

The Great Devolution of Powers Bazaar

On 18 September 2014, 55 per cent of Scots voted to retain Scotland's 307-year-old union with England and Wales. Yet Scotland's rejection of secession is not the end of Great Britain's constitutional debate. The referendum result was not a vote for the status quo. It marked the high point of nationalist support in Scotland's modern political history. The political legacy of the referendum will be a fundamental change in the way the United Kingdom is governed.

The startling lead for the Yes vote in a YouGov opinion poll 12 days before the referendum engulfed a hitherto largely complacent Westminster with a sense of panic that the union was really at risk. All three main UK parties promptly offered further "substantial" devolution, the third option which Prime Minister David Cameron had refused to include in the questions put to the voters. In the end, "devo max" has entered via the back door. The question now is how to interpret this pledge of constitution-making on the hoof.

The morning of the results, Prime Minister Cameron called for a "balanced" settlement for all parts of the UK, i.e. Scotland, England, Wales and Northern Ireland. He announced a plan that would radically decentralise power in the UK and promised English MPs much more say over their own affairs. Further, cities would see the restoration of control over local revenues and spending.

By linking fresh devolution of powers for Scotland to broader constitutional reforms affecting the whole of the UK, Cameron opened a can of worms with significant constitutional implications well beyond Scotland. Although proposals for Scotland are scheduled to be laid out by November, with draft legislation by January, the three main UK parties have not yet agreed exactly what those new powers would be. Months of three-way party haggling will ensue. Even if draft legislation is presented in January 2015, the Scotland Bill stands almost no chance of being passed into law before the general election in May. Regardless of who wins the election, there is a risk that memories of the Scottish referendum will have faded among politicians at Westminster, as they jostle for position ahead of next year's general election and return to business as usual. Therefore, Labour leader Ed Milliband's call for a "constitutional convention" to provide a blueprint for wider reform within a year of the next election deserves consideration.

The referendum has unsettled political leaders at Westminster. Cameron's authority, in particular, has been dented by the gamble he took in 2011 when striking a deal with Alex Salmond on the terms of the Scottish independence referendum, the undefined scope of the plans now announced on constitutional reforms and the impossible timetable to rush them through. These tactical mistakes and Westminster's scampering over the finish line of the Scottish referendum have added to concerns that the other gamble that Cameron took, i.e. a referendum in 2017 on the UK's position in or out of the EU if the Conservative government returns to power after the 2015 elections, will be another dangerously close call. Cameron's plan to organise another bazaar for populism and prejudice to satisfy his party's anti-EU flank is a reckless attempt at putting the EU issue to bed for a generation. No one could be sure of the outcome. Public sentiment currently shows roughly a third favouring exit, a third favouring continued EU membership and a third looking to see the terms of EU membership renegotiated. Ironically perhaps, by keeping Scotland's relatively pro-EU voters within the UK, the outcome of the Scottish referendum also reduces the chance of Brexit.

In a striking parallel to the concessions granted by Westminster to Edinburgh during the Scottish referendum campaign, Cameron's UK has already extracted concessions from "Brussels"

on more subsidiarity and proportionality in EU decision-making. In a dual effort to prevent the UK from sliding towards the exit and to address British concerns without having to revise the treaties (and accept new demands for opt-outs), the European Council asked the next European Commission to be bigger on big things and smaller on small things. Commission President designate Jean-Claude Juncker pledged as much in his political guidelines for the next legislature and designated Dutch Foreign Minister Frans Timmermans, who in previous months ran his own country's subsidiarity and proportionality test of EU draft legislation, as super Commissioner for (amongst other things) Better Regulation.

However, the willingness shown by the EU to reform itself may not be enough to turn decades-long Euroscepticism around and prevent a Brexit. This eventuality would not only diminish the EU. As the reports churned out so far by the UK government's "Balance of Competences Review" show, a Brexit would be against Britain's own geopolitical and geo-economic interests. The case for repatriation of competences, let alone secession, does not hold water. But the demand for closer, more accountable government does. This is the ground being tilled by nationalist movements across Europe.

For example, Artur Mas, Catalonia's president, has hailed Scotland's referendum as a lesson in democracy and political participation, while ignoring that such plebiscites are no substitute for sound representative government. Conversely, Mariano Rajoy, the Spanish Prime Minister, issued a stark warning to the Catalan people by stating that "[w]ith their decision [the Scots] have avoided the grave economic, social, institutional and political consequences that would have happened in the case of separation from the UK and from Europe."

Meanwhile, the regional parliament in Barcelona passed a new law that should provