less than 80% in the case of housing and homelessness. In contrast, 32% thought that Holyrood should be responsible for foreign affairs, 33% defence, and even in the case of international development, less than half (45%) were in favour of responsibility being placed in the hands of the Scottish Parliament.

Equally, much the same pattern has been uncovered by a more recent exercise that was conducted immediately after the referendum and which focused on those areas that are not currently devolved. Undertaken by Survation for the Scottish Mail on Sunday (See survation.com/archive/archive-2014/), the poll reported that no less than 80% believed that the Scottish Parliament should be 'given control over' welfare benefits, 72% income tax, 62% both pensions and corporation tax, and 61% VAT. In contrast only 44% felt it should have control over defence.

In short, this is a picture that suggests a majority of people in Scotland want what has come to be known as 'Devo-max', under which the country would take more or less full responsibility for its own domestic affairs, leaving Westminster to deal with little more than defence, foreign affairs, currency, financial regulation, and broad macroeconomic policy. Moreover, contrary to the emphasis on the devolution of taxation to be found in the proposals that have been put forward by the three unionist parties, there is no reason to believe that there is greater support for the devolution of taxation than of welfare benefits. This interpretation appears to be confirmed by the pattern of responses to another question that the Scottish Social Attitudes survey has asked in recent years in which people are invited to choose between four possible divisions of power and responsibility between the Scottish Parliament and the UK Government, as detailed in Table 1.

Table 1 Constitutional Preferences 2010-14

Which of these statements comes closest to your view about who should make government decisions for Scotland?	2010	2011	2012	2013	2014
	%	%	%	%	%
The Scottish Parliament should make all the decisions for Scotland	28	43	35	31	41
The UK government should make decisions about defence and foreign affairs; the Scottish Parliament should decide everything else	32	29	32	32	27
The UK government should make decisions about taxes, benefits and defence and foreign affairs; the Scottish Parliament should decide the rest.	27	21	24	25	22
The UK government should make all decisions for Scotland	10	5	6	8	6
<i>Sample Size</i>	<i>1495</i>	<i>1197</i>	<i>1229</i>	<i>1497</i>	<i>1501</i>

Source: Scottish Social Attitudes

In each of the last four years at least three-fifths and often more have either said that the Scottish Parliament should make all of the decisions for Scotland (a statement that is tantamount to independence) or else that it should make all decisions other those in respect of defence and foreign affairs (i.e., roughly dev-max). Moreover, when in 2013 respondents were asked which of these options was their second preference, no less than 79% of those whose first preference was for Holyrood to decide everything went on to say that giving it responsibility for everything apart from defence and foreign affairs would be their second choice. That meant that in that year at least, 62% clearly preferred devo max to the status quo.

Lack of Support for the Implications of Devo-max

However, people's attitudes towards more devolution are not quite as straightforward as this evidence makes it seem. For certain implications flow from the idea that both taxation and welfare benefits should be more or less fully be devolved to the Scottish Parliament. First, it implies that the funding of public services and benefits in Scotland would be funded primarily out of revenues raised in Scotland. Second, it means that levels of taxation and benefits might be different in Scotland from those pertaining in the rest of the UK. And it is far from clear that people in Scotland are ready and willing to accept these consequences.

On funding, the Scottish Social Attitudes survey has asked on three occasions between 2009 and 2013 whether public services such as health and education should be paid for 'out of a sum of money decided by the UK Government and funded out of taxes collected across the UK', or whether instead they should be funded 'out of taxes decided and collected by the Scottish Government in Scotland'. On each occasion only around a half agreed that they should be funded out of Scottish taxes, while support for UK-wide funding rose from 40% in 2009 to 46% in 2013,

More surprisingly, perhaps, much the same picture was obtained when in 2013 the survey addressed the issue the other way around, and asked whether the monies raised by income tax in Scotland and by the revenues from North Sea oil should be used only to fund spending in Scotland or whether they should be used to help pay for services across the UK as a whole. In both cases opinion was more or less evenly split. While 48% wanted income tax revenues to be used exclusively in Scotland, almost as many, 47%, took the opposite view. In the case of North Sea Oil, the balance of opinion, by 50% to 44%, was actually slightly in favour of regarding it as a UK-wide resource.

Meanwhile, it appears that there is even greater reluctance to see devolution applied to the funding of welfare benefits. In particular, in 2013 only 34% believed that pensions in Scotland should be funded solely out of Scottish revenues, a proportion that fell twelve months later to 22%. A similar result was obtained when in 2013 the same question was also asked of unemployment benefits.

So far as different levels of taxation and benefits are concerned, SSA has on three occasions between 2011 and 2013 asked whether the basic rate of income tax in Scotland should 'always be the same in Scotland as it is in England', or 'whether it is OK for it to be different in Scotland (either higher or lower) than it is in England'. Every time rather more people (between 50% and 52%) said that the rate of tax should always be the same than said it was OK for it to be different (between 41% and 48%). Meanwhile, there is an even greater resistance to the idea of having different a different rate of old age pension on the two sides of the border. Support for that possibility ranged between just 37% and 41%, while between 56% and 63% said that the pension should always be the same. (For further poll evidence, albeit with a less satisfactory question wording, see also Curtice, 2014b).

Thus, on the one hand the immediate reaction of a majority of people in Scotland appears to be that more or less all of the nation's domestic affairs should be settled in Edinburgh rather in London. Holyrood it seems is regarded as the legitimate locus of domestic decision-making. However, there is rather less enthusiasm for the idea of funding Scottish public services out of Scottish taxes, and no marked wish to see Scottish revenues kept at home. These are issues on which public opinion is more or less evenly divided. Meanwhile, there seems to be a particular reluctance to see welfare benefits funded solely out of Scottish revenues or to have such benefits to be paid at a different level than that pertaining south of the border.

Implications

This apparent disjuncture between people's views about who should make decisions and how they should be funded hardly makes the task of finding a stable, settled devolution settlement any easier. In truth, it suggests a need for much greater public debate – of the kind that was afforded to independence by September's referendum – than there has been to date and will be generated by the Smith Commission process. Only then might a more informed and thus, perhaps, a more consistent view of how much devolution Scotland really wants begin to emerge.

In the meantime, there are perhaps two pieces of advice for the Smith Commission that might be thought to arise from the evidence presented here.

First, given Scots' views about where legitimacy lies, rather than asking itself what extra powers should be given to Holyrood the Commission should pose the question of each and every area that is still reserved to Westminster, 'Why not devolve?' - and only propose that responsibility remain with Westminster if a good answer can be given to that question. Amongst the possible answers might then well be a judgement that the public would not welcome the potential consequences.

Second, given the tension between Scotland's apparent wish to have a say in its domestic affairs but rather less enthusiasm for taking on the responsibility for funding them, the Commission might be wise to include in its armoury of possible solutions, 'both' as well as 'Westminster' or 'Holyrood'. In other words, some powers and responsibilities might be shared between the two governments rather than reserved exclusively to one or the other. That is in effect what the 2012 Scotland Act does so far as income tax is concerned, and the same is true of proposals that public expenditure in Scotland be funded out of a mixture of Scottish and UK-wide taxation. After all, Scots do seem to want 'the best of both worlds' - and maybe sharing power and responsibility might just be the best way of giving it to them.

6. The Case for Scottish Borrowing

Angus Armstrong & Monique Ebell

The funding of Scottish government spending has two issues. First, there is a question of the mix of funding or the extent to which the government should be responsible for raising its own tax revenues versus relying on block grant transfer from the UK. Second, there is issue of the size of the Scottish budget which is determined by the total amount of funding and whether the government has the ability to borrow. In this chapter, we argue that an accountable Scottish government should have the tools, and indeed the obligation, to solve its own fiscal problems. The choice of which taxation powers to devolve should be taken at the same time as allowing the Scottish Government to borrow in its own name from capital markets. Giving the Scottish Parliament real responsibility over economic affairs requires removing the extremely cautious borrowing limits included in the Scotland Act (2012).

The current system of UK government finances

In recognition of the different preferences within the Union, a high degree of regional spending power has been devolved to the Scottish Parliament. Yet most revenues are still collected centrally by Her Majesty's Revenue and Customs (HMRC). Most spending by the Scottish Parliament is funded by central government transfers through a block grant and formula system administered by the Treasury.

There is much to commend this system. It avoids wasteful tax competition, ensures a single macroeconomic framework and has maximal risk sharing and common access to welfare across the Union. However, it also means that the Scottish Government is not accountable for raising or lowering taxes or changing borrowing to pay for its spending decisions. It is mostly tasked with spending an allocated amount of funding. The Scottish Parliament essentially operates within a balanced budget construction.

Almost 60% of all public sector spending in Scotland is controlled by the Scottish Government and Local Authorities (SGLAs). Of the total spending identified as specifically for Scotland, 69% is controlled by the SGLAs. The only area of identified spending which is not substantively controlled by the SGLAs is for social protection. This is entirely consistent with efficient risk sharing and fairness. It is difficult to see what items of spending could be further devolved while keeping consistency with economic principles.

By contrast, most revenue is collected by HMRC. At present only Council Tax and non-domestic rates are devolved which generate a paltry 8.4% of total onshore revenue. Stamp duty and landfill tax are now fully devolved, with a new Land and Buildings Transaction Tax set to be introduced in April 2015, and a Scottish Rate of Income Tax (SRIT) in April 2016. The amount of money which would have been raised in 2012-13 if the devolved taxes and the SRIT had already been in place is equivalent to 15% of identified spending and 22% of spending controlled by the SGLAs.²

The difference between devolved revenue and spending is sometimes called the vertical fiscal imbalance (VFI). This is one measure of the degree of responsibility and accountability at the sub-central level of government.

2 Scottish Government (2013) and NIESR calculations.

The VFI in Scotland is the difference between the 69% of Scottish-controlled spending and 15% of Scottish-raised revenue as a share of identified spending. In plain words, less than one quarter of the public spending by the Scottish Government and local authorities is funded by revenue controlled by the Scottish Government. Because the lion's share of spending is funded by central government transfers the Scottish Government is mostly tasked with spending an allocated amount of funding.

Options for the Future

Improve accountability through tax and borrowing

Reducing the vertical fiscal imbalance by devolving more taxation power must go alongside greater borrowing rights. Simply granting more taxation power would still mean that the Scottish Government is acting within a balanced budget framework. Moreover, the size of the budget in this framework will still largely be decided by the UK Government. Extending greater tax powers but without greater capacity to borrow implies continued balanced budget dependency on the UK and therefore no responsibility or accountability.

Indeed, if more taxation powers are devolved, but without the ability to borrow, then the macroeconomic prospects are likely to be impaired. The more tax powers that are devolved, the more that spending and revenue outcomes are likely to deviate from projections. Under the Scotland Act (2012) the Government has three options: first, borrow up to £200mn from the Treasury; second, accumulate cash reserves which can be drawn down; and third, cut in-year expenditure. The Scottish Government could easily find itself forced to cut spending and/or raise taxes in a recession to make up for a drop in income tax revenues and balance its budget.

Capital market borrowing

In our view, the Scottish Government ought to be allowed to borrow in its own name and without bound, with the explicit legal statement that the UK Government bears no responsibility for the debt. This is a substantial departure from the limited borrowing under the Scotland Act (2012) and the tendency to rely on UK government pockets and so never revealing the true cost of Scottish borrowing. By borrowing from international capital markets the Scottish government would also be exposed to market discipline, It will be clear from the cost of borrowing whether investors consider that its finances are sound. Of course, relying on markets alone is unlikely to impose enough discipline and the new Scottish Fiscal Council will have an important independent role to play on assessing the suitability of borrowing plans.

If the Scottish Government were allowed to borrow, it could take real responsibility for its decisions in the sense that they may succeed or fail. This includes being able to finance large infrastructure projects, in the hope that the additional tax revenues generated in the future would be sufficient to repay the debt incurred to finance them. With a greater borrowing capacity, the Scottish government would gain capacity to smooth out income tax revenues over the cycle, allowing it to run a more beneficial countercyclical fiscal policy.

The challenge is to make the ability to borrow compatible with stable finances in the UK. There are two possible incentives for Scotland to over-borrow. The first is that the real cost of borrowing could be reduced and imposed on the rest of the UK by creating an 'inflation bias' at the central bank. Since Scotland is less than one tenth of the UK economy, it is hard to see why the Monetary Policy Committee would accommodate any Scottish fiscal largesse. The second incentive is more problematic.

There may be a 'bail-out bias' simply because the rest of the UK is large enough to always bail out Scotland. However, this could be mitigated by the UK government making it explicit (perhaps in legislation) that it has no liability for Scottish debt.

There is no evidence to suggest that the Scottish government would not learn to accept the market discipline imposed by borrowing. Even if we are wrong and underestimate the risk of Scottish profligacy, the amounts involved do not seem likely to threaten the UK government. After the largest financial crisis in three generations, the average debt burden of the six OECD federal states is 23%. A similar debt burden for Scotland would amount to 2% of UK GDP. This risk may simply be the price to pay to ensure that devolution is structured to encourage accountability and responsibility, and reinforces rather than undermines the Union.

Which taxes to devolve?

Only with borrowing added to new tax powers will there be a truly accountable government in Scotland. In Alexander Hamilton's famous dictum 'the creation of debt should always be accompanied with the means of extinguishment.' Greater taxation and borrowing powers go hand in hand.

It is not our intention to describe the pros and cons of devolving each tax in turn. Yet the consensus in favour of fully devolving income taxes requires some comment. This would violate at least three economic principles and possibly undermine the integrity of the union. First, high income earners are particularly mobile and there is a real risk of creating inefficient tax competition. Second, income tax yield is highly dependent on the local economy. This may introduce macroeconomic stability problems. An adverse shock leading to a sudden fall in taxes would require fiscal tightening perhaps leading to a deeper downturn. If higher earners migrate then this could worsen the outcome further.

The ability to borrow would also make devolving tax revenues from North Sea oil and gas to Scotland feasible. Tax revenues from North Sea oil and gas are notoriously difficult to predict accurately and are highly volatile: Year-to-year drops of £4-5bn (equivalent to more than 10% of total devolved spending) annually have occurred twice in the past decade. With the ability to borrow in hand, Scotland could smooth out these fluctuations.

Finally, there is the issue of how reform in Scotland might spill over into other debates. For example, if income tax is fully devolved this greatly strengthens the case for 'English votes for English laws'. It would be difficult to justify Scottish MPs voting on income taxes which are in effect exclusively in another jurisdiction. Yet because England is 84% of the Union, its decisions on income tax would have a strong influence on macroeconomic policy for the whole of the UK. Since an English government may not be the same as a UK government, Scotland would have no say on what would effectively be UK wide macroeconomic policy which would constrain its own choices.

Which tax powers are devolved also matter for the future of the UK. UK sovereign debt is backed by an ability to impose taxes on citizens of the UK to repay creditors. If income taxes are devolved to three national assemblies and an English committee ('English votes for English laws') the UK government would lose direct control over its largest source of tax revenue. Indeed, the more that large taxes are fully devolved to national assemblies, the more the UK would resemble the Eurozone - a monetary union without a fiscal union. This is inconsistent with finding a solution within the UK.

7. The Potential Economic Impacts of “DevoSmith” Powers*

Patrizio Lecca, Peter G McGregor & Kim Swales

Introduction

There has been extensive debate since the referendum around which powers should be devolved to Scotland, but there has been rather little consideration so far given to the likely impact that any new powers could have on the Scottish economy. Yet the success of future Scottish Governments will ultimately depend on how well they use any new powers to achieve their policy objectives.

Given the proposals of the five main political parties in Scotland, additional powers over income taxation are inevitable. We discuss the likely content and economic impact of “DevoSmith” in detail elsewhere.³ In this chapter we focus solely on the likely impact of varying income tax rates and recycling revenues to allow greater public spending.

Scottish fiscal choices under “DevoSmith”

We focus on possible “balanced budget” fiscal policy changes, so that any changes in government expenditures is matched by equal changes in tax revenues over the relevant time interval. For simplicity, we consider the likely effects of changing Scotland’s variable rate of income tax, that is, the unused power included in the original devolution settlement to vary the basic rate of income tax by up to 3p in the pound . Very similar considerations will apply to variations in the new Scottish Rate of Income Tax which will come into force from April 2016, or to more radical income tax devolution which is likely to emerge from the Smith commission.

According to the 2009 HM Treasury Budget estimate, the amount of additional revenue raised by a three pence rise in the Scottish variable tax rate would be approximately £1.05 billion. This corresponds to a rise in the average income tax rate of 4.9%. Accordingly, we simulate a 4.9% rise in the income tax rate with the revenues being recycled to increase public government consumption. We explore these policy changes by simulating AMOS, a computable general equilibrium model of the Scottish economy⁴ within the UK economy.

We consider three long-term scenarios which differ in terms of assumptions made about the use and impact of the revenues generated by an increase in the Scottish variable rate.⁵ The impact of each scenario on GDP is reported in Figure 1.⁶

In the first scenario, government expenditure is on current spending, for example on parks and library services, which is assumed to have no direct beneficial effects on the competitiveness of the Scottish economy. We assume a negative effect on competitiveness as workers, able to compare their wages with workers elsewhere in the UK, seek to restore their after tax wage by pushing up wage claims. In this case GDP falls by 1.71%.

3 Lecca et al (2014b).

4 See e.g. Lecca et al (2014a)

5 The focus of the present paper is primarily on the long-run over which migration flows, driven by real wage and unemployment differentials between Scotland and RUK, and capital stock adjustments, driven by expected profitability, are complete.

6 The results are dependent to a degree on the values of certain key parameters of the model. This is discussed, and sensitivity analyses are reported in Lecca et al (2014,a).

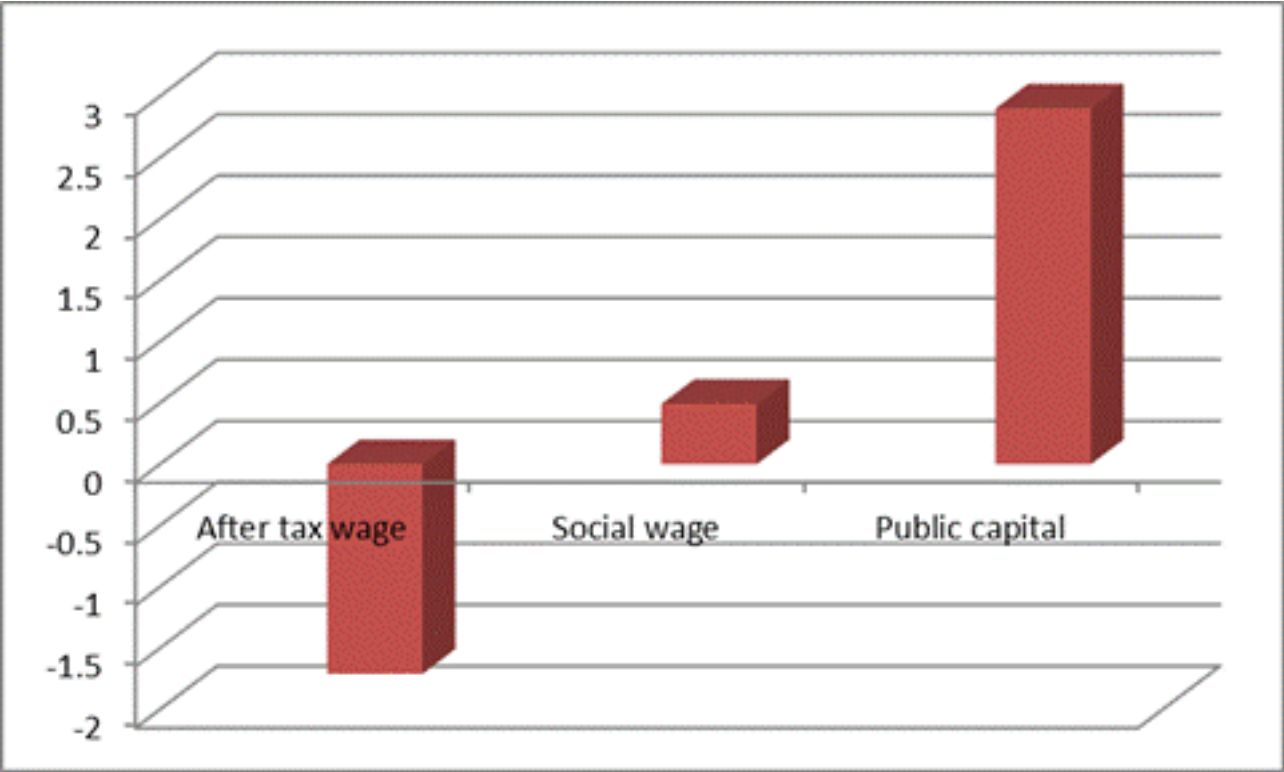
In the second scenario, public expenditure again does not generate a direct beneficial competitiveness effect, but it does so indirectly because potential migrants into Scotland and wage bargainers value the benefits created by enhanced spending on public services. So in this case the public spending enabled by the increase in income tax is reflected in workers’ decisions to stay in or move to Scotland, and moderates unions’ wage bargaining behaviour. The idea here is similar to the notion of a “social wage”, in which unions moderate their wage claims in response to a rise in taxes provided these generate improved public services that their members genuinely value. Under these conditions GDP actually increases by 0.49%.

Third scenario: While in the first and second scenarios tax revenues fund government current expenditure, in the third they fund government capital spending. Here the increase in government expenditure financed by the income tax has explicit beneficial effects on competitiveness. This reflects the fact that in this case the additional revenue is used for public investment in infrastructure that increases the stock of public capital and, in turn, stimulates productivity.

Our results suggest that the negative competitiveness effects of a rise in income tax rate can be more than fully offset by the positive impacts of an increase in the public capital stock. There is a resultant significant increase in GDP of 2.8%.

These more positive GDP effects could also apply with spending in some areas of what is currently classified as “current” government expenditure, such as health and education. These are, in effect, investments in human capital. We would expect productivity to be stimulated directly as a consequence of such public spending, potentially with significant economy-wide impacts. Furthermore, if wages in Scotland are at least partially determined in a UK-wide bargaining system then the scope for bargaining in Scotland to boost after tax wages following a rise in income tax would be limited. In that situation some of the negative effects on competitiveness of Scottish increases in income tax would be limited. But there must be doubts about whether UK-wide pay bargaining would survive the introduction of differential income tax rates between Scotland and the rest of the UK.

Figure 1. The long-run impacts of changes in the Scottish variable rate of income tax on GDP.



Conclusions

The greater fiscal responsibility embodied in the enhanced devolution of tax powers will simultaneously strengthen the link between Scottish economic activity and the Scottish Government's budget. This increases the incentive for the Scottish Government (and electorate) to promote growth-stimulating policies, but also increases the downside risk of fluctuations in tax revenues and public spending. The DevoSmith settlement will likely allow the Scottish Parliament considerable choice over the general levels of taxation and government spending. There would be scope to choose to move the economy to higher taxes and higher spending (as in the Scandinavian social investment model) or, less likely, to the low tax/ low spend model seen, for example, in the Baltic countries.

Our analysis suggests that the structure of the Scottish economy provides something of a challenge in that its degree of openness makes it particularly sensitive to any changes in competitiveness induced by rises in taxation. However, such effects can be countered if the resultant public spending has significant supply-side impacts (e.g. through infrastructure investment), although such effects take a long-time to build up and therefore may not be valued appropriately by a Government with a comparatively short lifespan. The adverse competitiveness effects of higher taxation can also be countered if the Scottish public can be persuaded of the importance of its social wage (not just take home pay) and the Scottish Government correctly identifies the types of public expenditures that are regarded as important to the social wage, most likely health and education spending.

8. Maximal Devolution

*David Comerford*⁷

Many people have interpreted Gordon Brown's comments prior to the referendum, and the so-called "Vow" in the Daily Record, as some commitment to "Devo-max". This is usually interpreted to mean full Home Rule for Scotland within the UK, so that the only functions that remain at the UK level are defence, foreign affairs, UK government debt repayments, as well as a single currency and free trade area. Scotland would raise all its own taxes and pay the UK government for the services it provides.

I assume that we are indeed aiming for the maximum level of devolution possible, and ask whether and where the proposal emerging from the Smith Commission must fall short of this common understanding of Devo-max.

Devo-max is subject to many of the same criticisms that can be levelled at the proposals for an independent Scotland sharing the pound Sterling with the rest of the UK. It is now unambiguously the case that Scotland will be retaining a common currency area with the rest of the UK under any proposed system of enhanced devolution. To make a success of divergent polities within a common currency area however, we must learn the lessons of the Eurozone crisis and seriously consider the constraints imposed upon divergent polities by the need to maintain macroeconomic stability.

I argue that whilst devolution can be extended greatly from its current form, an automatic, formulaic system needs to be built that responds to business cycle fluctuations and asymmetric shocks. I consider a system in which the maximum possible level of devolution that makes sense technically and economically within a single currency area, labelled "Maximal Devolution", is implemented. This system is necessarily "less devolved" than Devo-max.

The Macroeconomic Stability Constraint

Suppose there is Devo-max so that everything is devolved to Scotland except defence and foreign affairs, and that the UK is a single currency area with the Bank of England as its central bank. What doesn't work? The governor of the Bank of England Mark Carney, in a speech in January 2014, outlined certain requirements that were necessary for successful currency unions. He was making this speech in the context of a possible independent Scotland, but he effectively outlined the case against Devo-max.

Sharing a currency entails a common monetary policy. For a common monetary policy to be appropriate, there needs to be institutions that promote economic integration and alignment; and to counter the lack of flexibility induced by this common currency, there needs to be alternative shock absorbers for macroeconomic shocks.

The single market in the UK which facilitates the free movement of labour and other factors of production is an essential component of a single currency area, since it aligns economic performance and so leads to monetary policy based on the UK average being appropriate across the union in the face of symmetric shocks.

⁷ With thanks for comments and feedback to Dr Angus Armstrong, NIESR; and Prof David Bell & David Eiser, Scot-FES & University of Stirling.

Free movement of labour is also helpful from an economic stabilisation viewpoint (with respect to asymmetric shocks) as migration from high to low unemployment areas helps bring supply and demand for labour into line across the union. To maintain this single market, central government needs to retain oversight of common standards for goods to be sold, and for qualifications etc. to be recognised in the labour market. There is however no need for all labour and product market regulations to be centralised, for example different minimum wages and local pay bargaining arrangements in no way impede free movement, and so under the principle of maximal devolution this and many other aspects of labour and product market regulation could be devolved.

How does a system of Devo-max deal with macroeconomic shocks? It is helpful to classify these into symmetric and asymmetric shocks. Symmetric shocks include business cycle fluctuations which can be assumed to affect the whole of the UK equally; whilst asymmetric shocks include oil prices changes, differential property prices movements, or sectoral change that impact certain regions over others. Asymmetric shocks are a particular concern because it is when they are realised that monetary policy is, at least temporarily, inappropriate for the region concerned.

Under Devo-max, and given a negative asymmetric shock that reduces tax revenues, the Scottish Government could try to raise tax rates to recover the lost revenues. This is pro-cyclical policy that is particularly destabilising if the tax base is highly mobile: a fall in the tax base, compensated by a rise in rates, leads to a further fall in the tax base as it migrates. A better design feature for any system that tries to implement the Maximal level of Devolution consistent with macroeconomic stability would be to fund UK Government spending from the most mobile tax bases across the UK (top rates of income tax, corporation tax, capital gains tax), and use less mobile tax bases as the funding stream for local government.

Given falls (rises) in Scottish Government revenues under negative (positive) asymmetric shocks, how should public spending be stabilised under Maximal Devolution? There are two options: the Scottish Government could borrow in (repay) international capital markets to stabilise its revenue spending; or the Scottish Government could receive a positive (negative) grant from the UK Government. This second option is much the preferred option since it massively simplifies the mandate of the Bank of England with respect to Scottish Government debt.

The level of the grant should be formulaic and countercyclical. It could be based on an assessment of demographics, deprivation, and unemployment in Scotland relative to the UK average. An asymmetric shock would change these indicators relative to their UK averages, and so lead to a fiscal transfer funded from taxes reserved to the UK level. Alternatively, it could be done based on some standard rate of taxation levied upon the non-reserved tax base, likely (and certainly initially) the English system, but maybe the average system if a more symmetrically federal structure is eventually adopted.

Under such a system, the Bank of England would have no responsibility for Scottish Government debt at all, similar to local authority debt. Scottish Government debt would come with no security over public assets in Scotland and the Scottish government could freely default. This treatment of Scottish Government debt is consistent with the treatment of, for example, US State debt: the US Government cannot default on its debt so long as the US Federal Reserve is willing to buy it; but US States can and do default. This possibility of default mitigates against moral hazard effects: Scotland will not alter its behaviour as a result of bail-out expectations from the rest of the UK. The comparison of Scotland to a US State is apt in size terms too: Scotland's size relative to the UK as a whole is similar to Texas or New York State in comparison to the USA.

This countercyclical grant would also aid the system's response to symmetric shocks since it would allow countercyclical borrowing for revenue spending in recessions, to be conducted at the UK level, where borrowing is cheapest. The devolved Scottish Government has no need to borrow for stabilisation – its borrowing should be for local public investment. Such borrowing is much less of a concern from a stabilisation perspective since the need for it is not greatest at the point when government solvency is in doubt. To ensure the stability of devolved government finances in response to symmetric shocks this grant should vary in absolute value over the business cycle i.e. these distributions should be negatively correlated with business cycle. Public spending on devolved matters (e.g. health and education) should not fall in transitory business cycle recessions, so the level (even if all regions impacted symmetrically) of this grant should rise in a similar way to falls in devolved tax revenues (given some standard taxes and tax rates).

Under Maximal Devolution therefore, the Scottish Government should be funded from devolved taxes, which are any taxes it chooses to levy, plus a countercyclical grant from the UK Government which has been designed to complement macroeconomic stability. UK Government expenditure, including this grant, is funded from the most mobile of taxes, leaving relatively immobile tax bases (income tax on low and middle incomes, national insurance, land taxes, and taxes on natural resources) to be taxed at the devolved level. Scotland should also have the power to borrow. To provide the maximum level of stabilisation from UK Government spending, UK Government expenditures should be regionally balanced. It is not necessary to equalise the “expenditure for a region” and the “expenditure in a region” for every spending line, these should approximately equal when taken as an aggregate.

What can be devolved?

Everything else! Examples from around the world show local control over a great variety of policy areas and therefore a system of “Maximal Devolution” would have these also devolved to Scotland. Relative to the status-quo, a more comprehensive system of devolution could have prevented some problems and inconsistencies relating to Free Personal Care and Attendance Allowance; Council Tax Benefit and the Council Tax freeze; the legality or otherwise of Scottish Government aid for Bedroom Tax/Spare Room Subsidy payments; Barnett Consequentials on higher education spending and tuition fees in England. Many areas that some people think are infeasible to devolve can in fact be devolved, for example see Appendix B of the full version of this Submission for a discussion of the devolution of the renewable energy subsidy regime.

Given its importance for the stability in the level of financial resources available to the public sector in Scotland, is feasible to devolve the tax revenues from North Sea oil? When including oil revenues Scotland, averaged over recent periods, funds its own higher spending through higher tax income. If oil revenues are included in a devolved settlement then the expected value of Scotland's public finances can remain relatively stable over the transition to Maximal Devolution.

North Sea oil revenues are not a mobile tax base, since tax liability is tied to output from particular fields. It therefore fits with the principles outlined previously. What about its stability properties? The volatility and expected decline profile of these revenues means that the Scottish Government has the incentive to use them to fund public investment rather than revenue spending, with borrowing used to provide smoothing. High (low) oil prices are a negative (positive) shock to the rest of the UK economy.

But if the Scottish Government is using borrowing to smooth oil revenues, then the impact of high and low prices is not dissimilar on the Scottish economy: public spending should not vary with the oil price; oil price changes have the same impact upon the wider non-oil economy as in the rest of the UK; and private demand changes in the Scottish economy from oil price changes are likely low: the marginal worker in the North Sea is highly mobile and not necessarily from or based in Scotland at all; and oil profits are distributed to the whole of the UK and worldwide.

So long as oil revenues are used for public investment and smoothed using borrowing, the devolution of oil revenues is not a major issue for macroeconomic stability.

Conclusion

Under Maximal Devolution the Scottish Government would be the political focal point of Scotland with control over everything other than defence, foreign affairs, and the single currency/free trade area. It would raise its own taxes from immobile tax bases, including North Sea Oil, and it would participate in a macroeconomic stabilisation scheme that implemented fiscal transfers in response to economic shocks. Such a system would solve the problem that has been highlighted by the Eurozone crisis.

9. Devolution and Welfare

Nicola McEwen

This chapter outlines some of the issues that should be considered within the Smith Commission and the intergovernmental process which will follow it when debating whether, how and how far to devolve welfare. I outline different models of welfare devolution and their implications, and consider specific options in relation to Attendance Allowance and Housing Benefit, the two areas originally proposed by Labour and the Conservatives in their devolution proposals. The chapter concludes by underlining the importance of determining the form, the bureaucracy and the financing of welfare devolution, and the need to take these into account before legislative proposals are introduced.

Models of Welfare Devolution

In the context of this debate, ‘welfare’ implies social security. The Scotland Act (1998) specifically reserved to the Westminster parliament control over social security, including pensions, national insurance, benefits and other cash transfers to individuals ‘for social security purposes’. What does the devolution of social security powers mean in practice? There are a variety of models included within the proposals submitted to the Smith Commission by the political parties, dependent upon where legislation is made, where policies are designed and delivered, and how they are financed.

Four factors should be borne in mind:

(i) We should distinguish between administrative responsibility and legislative devolution.

The Liberal Democrats, for example, envisaged that the Scottish government would administer and deliver some DWP programmes. The government may then be able to influence how programmes are accessed, the culture of delivery, and perhaps tailor programmes to suit local geographic needs. Labour’s proposals for devolving the work programme may also fall into this category. Likewise, the flexibility supported by the Conservatives would allow the Scottish government, subject to the approval of the Scottish parliament, to dedicate a proportion of its budget to increasing the level of benefits which Scottish claimants can access. However, in these cases, the power to design the social security system or determine which benefits should be offered, to whom, and under what conditions, and any other aspect which defines the scope and nature of the policy, would rest with the UK government and the UK parliament. In these cases, legislative devolution is not on offer.

(ii) Some forms of legislative devolution may also imply significant autonomy constraints.

Social security is formally devolved in Northern Ireland, but in practice it remains part of the integrated UK system and social security law and policy in Northern Ireland conforms closely to the system designed for the rest of the UK. The long-held objective of maintaining ‘parity’ in the rates of contributions and benefit payments across the UK was reaffirmed in the 1998 Northern Ireland Act. This restrictive form of devolution can, with intergovernmental agreement, accommodate some relatively minor differences, for example, regarding residence qualifications or designating who in the household should receive benefits, but it severely limits the capacity to redesign social security policy in more fundamental ways, or to prevent UK-led changes.

The refusal of the Northern Ireland Assembly to pass complementary legislation which would fully implement the UK government's welfare reforms has, to date, led the Treasury to impose fines of £114 million (effectively deductions from the block grant), which is the Treasury's estimate of what would have been saved had welfare reforms been fully implemented.⁸

(iii) Full legislative power may not provide the scope to change the benefits system in significant ways if the bureaucracy for delivering devolved social security benefits was shared with the DWP.

Most benefits applied for by Scots are processed by DWP offices based in Scotland, which also provide this service to parts of England. However, the system remains deeply integrated. Corporate functions and IT systems are managed centrally. Service delivery is dependent upon an integrated payment and accounting system run by the UK Department for Works and Pensions. DWP have indicated that the new IT system designed for Universal Credit has the capacity to accommodate modest regional differences, which may enable divergence in housing benefit north of the border. The systems underpinning other benefits are older and have much less flexibility. A shared delivery system, e.g. for disability benefits, would therefore struggle to accommodate distinctive policy programmes for social security north and south of the border. Sharing bureaucracy may mean that devolved benefits would have to keep step with ongoing and future changes in UK social security.

Meaningful devolution implies the capacity to design and shape social security policy autonomously, including to determine the nature and scope of programmes and entitlements. This may necessitate a separate social security bureaucracy in Scotland, accountable to the Scottish government and parliament. The establishment of Revenue Scotland provides a model, but establishing a separate Scottish welfare bureaucracy would carry significant costs over and above the costs of the benefits themselves, with the likelihood that these would have to be carried by the Scottish government.

(iv) The scope for policy distinctiveness also depends upon the system of financing welfare devolution.

Under the current arrangements, social security is financed under Annually Managed Expenditure (AME), which means that the Treasury covers the actual costs incurred in meeting social security demand. Welfare devolution in Northern Ireland also operates on this basis, hence the assumption that the Northern Ireland Executive will implement any changes in UK regulations designed to make efficiency gains (or, as currently, face the financial penalty of refusing to do so). Even without policy divergence, the benefits cap – a cap in Annually Managed Expenditure - announced in the budget in March imposes strict spending limits on a broad range of welfare benefits wherever they are delivered in the UK.

An alternative way to finance welfare devolution in Scotland would be to include it within Departmental Expenditure Limits, with changes subject to the Barnett formula. In this case, it would be important not to follow the precedent set by the Social Fund and Council Tax Benefit; when these were abolished and responsibility passed to the devolved administrations, the block grant was supplemented to cover the programme costs minus a 10% cut. The challenge would be to determine the basis on which to calculate the initial block grant adjustment, and how to do so in each subsequent year, as the normal DEL/Barnett rules do not apply to most welfare benefits. The protracted disagreements and prolonged uncertainty over how to adjust the block grant in light of the tax powers introduced in the Scotland Act 2012 illustrate the difficulties that can arise. Moreover, there would be considerable risks in using this method to finance those benefits, like Housing Benefit or Job Seekers Allowance, whose costs depend very much upon the state of the economy and are very difficult to forecast.

Housing Benefit and Attendance Allowance

The two key benefits identified by the UK parties in their original submissions as suitable for devolution were Attendance Allowance and Housing Benefit. Devolution of these programmes offers clear opportunities to integrate hitherto reserved benefits with social care and social housing. But the form, delivery and financing of devolution in each case requires closer examination.

Attendance Allowance is a benefit paid to those of state pension age who need help with their personal care because of their disability. Processed in DWP centres in Preston and Blackpool, it amounted to £489m in 2012-13 - around 3% of Scotland's welfare spend. If Attendance Allowance is devolved, it would logically follow that the closely related care component of Disability Living Allowance/Personal Independence Payments for pensioners should be devolved too. The most feasible form of devolution would see the Scottish government opting out of the UK-wide scheme of Attendance Allowance, receiving compensation in the form of a supplement to the block grant, subject to agreement on how it should be adjusted. The Scottish government would then be free, in principle, to redirect resources to its own programme of delivering free personal care, which serves a broadly similar purpose at a similar cost. Although in the longer term, this should generate cost savings, in the short term it may be politically difficult to make significant changes, if to do so would imply withdrawing entitlement from those who currently receive both the cash benefit and the social service.

Housing Benefit carries a much heavier price tag, amounting to £1,789 million in 2012-13 - around 9% of welfare spend in Scotland. Housing Benefit policy has undergone significant changes in recent years intended to curtail entitlement and cap or cut expenditure. Housing Benefit costs in Scotland are lower than the UK average because of lower rents, but if the block grant adjustment was calculated on the basis of Scottish costs after welfare reforms (as opposed to the UK average), it would limit the capacity of the Scottish government to reverse these cuts.

There are two further problems with devolving Housing Benefit:

(i) Housing Benefit is one of six working-age benefits/tax credits to be merged into the Universal Credit and so is set to be abolished as a stand-alone benefit. It may be technically possible to disentangle Housing Benefit from the rest of Universal Credit or to accommodate modest differences within Universal Credit in Scotland, but this may constrain the scope for change and would require ongoing intergovernmental collaboration to manage the interdependencies. A further complication is that Housing Benefit is often a passported benefit; many people are entitled to housing benefit because of their entitlement to other income-related benefits, like income support, income-based Jobseekers Allowance or pensions and child tax credits. Devolving housing benefit alone would not give the Scottish Parliament an opportunity to determine entitlements to these other benefits. An alternative may be to devolve all elements within Universal Credit: Jobseeker's Allowance, Working Tax Credit, Child Tax Credit, Employment and Support Allowance and Income Support, as well as Housing Benefit. If this much more extensive form of welfare devolution is given serious consideration, the form, forecasting and financing of these benefits has to be clarified.

(ii) Housing Benefit and the other Universal Credit benefits are cyclical. They fluctuate according to the state of the economy and are very difficult to forecast. Devolution could expose the Scottish government to significant financial risk if the funding formula did not accommodate these cyclical effects.

Furthermore, a form of devolution which entails a transfer of responsibility without the power to set the parameters, conditions, and eligibility criteria housing benefit and other social security benefits would significantly heighten the Scottish parliament's welfare burden without giving MSPs much opportunity to redevelop policy in a way they may deem more suited to Scottish needs.

Determining the form of welfare devolution, the system for delivering any devolved benefits, and the means by which these would be financed is fundamental to the nature and scope of devolution. Such considerations determine how much power the Scottish Parliament would have to shape any new social security policies, as well as its capacity to deliver for those in need. As such, they should be a central part of the discussion about whether to devolve welfare powers and policies. Such discussion should not be deferred until after political agreement on the headline devolution measures has been reached.

10. What new powers does Scotland need to improve social care?

Kirstein Rummery

Like the rest of the UK, Scotland faces the issue of how to provide services and support for an ageing population, and how to improve independence and social inclusion for disabled people. However, it also faces more of a demographic ‘timebomb’ than the rest of the UK, with a higher proportion of older people needing health and social care services earlier (due to poverty and health inequalities over the life course), and geographical challenges that make the provision of services challenging, particularly in rural areas. Scotland also has a high level of youth unemployment and net emigration, which means there are fewer numbers of working-age people contributing to the tax base which pays for services.

Health and social care are already devolved. However, Scotland has faced constraints in how easily it can tackle the health inequalities that lead to the increased demand for social care in later life due to the lack of control it has over revenue and welfare/social security benefits. It also has faced constraints due to the complexity of disability-related benefits and sometimes perverse incentives that prevent younger disabled people from engaging in paid work – such as benefit cut-off levels, inadequate support and training, and an inflexible approach to work/welfare policy that does not take into account the fluctuating needs of many disabled people. As in the rest of the UK, disabled people in Scotland are at a higher risk than the rest of the population of experiencing poverty and social exclusion. In addition there is insufficient support for unpaid carers. Scotland also faces problems providing services and support for people with complex health and social care needs due to the lack of integration and flexibility of services.

The devolution of control over welfare benefits, as a result of the Smith Commission and subsequent legislative processes, would offer Scotland significant opportunities to address these issues. Scotland could in many ways be a ‘policy laboratory’ in social care, testing solutions that if successful could be rolled out across the rest of the UK. The following suggestions draw on international comparative evidence of what works in social care in other developed welfare states, as well as an analysis of the state of social care in Scotland and the rest of the UK.

Combining social care and benefits

Scotland is moving towards a more systematic adoption of self-directed support⁹ (whereby service users control the level and type of support they receive, for example by employing a personal assistant instead of using home care services). Where these systems are properly funded and supported they can offer significant benefits for disabled people and their carers: they do not save money per se, but they enable more effective and efficient use of limited resources and achieve better outcomes for similar expenditure as traditional social care services.

‘Independence’ for disabled people does not mean doing everything for yourself with no reliance on services or support. It means having choice and control over the level and type of that support. However there is evidence that in order to achieve full control of the help and support they receive disabled people often have to ‘top up’ with their own income, help from carers and purchasing healthcare as well as social care services.¹⁰

9 www.selfdirectedsupportscotland.org.uk/

10 www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/257/25705.htm

Most working age disabled people want to work, but often face significant barriers in terms of accessing training and support, along with the poverty caused by the additional costs associated with their impairments. The lack of flexibility and joined-up policy in the work environment, the benefits system, transport, care costs, the inflexibility of health and social care systems, education, housing, leisure, and lack of formal and informal social networks to provide support all contribute to barriers faced by disabled people.¹¹

There are over 650,000 unpaid carers in Scotland and over 100,000 young carers. Providing a significant amount of care for a disabled or older person increases the carers' risk of poverty and ill health, and if carers are providing more support than they (and the person they are caring for) are comfortable with due to lack of affordable alternatives, it can be harmful to the wellbeing and independence of both the carer and the cared-for.¹²

Our research indicates that giving disabled and older people the choice and control over their care and support services frees unpaid carers up to provide the additional support at a level they are comfortable with. This improves relationships, reduces the risk of poverty and ill health for carers (because carers are freed to engage in paid work if there are reliable services supporting the person they care for) and for those needing services and support (because they can 'purchase' the elements of care that they are comfortable with, which enables them to be parents, carers, workers, grandparents and spouses themselves).¹³

Improving social care in Scotland is a significant challenge, and it needs a radical solution. Our research indicates that the following policy options offer improved outcomes in social care at reduced or the same cost as the present social care system and care-related welfare benefits system:

- Create a system of self-directed support that is universal and needs-led, and is not devolved to local authorities (ie disabled people would be able to access a system of self-directed support payments that was national and uniform across Scotland, with the same criteria and levels of benefit);
- Remove most of the funding for social care from local authorities and manage it at a central (Scotland-wide) level to enable this system to function;
- Retain the role of social workers as support workers, service brokers, advocates and advisors for disabled and older people (ie maintain current levels of staffing in professional social work and allied professions);
- Remove funding from the direct provision of services and enable a market for social care to develop where the disabled person is the purchaser/commissioner of services;
- Divert funding to user-led organisations at a local authority level to provide advocacy, peer support and advice on commissioning and purchasing social care support;
- Enable the integration of health, social care and other budgets to provide the full range of self-directed support.

11 www.disability.co.uk/sites/default/files/resources/Barriers%20to%20Employment.pdf

12 www.york.ac.uk/inst/spru/pubs/pdf/Hearts&Minds.pdf

13 www.scotland.gov.uk/Resource/0038/00388624.pdf; Rummery, K. and Fine, M. (2012), Care: A Critical Review of Theory, Policy and Practice. *Social Policy & Administration*, 46: 321–343. doi: 10.1111/j.1467-9515.2012.00845.x

Opportunities from Further Devolution

In order to make this system work more effectively alongside the tax and benefits systems, our research suggests that the following policy options could be explored within the Scottish context as measures of further devolution. Some research indicates they may offer improved efficiency and effectiveness and better outcomes than the present (complex) system of disability-and-caring related welfare benefits (including Disability Living Allowance or Personal Independence Payments, Attendance Allowance, Constant Attendance Allowances, Employment and Support Allowance, Carers Allowance, Income Support and Working Tax Credits.)¹⁴

For example, with devolved power over welfare benefits, Scotland could:

- Establish a Citizens Basic Income¹⁵: a subsistence level non means-tested benefit that is universally available as a social right. Proponents of a Citizen's Basic Income argue that it creates social cohesion, fairness, addresses poverty and inequality, and research indicates it would cost the same, or less, than the current benefits system to run. Citizens Basic Income removes the need for punitive 'welfare to work' programmes, and instead enables citizens to engage in paid work to supplement their income on the basis of their skills. The result could be an enabling effect for both disabled people and carers (and parents and other groups of society who would like to work but find engaging in full-time paid work difficult because of access, training, the costs of childcare and transport, skills and balancing caring and other commitments). Citizens Basic Income could also remove the need for the minimum wage, and enable the development of more creative enterprise activity, particularly in areas that would address youth unemployment, such as the creative industries, information technology and the provision of childcare and long-term care services: because there would not be the need to make a 'living wage' entrepreneurs could take risks, provide more effective and targeted services (eg enabling disabled people to co-produce and run their own social care enterprises). Citizens Basic Income could also partially addresses carer poverty, and given that the majority of carers who are unable to work due to caring commitments are women, would also help to address gender inequality.
- Create additional top-up benefits that are based on the costs of impairments to address disabled people's poverty (available across the life-course)¹⁶.
- Create a system of long-term care insurance financed by individuals, the state and employers to remove the need for means-testing and asset-based long-term care (ie selling houses to pay for social care)¹⁷.

It would take time for such radical changes to embed and the outcomes properly evaluated. However comparative research does indicate there is the potential for a fairer system of social care and welfare benefits if Scotland is given the power to develop and test radical policy solutions: if successful, these solutions could potentially transform social care in the rest of the UK.

14 www.scottishgreens.org.uk/wp-content/uploads/downloads/2014/08/Citizens-Income-Briefing-Note.pdf

15 www.citizensincome.org/resources/Newsletter20123.htm

16 www.jrf.org.uk/system/files/1859352375.pdf

17 www.kingsfund.org.uk/sites/files/kf/field/field_publication_summary/social-care-funding-paper-may13.pdf

Radical solutions for ‘wicked issues’?

The growing demand for social care caused by demographic change, net emigration, poverty and health inequalities over the life-course, and an ageing population, is a ‘wicked issue’ for Scotland: one that demands systematic and comprehensive overhaul of the current system to address. It is impossible to predict whether, if given additional powers, Scotland would adopt any or all of the solutions proposed above.

Scotland needs to be given the power to harness the creativity of its people to work together to provide solutions to the challenges of social care. It has much to learn comparatively from policy solutions working outside of the UK, that reflect the aspirations of the Government and people to be a fairer nation. Scotland’s ability to manage its welfare budget will be hampered if it does not also have control over revenue raising and spending - otherwise, the Scottish Government would be hostage to whatever grant settlement is decided by Westminster.

We would therefore advocate the devolution of all social security benefits through the Smith Commission process, including out-of-work benefits, to Scotland. We would also advocate the devolution of as much control over revenue raising and spending (or over any grant settlement to Scotland) to the Scottish Government.

11. Further Devolution and Energy Policy

Aileen McHarg

In its submission to the Smith Commission, the Scottish Government has called for a comprehensive devolution of energy policy to the Scottish Parliament. The Green Party also supports extensive energy devolution, although with some continued reservations to Westminster, while the Scottish Liberal Democrats argued before the referendum that energy powers should be shared between the UK and Scottish Governments, through partnership arrangements. Other groups, such as Reform Scotland, also support full devolution of energy policy competence. This chapter outlines the current role of the UK and Scottish Governments in energy policy, and assesses the advantages and disadvantages of strengthening energy devolution. There are several precedents for devolving energy powers to intermediate level governments, and the chapter concludes that there is a strong case for doing so in Scotland within the context of continued energy market integration.

Current Energy Policy Powers

The Scotland Act 1998 largely reserves energy policy to Westminster, including electricity regulation, oil and gas, coal, nuclear power, energy conservation and energy taxation. However, through express exceptions or by implication, the Scottish Parliament does have some energy policy powers, notably regarding the promotion of renewable energy, carbon capture and storage and energy efficiency, and the elimination of fuel poverty, as well as in related areas such as environmental regulation and climate change. The Scottish Government also has some devolved executive powers, most importantly in relation to energy planning and – until the Renewables Obligation closes to new applications in 2017 – financial support for renewable energy.

Although these powers give the Scottish Parliament relatively little room for legislative initiative, the Scottish Government has nevertheless managed to develop a distinctive energy policy, including, for instance very ambitious targets for the expansion of renewable energy and the rejection of new nuclear power stations. It has been said that, by pushing at the boundaries of its powers, the Scottish Government has acquired the reputation of having an energy policy competence. Energy is clearly an important policy area for the current SNP administration, and the other Scottish parties seem to share the view that the Scottish Government should have its own energy policy, although naturally they differ on its content.

Precedents for Further Energy Policy Devolution

In contrast to Scotland, energy policy is almost entirely devolved in Northern Ireland (NI), the only exceptions being nuclear energy and energy taxation. This can be partially explained in historical and functional terms. Energy policy was devolved to the old NI Parliament and the NI energy systems therefore developed separately from those in Great Britain (GB). Until 2002, the NI electricity system was entirely separate physically from the rest of the UK, and there is still a separate (Irish) wholesale electricity market. The natural gas supply market is much less developed than in GB, and also regulated separately. There is no oil and gas production, while coal production ceased in 1970.

However, these historical and functional differences should not be exaggerated. For instance, the Scottish electricity industry was only fully integrated into the GB market in 2005, and there remain some regulatory differences. Conversely, despite devolution, NI renewable generators are integrated into the UK-wide financial support regimes. Devolution of energy policy to NI also enables the Northern Ireland Executive to take a different policy line on issues where there is no obvious historical or functional difference. For instance, it has been able to prevent unconventional oil and gas exploration (fracking), whereas the devolved Scottish institutions have had no say on the allocation of fracking licences nor on controversial proposed changes to underground trespass laws to facilitate horizontal drilling.

Paradoxically, NI enjoys extensive energy policy competence despite the relatively low importance of energy as a policy issue in the Province, whereas Scotland, with its extensive comparative advantage in both fossil fuels and renewable energy, has much weaker powers.

Further afield, there are precedents in some federal systems, such as the USA, Canada and Australia, for state-level governments having extensive control over energy policy. Again, this is partially attributable to the fact that energy systems and energy production initially developed on a relatively local scale. As energy networks and markets have expanded, local control has often been overlain by federal powers, for instance to facilitate inter-state trade, or to ensure compliance with international environmental obligations. Nevertheless, state-level governments have been able to develop their energy resources and energy systems to reflect local needs and political priorities, and also to ensure local benefit from natural resources. For example, the hydrocarbon-rich Canadian province of Alberta has its own Heritage Fund, similar to the oil fund that the Scottish Government proposes to establish for Scotland.

Arguments for Further Energy Policy Devolution

The fundamental argument for extending energy devolution in Scotland is that the energy policy context in Scotland differs significantly from the rest of the UK, and may therefore demand different policy and regulatory responses. As noted, Scotland enjoys abundant energy resources, which makes the energy industries a comparatively more important part of the Scottish economy than they are elsewhere in the UK. There are also substantial differences in geography, climate and housing stock, and the legacy of historically separate energy supply industries, which create different and more challenging market conditions in Scotland, and lead to particularly serious problems of fuel poverty. Finally, there are important political differences, such as more demanding climate change targets, a greater emphasis on community-owned energy, and opposition to nuclear energy.

Arguably, the current distribution of energy policy competences does not always ensure that these differing Scottish interests and priorities are sufficiently taken into account. In particular, the complexity of the current division of competences often leaves the achievement of Scottish policy goals dependent on the goodwill of UK decision-makers. For instance, the Scottish Government has long argued that the rules on electricity transmission pricing are a barrier to the achievement of Scottish renewable energy targets. However, it has only partially succeeded in persuading the energy regulator, Ofgem, to change its approach. Similarly, the Scottish Government's HEEPS scheme (Home Energy Efficiency Programmes for Scotland) was recently jeopardised by a unilateral UK Government decision to reform the Energy Company Obligation (the regulatory mechanism requiring energy companies to invest in energy efficiency). When the devolved institutions do or do not have a say in energy policy making sometimes seems arbitrary.

For instance, as regards the proposed changes to underground trespass laws, the Scottish Parliament's consent is required under the Sewel Convention insofar as the new access rights relate to geothermal energy (which is devolved), but not as they apply to oil and gas exploration (which is reserved). This can also be problematic for the UK government, as it means that the devolved institutions have certain veto powers over UK or GB-wide policy making, but these operate in a somewhat haphazard manner.

Arguments Against Further Energy Policy Devolution

It is clear that, were additional energy powers to be devolved, the Scottish Government would still want to participate in GB-wide electricity and gas markets. This means that, to a large extent, the practical significance of having more legal competence would be to enable the devolved institutions to exercise greater formal influence in GB- or UK-wide decision-making, rather than leading to extensive policy divergence.

One objection might be that this would hamper timely and effective energy decision-making. However, it is clear that the UK and Scottish Governments can reach agreement on energy policy where it is mutually beneficial to do so. For example, Holyrood consented to the replacement of the Renewables Obligation by the Contracts for Difference regime, even though this deprived the Scottish Ministers of powers to set different funding levels for Scottish renewables.

A related objection concerns the transparency of joint decision-making and the arrangements for concurrent accountability of GB regulators, such as Ofgem and the new Oil and Gas Authority, to both the Westminster and Holyrood Parliaments. This is something that would have to be addressed, but it is unlikely to pose insurmountable problems.

Continued market integration would clearly limit the scope for independent policy-making by the Scottish institutions. However, experience in the UK and elsewhere suggests that some regulatory divergence can be tolerated within a single market. The Scottish Government's Expert Commission on Energy Regulation concluded that there would be greatest scope for policy innovation in relation to the retail energy markets and energy distribution, and it suggested a number of areas in which policy could be more effectively tailored to Scottish needs.

The prospect of policy change in Scotland in the event of greater devolution raises the spectre of regulatory uncertainty, which may be a disincentive to much-needed investment in energy infrastructure. However, this is a much less serious issue in the context of further devolution rather than independence, since the mere fact of transferring legislative competence from Westminster to Holyrood does not by itself produce any disruption in market and regulatory arrangements. Similarly, further devolution would not raise the same uncertainties as independence regarding financial support for Scottish renewables, as there would be no reason in principle why Scottish producers could not continue to participate in UK-wide low carbon energy support schemes.

A further limit on the practical significance of energy policy devolution is the role of European Union energy law. Like the UK Government, the Scottish Government would have to ensure that its policy measures were compatible with EU law. However, it is clear that there is some scope for internal differentiation within Member States in the way EU law is implemented.¹⁸ Moreover, the constraining effect of EU law would help mitigate the risks of regulatory uncertainty and regulatory deadlock.

18 Horvath v Secretary of State for the Environment, Food and Rural Affairs [2009] ECR I-6355.

Conclusion

There is a strong case for greater devolution of energy policy competences, given the different policy context in Scotland, the complex nature of the current distribution of powers, and the precedent of energy policy devolution to NI. However, given the near certainty of continued market integration, and therefore continued policy convergence, there may be a case for some form of shared competence or partnership arrangement in this area, rather than a grant of exclusive competence. This may emerge from the Smith Commission process.

12. The scope for a differential immigration policy for Scotland

David McCollum

The Scottish and British Governments hold very different stances towards immigration. The Scottish Government wishes to attract so-called 'New Scots' to Scotland whereas policy and rhetoric at the UK level is very much orientated towards restricting immigration. With the exception of the short lived Fresh Talent initiative, which permitted some international students to remain in Scotland for up to two years after graduation, the regulations governing immigration to Scotland have historically been the same as those in the UK as a whole. Scotland's Future, the Scottish Government's blueprint for an independent Scotland, set out proposals for a less restrictive immigration policy than Scotland is currently subject to from Westminster, claiming that: 'one of the major gains from independence for Scotland will be responsibility for our own immigration policy...Scotland has a different need for immigration than other parts of the UK... [and] the current UK immigration system has not supported Scotland's immigration priorities'. Scotland accounts for only 8 per cent of the UK population: therefore its circumstances are likely to play only a small part in the processes by which immigration policy is determined at UK level. It was therefore widely assumed that with independence Scotland, at least under an SNP-led government, would seek to enact a less restrictive set of immigration policies than those of the current Westminster government. These goals were credible given that Scotland has had different experiences of and attitudes towards immigration than other parts of the UK; particularly southern England, the tail which arguably wags the dog in terms of UK immigration policy.

The No vote in the independence referendum means that the Scottish Government will evidently not be able to enact its proposals for immigration policy as laid out in Scotland's Future. The issue of immigration did not feature heavily in the debates that surrounded the independence referendum, nor has it been a prominent feature of discussions concerning the devolution of additional powers from Westminster to Holyrood that have followed the No vote, though it may well figure in contributions to the Smith Commission from universities and business groups. This suggests that a differential immigration policy may not be something that the public or policymakers in Scotland see as a priority. However immigration measures better orientated towards Scottish needs are certainly feasible in practical, and to a lesser extent political, terms.

Options for devolving partial control over immigration

Although immigration is generally considered to be a part of relations negotiated between independent countries, and as such is almost exclusively kept under central government control, under some federal systems, elements of governance relating to immigration have been entrusted to decision makers in devolved level governments. This allows devolved institutions to formulate immigration policies that are directed towards their particular economic, demographic and sociocultural needs or preferences. The three models of federalism in immigration policy set out by the legal scholar Peter Spiro (2001) provide a useful categorization in this respect. The first is the conventional situation in which central government retains full responsibility for immigration decision making. In the second model, central government retains primary control over immigration policy, but allows devolved authorities some discretion to account for their particular needs.

This is the model of immigration policy under which Scotland currently operates since some (limited) Scotland-specific measures exist within broader UK-wide immigration policy, such as the 'Scotland List' within the UK Government's Shortage Occupation List. The final model involves central government ceding significant control over immigration to devolved governments. In Scotland's case this could take the form of a modified Points Based System (PBS), akin to the regionalized Canadian and Australian immigration systems, as advocated by the economists Richard Wright and Irene Mosca (2009, 59), who noted:

'it is somewhat surprising that the UK Government praises the Canadian and Australian immigration systems yet at the same times ignores the fact that regionality is a cornerstone of both. Scottish specificity could easily be built in through bonus points or lower thresholds for those who agree to live, work and stay in Scotland for a minimum period of time. Or the responsibility for immigration could be transferred to the Scottish Government along the lines of the Canada-Quebec Accord.'

Devolved immigration policies work by allowing applicants with certain skills to face a lower immigration threshold if they agree to live, work and stay in a particular region for a minimum period of time. Professor Wright (2013) has argued that the current UK immigration system could be modified to include Scotland by allotting more points in the PBS to applicants who agree to initially live and work in Scotland. Immigrants selecting this option would be issued with a visa stating that they are only allowed to work in Scotland for the first few years after their entry into the UK, thus increasing their likelihood of remaining in Scotland over the longer term.

Does Scotland need a distinctive approach to immigration?

Whilst the examples from other national contexts suggest that Scotland could have a differential immigration policy to the rest of the UK, it is important to consider whether Scotland merits such measures. The arguments put forward by the Scottish Government relate to Scotland's distinctive historical and contemporary patterns of migration, which mean that Scotland 'needs' migrants to a greater degree than many other parts of Britain. Scotland has traditionally lost more people than it has gained from migration, meaning that its foreign-born population is smaller than the UK as a whole (7% and 13% respectively, 2011 Census). Despite having a relatively small migrant population, a modest rate of natural increase means that Scotland is much more reliant on immigration for demographic stability and growth than other parts of the UK. Scotland's population is also ageing more rapidly than the UK's, meaning that immigration may serve a particularly significant role in boosting the population of working age relative to retirees.

As well as immigration being more desirable for demographic reasons, there is an argument which contends that Scotland is relatively well suited, politically, to an immigration policy that seeks to attract and retain migrants. Attitudinal surveys indicate that the general public in Scotland is less hostile to immigration than is the case in other parts of Britain (aside from London). So whilst a case could be made that immigration benefits the UK generally, the public in Scotland may be more tolerant of policy efforts to attract migrants than is the case elsewhere. This is particularly true for high-skilled labour migration and for international students, two of the migrant groups that raise the fewest objections from members of the Scottish (and English and Welsh) publics. There is widespread public support for Holyrood rather than Westminster as the key decision-making body for immigration policy (60%) and asylum policy (58%) for Scotland (Blinder, 2014).

A caveat here is that whilst Scotland does appear to be relatively welcoming of immigration, surveys show that majorities still support reduced immigration. Concern about immigration could become stronger should the Scottish Government be successful in its efforts to increase levels of immigration to Scotland.

Another point in favour of Scotland having a differential immigration policy relates to the view that the needs and experiences the South East of England play a significant role in determining the form of UK-wide immigration policy. Restrictive immigration policies, as a consequence of a perceived 'overheating' of this region, may therefore have negative demographic and economic impacts for other parts of Britain, including Scotland. Finally in Scotland the share of students attending Scottish Higher Education Institutions (HEIs) who come from countries outside of the UK is higher than for Britain as a whole, and the higher education sector in Scotland is therefore especially sensitive to the restrictionist policies and rhetoric surrounding immigration at the UK level.

Conclusion

Whilst the UK Government has acknowledged that Scotland's population is ageing more quickly than other parts of Britain, it has expressed skepticism about Scotland's demographic and economic case for increased migration. It is generally agreed that migration adds to economic growth, but some studies have found adverse effects on wages at the lower end of the spectrum. Meanwhile, significant levels of immigration would be required to mitigate the problems of an ageing population in the longer term. Such consistently large inflows would be difficult to achieve and, if they were attained, would put pressure on some public services and may lead to an increase in hostility to immigration amongst the general public in Scotland.

However, the precedent of sub-national immigration policies elsewhere illustrates that independence is not essential for Scotland to have immigration policy measures better suited to its particular demographic and economic needs. Such moves are clearly possible in practical terms. Whether they are feasible in political terms is a different matter entirely since neither the Scottish Government nor Scottish public appears to see this as a priority issue in the ongoing discussions surrounding the further devolution of powers to Holyrood.

13. The Smith Commission, top-down politics and local government

Neil McGarvey

Local government has not and does not feature heavily in Scottish constitutional politics. It is not at the forefront of debates on changing the institutional configuration of Scotland's constitutional settlement. Indeed the incorporation of local government into some of the Smith Commission submissions from Scotland's political parties appear to be something of an afterthought and tangential to the thrust of the submissions. The future of Scotland's governing arrangements is discussed with little, if any, serious consideration given to any knock on implications for local government and democracy. Local government remains but a footnote in the Scottish constitutional debate.

The SNP suggests that 'enhanced devolution enables decisions to be taken closer to the people affected. A significant transfer of additional responsibilities to the Scottish Parliament will provide the opportunity to devolve these powers further to councils and communities' (Scottish Government 2014: 28). There are only three paragraphs on local government in the 34-page submission, and two were merely citing things that have already happened – the Christie Commission, empowering Islands communities and the Community Empowerment Bill. Given experience since 1999 there is little empirical evidence that the 'opportunity to devolve ... powers further to councils' is one likely to be taken up by those at the centre of Scottish politics in the near future.

In any case the first 15 years of devolution have provided little, if any, evidence that increased powers for the Scottish Parliament is associated with decentralization of power downwards to local councils. Indeed since 2007 councils have been hamstrung fiscally by the council tax freeze. Today only 18% of local government income is raised through local taxation (COSLA 2014). Devolution did not result in a revival of Scottish local democracy. It is highly unlikely Smith Commission proposals for further devolution will do so either. Indeed, the likely core of any new powers will relate to issues beyond the remit of local government – income taxation, welfare, additional borrowing powers and the like.

Scottish Labour (2014), like virtually all political parties enduring a period of opposition, have recently rediscovered the virtue of local government. The Scottish Labour's Devolution Commission refer to it as 'a continuing and valued part of our constitutional settlement' and makes reference to 'double devolution', 'empowering local government' and 'enhancing local democracy'. Reforms are promised (or at least not ruled out) in the fields of city-regions, finance, local taxation and economic development. An enhanced role for local authorities is envisaged in Department of Work & Pensions and Crown Estate affairs. However, there is much vagueness and little detail.

Scotland's minor parties all outline, to varying degrees, localist agendas. The Scottish Conservatives (2014: 2) suggest that 'the centralization from local to central government should be reversed and real devolution should be given to individuals with a greater role for civil society and local government'. They suggest the UK Coalition Government has decentralized power while the SNP Scottish Government has centralized it. The Green Party (2014) make perhaps the most 'localist' submission calling for a written constitution that entrenches local democracy in Scotland, as well as outlining proposals for utilizing new public participation mechanisms such as citizens juries. The Liberal Democrats (2014) make no direct reference to local government but do suggest, 'power should be dispersed further to communities and not hoarded either in Westminster or Holyrood'.

The politics of the Commission's creation and timetable unfortunately has resulted in little, if any, scope for local consultation and engagement. The rushed legislative timetable leaves opportunity for the consideration of proposals on the internal governance of Scotland. The whole process is predicated on creating a 'solution' that will satisfy the needs and requirements of how Scotland will relate to the UK. There is little sense that delivering additional powers for the Scottish Parliament will have the knock-on effect of resulting in more powers for Scottish local government.

COSLA (2014) suggest that 'Scotland has been on a 50 year journey in which the default position has been to take powers and accountability to the centre' and that 'Scotland has become the most centralized country in Europe'. This is an analysis of contemporary Scottish political history that is hard to disagree with. Local government remains in a weak constitutional position. Councils are creatures of statute. Their functions and purpose stem from Acts of Parliament. They can be added to, or taken away, according to the whim of those controlling the Scottish Parliament. The legal doctrine of 'ultra vires' – a Latin legal term that translates as 'within powers' – means councils which act outside ultra vires would be acting unlawfully beyond their powers. The constitutional and political weakness of local government is evidenced by consistent boundary restructuring, withdrawal of responsibilities, increasing financial dependence as well as an ongoing culture of centralization. With no constitutional protection or guaranteed responsibilities, Scottish local councils remain in a politically vulnerable position.

There has been a 'creeping centralization' post-devolution with policies such as the nationalisation of police, fire services, 'single' outcome agreements, and the freezing of council tax. Increased Scottish wide scrutiny, auditing, regulation, inspection, oversight, 'guidance' (and at times determination) of service standards and financial decision-making coupled with the austerity agenda has left little scope for genuine local government decision-making on local prioritization of services and expenditure. Any discretion in local authority budgeting is gradually being eroded. Retrenchment and cutbacks force councils to concentrate on achieving their statutory responsibilities, leave little scope for autonomous decision-making, and effectively strip local authorities of any governing role. Implementing statutory services is administering, not governing. The top-down governing culture results in most Scottish local authorities lacking initiative and capacity. There is an inclination to look outwards and upwards rather than inwards for innovation and ideas.

Scottish local government operates in a fragmented, complex and interconnected policy and service delivery environment with much emphasis on associational and joint arrangements. However, the perennial social problems such as inequalities, poverty, poor housing provision, poor education and health outcomes remain as prevalent as ever. The connection between excessive centralism and these poor outcomes has been made by the Commission on Strengthening Local Democracy (2014).

The direction of travel of all party proposals is that of enhancing the autonomous revenue generating and taxation powers of the Scottish Parliament. This is to be welcomed, for reasons of political and financial accountability. However, there appears to be a duality of thinking. Whilst parties campaign and deliberate on the extent of more powers over taxation and expenditure for the Scottish Parliament, the direction of travel on local government has been to weaken local capacity for autonomous decision-making. Council tax has effectively been transformed from a local to a national property taxation system. Whilst national politicians talk of creating a 'powerhouse parliament' there is little consideration of its impact on local authorities.

There is little sense in the ongoing debate that devolving authority and capacity to the Scottish Parliament will actually enhance the capacity for local autonomy. The Commission may wish to consider the not inconsiderable evidence that has been submitted to them that will reflect a Scottish consensus in favour of how the devolution of more tax and financial authority will enhance the power, effectiveness and political authority of the Scottish Parliament and ask why the same set of assumptions and conclusions could not be transplanted into thinking about Scottish local government and democracy? The logical connection is simply not made.

There is a very real danger that the Smith Commission timetable and process comes to be seen as reflective of conventional elitist-centrist politics in Scotland. It is top-down and to be contrasted with the bottom-up energy enthusiasm and surge in political participation created by the referendum campaign. This legacy is unlikely to be harnessed by the fast-track timetable and process involved in the Smith Commission. Whilst the language of localism is evident in party's submission, given the evidence of the recent past there must be some scepticism whether it would necessarily be followed through.

At a philosophical level, if enhanced taxation and fiscal decentralization is good for Scotland and the UK, why is it not good for Scottish local government? Councils can act as important counter-weights to excessive centralism in Scottish governance (Cairney and McGarvey 2013: 136), just as the Scottish Parliament does within the UK. Empowering the Scottish Parliament with the right and freedom to make informed choices about the public services Scotland wants, and how to fund them, appears to be the new settled will of the Scottish people. It may be idea novel though, that while Scotland's constitutional relationship with the rest of the UK is being considered, we might also reflect on the dynamics of Scottish governance at a local level and intergovernmental relations within Scotland.

14. Policy Capacity in the Scottish Government

Richard Parry

A new devolution settlement, originating from the Smith Commission process, will mean an addition to the powers and responsibilities of the Scottish Government. This chapter first looks at the development of policy capacity within the Scottish Government. It then considers the additional policy capacity which new powers may necessitate, and asks whether the Scottish Government has this technical capacity to accept these new responsibilities and carry them out well.

The Ease of Taking on New Devolved Tasks

This topic revolves around the question of the capacity of any political system to scale-up to new tasks. In 1999, the devolved system inherited (and was largely defined by) administrative devolution accumulated within the Scottish Office since 1885. This gave the Scottish Government significant capacity to take on its new tasks. The civil servants and the policy-making system were already there; they simply moved to a new channel of ministerial control. This stability and continuity has been reinforced by two more factors. Scotland's distinctive legal system was preserved by the Act of Union and (unlike in the abortive devolution proposals of 1979) was fully devolved in 1999, giving away a symbol-laden part of government; this has never been done for Wales and only after much difficulty for Northern Ireland. Secondly, the management of the Scottish Government's civil service is reserved; politically they are solely accountable to Scottish ministers, but administratively these ministers are in a similar position to the ministers of UK departments. They have much discretion over pay and appointments but their officials are part of a unified entity alongside Whitehall counterparts which, short of independence, facilitates the transfer of further functions. In addition, rules of UK government accounting impose technical constraints that limit the discretion of devolved ministers on matters like the funding of capital projects, write-offs of debt, and rules around public sector pensions. Even for the SNP, these have sometimes been politically convenient limitations.

The devolution settlement has not been static. There has been movement in responsibilities but the organisational implications of them have been handled flexibly and co-operatively. Notably in 2005 responsibility for rail infrastructure and franchising within Scotland were devolved, allowing Transport Scotland to become a more integrated agency. The creation of Land and Buildings Transaction Tax in 2015 has required the creation of a small new agency, Revenue Scotland. The establishment of a Scottish Rate of Income Tax (SRIT) from 2016 will require the demarcation of Scottish and non-Scottish taxpayers within the UK but it assumes common tax administration by HM Revenue and Customs (HMRC). As the annual implementation reports on the Scotland Act 2012 make clear, important precedents are being set for HMRC to work closely with the Scottish Government and report directly to the Scottish Parliament on the auditing of the SRIT.

In the civil service, grading and pay structures vary between departments and so there is always a level of complication when functions transfer. This is mitigated by a long history of transfers within which the position of individuals is safeguarded, reinforced now by EU rules on the transfer of undertakings. A common structure of civil service trade unions throughout Britain (though not Northern Ireland) is a further integrative factor.

In short, we have precedents for the accretion of functions to the Scottish Government. If the political will is present to make the transfer, a well-working system has every chance of securing seamless transition in which the interests of both producers and consumers are safeguarded.

Capacity Issues Raised by the Smith Agenda

In assessing the party proposals to the Smith Commission, we must distinguish two types of capacity: processing and policy-making. Despite its extensive powers, the Scottish Government is light on labour-intensive executive tasks, and the ones it has (like prisons, the courts and student support) were long ago hived-off into executive agencies. Its total staff numbers are only 40% of civil servants in Scotland (though this proportion is increasing after UK staff cuts). But within the UK there is potential for the contracting-out or sharing of services within or outside government. The continuing UK connection makes it possible to put in place agency and sharing arrangements that the UK government found difficult to contemplate in the scenario of independence, as set out in its Scotland Analysis work. On the policy-making side, analytical capacity would take a while to build up and Scotland's smaller scale and lack of think-tanks would be a problem. But again these considerations would have arisen much more pointedly in an independence situation. Within the Scottish Government, expertise on non-devolved areas of policy was greatly extended by work on the independence White Paper.

The key proposals before the Smith Commission which raise capacity issues fall into three categories:

Social benefits: We know more about the Department for Work and Pensions (DWP)'s administrative arrangements for these benefits in Scotland from the work of the Scottish Government's Expert Working Group on Welfare. Their first report explained the cross-border traffic in benefits administration: working-age and pension benefits to Scots are administered in Scotland in offices that also handle many claims for benefit recipients in England. But the two benefits identified by both Labour and Conservative for further devolution – Housing Benefit and Attendance Allowance – are different. Housing Benefit is already run by Scottish local authorities under central UK government rules. Although planned for incorporation into Universal Credit (UC), there is still time to take it out and devolve it, especially since the DWP conceded on 22 October 2014 that extending UC from its present piloting to full implementation was now only an aspiration without a timeline. Attendance Allowance is run from Preston and Blackpool and could presumably continue to be so under an agency arrangement or transferred to a new Scottish central office.

Taxation: Devolution of tax powers could proceed incrementally. Once there is some devolution of a tax, Scottish payers of it are identified, and the system recognizes different rates within it, shared HMRC administration is possible and desirable and might be extended to all the taxation proposals, including the Liberal Democrats' for Inheritance Tax and Capital Gains Tax.

Other functions: Labour wants a devolved Scottish Health and Safety Executive and employment tribunals. SNP and Green proposals would require a new policy apparatus to deal with matters like energy, broadcasting and employment policy. These would be small in number and might be partly supplied by a transfer of personnel from Whitehall in the way found in 1999. The Conservatives want a new Scottish Fiscal Commission, but this seems to be a Parliament-focused body like Audit Scotland.

Would a flexible structure of agency arrangements be possible, or would there need to be a fuller restructuring of the Scottish Government to fill these capacity gaps? In terms of the internal organization of the Scottish Government, ministers and officials are defined in relation to policy issues and not to a pre-existing administrative apparatus; since 2007, there has not even been a formal denomination of departments within government. Extended powers might put strain on this system, as their whole point is to be cognate with existing powers and secure new instruments to promote existing national objectives. Coalition government usually promotes the cause of a structure of separate ministries, and it would be interesting to see whether any non-SNP presence in government would seek to rebuild the silos the SNP government and its officials have removed.

Conclusion: Not a Problem Now

It is a mark of the progress and success of devolution in Scotland that few are suggesting that the Scottish Government lacks the capacity and quality necessary to take on more functions. The Scottish Government has fitted into UK norms and practice, including the legal basis of the public sector and the demarcation between central and local government. A common civil service removes barriers to the transfer of functions and staff. The Scottish variable rate of income tax from 2016 already requires new types of revenue collection that could be extended. Devolution of social benefits requires both processing and policy capacity, but from an administrative perspective at least, the first two in line are easier to accommodate: Housing Benefit is already run by local authorities, and Attendance Allowance is run centrally. In time, the expansion of the devolved system might elicit new styles of administration, but two models on offer win little traction in the Scottish political debate: Whitehall-style contracting-out of as many public functions as possible, and 'old Labour' delivery of services by public agencies with strong trade union influence on the pace of change and reform. By operating within UK norms but using them flexibly, the devolved system has almost by accident come up with a model well able to implement the Smith Commission proposals.

15. The Smith Commission: will greater powers come with greater democratic accountability?

Paul Cairney

The main focus of the Smith Commission has been to decide which powers should be devolved to the Scottish Parliament. In some cases, more devolution may go hand in hand with more democratic accountability - such as the big decisions on how to tax and on what services to spend. Yet, in most cases, there is a lack of institutional accountability. Most powers are held by the Scottish Government and devolved to, or shared with, a large number of governmental, non-governmental and quasi-non-governmental bodies. As a result, no one is quite sure who is responsible for decisions made in the name of the Scottish Parliament. This makes it almost impossible to identify a democratic system in which there are meaningful levels of accountability – either through the ballot box or in our day to day scrutiny of government policy. This chapter argues that the Smith Commission report and subsequent legislation should not just be a means to devolve greater powers. Rather, it should consider how to make sure that, with greater responsibility, comes greater democratic accountability.

Accountability in a further-devolved Scotland

Scotland has an apparently simple accountability process: power is concentrated in the hands of ministers, who are accountable to the public through Parliament. This simple picture of ministerial accountability is increasingly misleading. The Scottish Government plays an overarching role in policy making: it sets a broad strategy and invites a large number of public bodies to carry it out. Ministers devolve most day-to-day policy making to civil servants. Most policy is processed in ‘policy communities’, which bring together civil servants, interest groups, and representatives of an extensive public sector landscape, including local, health, police, fire service and other service-specific bodies. This generally takes place out of the public spotlight and often with minimal parliamentary involvement. Indeed, few non-specialists could describe how these bodies interact and where key decisions on Scottish policy are being made.

Further, the Scottish public sector landscape is changing. The Scottish Government has moved from the production of short-term targets to long-term outcomes measures which go beyond the five-year terms of elected office. It often encourages localism. It has, since 2007, produced a National Performance Framework and rejected the idea that it can, or should, micro-manage public sector bodies using performance measures combined with short-term targets. Instead, it encourages them to cooperate to produce long-term outcomes consistent with the Framework, through vehicles such as Community Planning Partnerships. Further, following its commitment to a ‘decisive shift to prevention’, it has begun to encourage reforms designed to harness greater community and service-user design of public services.

Most of these measures seem appropriate, particularly when they foster decision making by local actors with greater knowledge of local areas. Yet, they are also troubling, because it is increasingly difficult to know who is responsible for policy outcomes – and, therefore, who or what to hold to account. In the Scottish political system, the Scottish Government processes the vast majority of policy, the Scottish Parliament is generally peripheral to that day-to-day policy process, and the public has limited opportunities for direct influence.

This is important background which should inform the current debate, most of which focuses on more powers and neglects the need for more accountability. The Smith agenda gives us a chance to evaluate the devolution experience so far, and consider what might change if there is further devolution. As far as possible, we should focus on the Scottish political system as a whole, including the relationship between the Scottish Parliament, public participation, the Scottish Government, and a wide range of public sector bodies, most of which are unelected.

Will Devolution within Scotland Enhance or Weaken Accountability?

Consider, for example, if the system follows its current trajectory, towards a greater reliance on local governance. This development has great potential to undermine traditional forms of parliamentary scrutiny. The Scottish Parliament already lacks the ability to gather information independently – it tends to rely on bodies such as the Scottish Government to provide that information. It does not get enough information from the Scottish Government about what is going on locally. Scotland lacks the top-down performance management system that we associate with the UK Government, and a greater focus on long term outcomes removes an important and regular source of information on public sector performance. Local and health authorities also push back against calls for detailed information. More devolution to local authorities, as proposed by several of the parties involved in the Smith Commission, and the Commission on Strengthening Local Democracy, would exacerbate this tension between local and national accountability.

Local decision-making also has the potential to change the ‘subsystem’ landscape. Currently, most Scottish policy is processed by civil servants who consult regularly with pressure participants. Most ‘lobbying’ to the Scottish Government is done by (a) other parts or types of Government and (b) professional and interest groups. Civil servants rely on groups for information and advice, and they often form long-term, efficient and productive relationships based on trust and regular exchange. When policy is made at the Scottish level, those groups organise at the Scottish level. The Scottish Government is a key hub for policy relationships; it coordinates networks, referees disputes, and gathers information and advice at a central level. One consequence of devolving more power locally is that these groups must re-organise, to shift from lobbying one national government to 32 local governments. Such a shift would produce new winners and losers. The well-resourced professional groups can adapt their multi-level lobbying strategies, while the groups working on a small budget, only able to lobby the Scottish Government, will struggle.

Such developments may prompt discussions about three types of reform. The first relates to a greater need to develop local participatory capacity, to take on the functions performed less by these national organisations. For example, the ERS Scotland’s suggestion is that more local devolution could produce a more active local population. Even so, we still need to know more about how and why people organise. For example, local communities may organise in an ad hoc way to address major issues in their area as they arise; to engage in a small part of the policy process at a particular time. They do not have the resources to engage in a more meaningful way, compared to a Parliament and collection of established groups which maintain a constant presence and develop knowledge of the details of policies over time.

The second relates to governance reforms which focus primarily on the relationship between elected local authorities, a wide range of unelected public bodies, and service users. There is some potential to establish a form of legitimacy through local elections but, as things stand, local authorities are expected to work in partnership with unelected bodies – not hold them to account.

There is also some scope to develop a form of user-driven public service accountability, but separate from the electoral process and with an uncertain focus on how that process fits into the wider picture.

The third relates to parliamentary reform. So far, the Scottish Parliament has not responded significantly to governance trends and a shift to outcomes-focused policymaking. Its main role is to scrutinise draft Scottish Government legislation as it is introduced. Its committees devote two to three months per year to the scrutiny of the annual budget bill. In general, this scrutiny has a very narrow focus, with a limited emphasis on pre- or post-legislative scrutiny, and its value is unclear. It has the potential to change its role. It can shift its activities towards a focus on Scottish Government policy in broader terms, through the work of inquiries in general and its finance and audit functions in particular. However, its role will remain limited as long as it has a small permanent staff. The devolution of greater responsibilities to the Scottish Government, without a proportionate increase in Scottish Parliament research capacity, could simultaneously enhance and undermine the Scottish Parliament's powers.

Conclusion: a brief window of opportunity for political reform

The Smith Commission has provided a brief 'window of opportunity' to consider these issues of governance, participation and accountability – and how these problems may be exacerbated by the devolution of greater powers. We face the possibility of a Scottish system, in which we already struggle to hold policy makers to account, taking on more responsibilities without a proportionate increase in accountability measures. For example, the Scottish Parliament will have to scrutinize more activity with the same, limited, resources.

The Smith agenda should already prompt us to consider how powers would be used if they were devolved. This is not about the different policy decisions that each party would make with extra powers, which Smith has, appropriately, decided is outside of his remit. Rather, it is about how, for example, new tax and welfare powers interact with already-devolved powers over public services – such as when the devolution of relevant taxes and housing benefit can be linked to housing policy.

Similarly, it is difficult to consider the devolution of greater powers without considering how they will be used – and what effect more devolution would have on Scottish democracy. People already struggle to know who to hold to account in a relatively simple system in which there is a quite clear list of devolved powers and tax/ welfare powers stay with the UK. We should think more about how we can understand a further devolved system, in which powers are shared across levels and, for example, ministerial accountability to parliament may only scratch the surface of a complex accountability landscape. This aspect of the process may, in principle, appear to be beyond the Smith remit but, in practice, there is no way to separate the long-term constitutional question from the day-to-day democratic question.

16. 'We Have an Arrival Time, We Need a Destination': The Runaway Train of Constitutional Change

Stephen Tierney

The Smith Commission has sought to draw up the most significant programme of constitutional change for the UK since 1998 in a period of a few weeks, with its report published at the end of November. Such a process runs counter to both the due diligence that is surely needed before any decision is taken to restructure the UK tax (and possibly welfare) systems so radically and the due process which ought to accompany such a seminal constitutional development. I will argue that the principles of deliberative constitutional decision-making and popular democratic engagement which featured strongly in the recent independence referendum have little scope to feature in the current rush to change.

The referendum campaign was indeed a remarkable process of citizen empowerment. The turnout of 84.7% was the highest for any UK electoral event since the introduction of universal suffrage. But turnout is only part of the picture. The story we have heard time and again from voters and campaigners is that citizens felt greatly invigorated by the referendum and the role they had in making such a huge decision. The Smith Commission process, by contrast, bears all the hallmarks of a return to elite-led constitutional change, and one conducted at an extremely fast pace in response to the pre-referendum Vow of the leaders of the pro-union parties. The UK constitution that has evolved slowly over centuries now faces a potentially open-ended overhaul by means of a Solomon Grundy timetable.

The Need for Due Diligence

My first set of objections are less of principle and more of prudence. Due diligence surely demands a thorough process to assess the practicalities and implications of changes that pose very real challenges to the UK's economic and financial integrity. It is not enough to make policy decisions and then complete an assessment of how these can best be operationalised later; the operational difficulties which present themselves in a practical review of their feasibility are themselves crucial in informing policy in the first place. The devolution of extensive tax and welfare competences within such a highly integrated state requires to be tested for their impact both on Scotland and on the rest of the UK. Tax powers were extended to Scotland by way of the Scotland Act 2012 following a much more careful and detailed review. The Calman Commission met for a year and its proposals were extensively debated in both the Westminster and Holyrood parliaments. Even then, the most important tax powers enacted in 2012 (which will in all likelihood pale in insignificance in light of the Smith recommendations) will not be in place until 2016.

The Smith timetable is also odd given that we are heading towards a UK general election. Indeed the plan is to put the Smith proposals on hold after initial agreement is reached, with legislative implementation to follow the election. But surely it makes sense to wait until the election is over before even the decisions of principle are reached. The Smith Commission is of course the result of the political commitment made in The Vow, and for political reasons the parties feel the need to move fast. But this does not seem to be a prudent or a principled way to make such huge decisions. The General Election provides an entirely credible reason to set deliberation back until next year.

By any measure it is better to do things correctly than to do them quickly. Instead we will have a hastily produced policy decision made by party bartering and the subsequent legislative process will serve merely to implement rather than fully deliberate on the wisdom of the proposed reforms.

The Need for Due Process

As a point of democratic principle fundamental constitutional change should be open, inclusive and deliberative if the people of Scotland, and just as importantly the people of the rest of the UK, are to consider it legitimate. This is no small matter. Regardless of how popular the changes prove to be or how well they work in practice, the health of democracy depends as much, if not more, upon the propriety and legitimacy of the process by which they are effected.

The bigger picture is of course the UK constitution as a whole. The Smith Commission is concerned only with additional powers for the Scottish Parliament. But is it feasible to address this issue alone without also considering the knock-on consequences for the entire country? We were told that further devolution could not be an option on the referendum ballot paper because it was a UK-wide issue, and yet here we are. Already the West Lothian Question – or English votes for English Laws - has re-appeared as a counterpoint to more powers for Scotland. Should decisions be taken on radical tax powers for Scotland without advance notice of whether and if so how these powers may lead to a significant loss of influence for Scotland at Westminster? We also don't know if this process might lead to a strong campaign for an English Parliament within the UK system, further devolution for Wales and Northern Ireland, a re-worked system of intergovernmental relations, potential issues of compatibility with European Union law (something which Smith says it will address), and even moves to some kind of quasi-federal system, possibly involving a realignment of the House of Lords as a chamber of the nations and regions of the UK, a point raised by Ed Miliband in his speech to the Labour Party conference in September 2014. Scots should know whether the price of more powers will be a radically new constitutional structure within which the position of Scotland is in some ways marginalised. Instead, the Smith Commission in its media statement of 22 October, its last before it goes into lockdown to produce its final proposals, asserts both that its proposals should '[n]ot be conditional on the conclusion of other political negotiations elsewhere in the UK', and '[n]ot cause detriment to the UK as a whole nor (sic) to any of its constituent parts'. There is simply no guarantee that such a unilateral process will not have detrimental consequences for the UK as a whole or its constituent parts, most notably Scotland itself.

Given the importance of the issues at stake, what then of the democratic credibility of the process? Does the Smith Commission really offer scope for proper deliberation at either elite or popular levels? Deliberative democracy remains a recent and developing turn in political theory but if we are to try to identify a principle that unites deliberative theorists across a very wide spectrum of differing approaches it is that decision-making is best made in an open and reflective manner, where participants listen as well as speak, and in doing so are amenable to changing their positions.

It is not impossible for the Smith Commission to conduct itself in such a way but the fact that its membership is open only to political parties and the limited time it has been set to reach an outcome makes reflexive deliberation very difficult. Indeed, when we see the proposals submitted to Smith they are largely the well-established positions of the political parties and not the result of any independent or cross party review. There will of course be give and take in a process of inter-party bartering, but is this the type of democratic deliberation to which post-referendum Scotland aspires?

Conclusion: a need for restraint

All of this suggests the need for restraint; for the two governments to set up a much more inclusive and wider-ranging review over a much longer period of time which can be conducted in a more independent way, relatively free from party political horse-trading. Such a process would be able to take the views of many people across civil society as well as assess the interests which are likely to be affected by the devolution of extensive tax and welfare powers; it would also consider the full implications of such changes for the UK as a whole.

In light of this recent experience why not see the referendum as the first step in a new endorsement of popular politics? The post-referendum environment offers the chance to re-engage with a public which is better educated about, engaged with and enthused by constitutional politics than ever before. There have been many experiments in popular deliberation across the world in recent years which have served to give people a meaningful say both in framing major constitutional issues and in making decisions upon these issues directly. To step back and explore such avenues would be no retreat from the democratic will of the people; on the contrary, such an engagement would help fulfil the democratic promise of the referendum.

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Appendices to Maximal Devolution

Appendix A – A Specific Example Proposal Outline

UK Government expenditures: pension payments, defence spending, research councils, spending on domestic departments related to foreign affairs, spending on central government functions e.g. BoE & ONS, UK government debt repayments, and grants to devolved administrations.

UK Government tax revenues: VAT (since rate must be centralised by EU law), Income Tax on the highest incomes, Capital Gains Tax, Corporation Tax, and Government borrowing

All other taxes devolved: Taxation of natural resource rents, all land taxes, Income Tax on the bulk of the population (including thresholds), National Insurance, Duties, smaller taxes.

What, roughly, are the tax income and expenditure outlays, at the UK level, on these areas (using self-assessment income tax as a proxy for income tax on the highest and most mobile incomes):

Revenues	2012-13	%GDP
Income Tax paid through Self-assessment	20.6	1.3%
Corporation tax	39.5	2.5%
Capital gains tax	3.9	0.2%
Stamp taxes on shares	2.2	0.1%
Value added tax (VAT)	100.6	6.4%
Customs duties and levies	2.9	0.2%
Bank levy	1.6	0.1%
Other taxes and royalties	20	1.3%
Interest and dividends	8	0.5%
Gross operating surplus, rent, other receipts and adjustments	30.7	2.0%
Government Borrowing	115	7.3%
Total	344.8	21.9%
Expenditures	2012-13	%GDP
Defence	36.4	2.3%
International services	8.0	0.5%
PS Gross debt interest	48.3	3.1%
Pensions	90.1	5.7%
Total	182.8	11.7%

Sources:

www.ifs.org.uk/uploads/publications/ff/revenue_composition%20June%202014.xls

www.ifs.org.uk/uploads/publications/ff/lr_spending_August_14.xls

www.scotland.gov.uk/Resource/0045/00458489.xlsx

www.gov.uk/government/uploads/system/uploads/attachment_data/file/310483/outturn-and-forecast-budget-2014.xls

This table suggests that a grant based distribution to the devolved governments might be around 10% of GDP, or around £2,500 per person.

How does this proposed Maximal Devolution differ from Devo-max:

Payment for UK functions and funding of Scottish Government:

Under Maximal Devolution, there are UK taxes to pay for UK services; and the Scottish Government is funded from a combination of Scottish taxes and UK Government grants.

Devo-max, Scottish Government collects all taxes from the Scottish tax base, to fund itself and to pay the UK Government for UK services.

Economic integration

Under both Maximal Devolution and Devo-max, Scotland is likely to remain highly integrated with the UK economy, and in particular labour mobility is likely to remain high.

Monetary policy:

Under both Maximal Devolution and Devo-max, monetary policy is set by BoE based on conditions across the UK. Given strong economic integration, this means that UK monetary policy will be broadly appropriate for Scotland when faced with shocks that are symmetric across the UK, but inappropriate in the face of an asymmetric shock.

Treatment of Scottish Government debt:

Under both Maximal Devolution and Devo-max it is likely that the BoE would treat Scottish Government debt as it currently does local authority debt. The spread over UK gilts would not enter into the BoE's objective function, and Scottish Government could default and lose access to capital markets in a way that does not apply to the UK Government.

Fiscal stabilisation:

Under Maximal Devolution, the grant from the UK Government would vary in a countercyclical manner, largely eliminating the need for Scottish Government borrowing in respect of business cycle (a symmetric shock, so monetary policy should be broadly appropriate) or asymmetric (for which monetary policy will not be appropriate to Scotland's circumstance) shocks.

Under Devo-max the Scottish Government must fund the operation of automatic stabilisation from its own resources. Given the potential for monetary policy to be inappropriate, fiscal policy must be responsive. But without the backing of the central bank, this may not work. Potentially highly destabilising.

Appendix B – Devolution of Energy Policy

The Scottish Government has created the expectation (through passing the Climate Change (Scotland) Act 2009), that it can achieve its climate change targets. Maximal Devolution should therefore include the devolution of those powers needed to create the government capacity to realise these expectations.

In the case of climate change targets, this means energy policy and control over the subsidy regime. Since the subsidies are paid by consumers, 10 11^{ths} of whom are in the rest of the UK, this has been taken to mean that it is difficult for the energy subsidy regime to be devolved. This is not true.

For example, a completely different subsidy regime imposed in Scotland would have the effect of influencing the price of electricity at the Scottish border. So long as this price is competitive with prices south of the border (which will be influenced by subsidy regime south of the border) then the English National grid would simply treat the whole of Scotland as a single supplier located at the border. A special case of this arrangement is where Scottish regulation replicates the current prices at all locations. In this case Scottish and rest of the UK consumers pay exactly as they do at the moment, and all generators receive exactly the revenues that they receive at the moment. Therefore the incidence of subsidy on consumers across the UK must be exactly as it is currently the case. Despite the fact that a disproportionate share of subsidy-requiring renewables are located in Scotland, and even under a Scottish administered subsidy regime, it is clearly possible for Scottish consumers to pay only their per capita share of the subsidies.

Obviously the real question is whether an English or rUK regulator would maintain the same subsidy regime as the current UK regulator, but it's hard to understand how the incentives of such an rUK regulator differ substantially from the incentives of the current UK regulator. Therefore we might expect the behaviour of this regulator to be fairly independent of whether Scotland has control over its own subsidy regime or not.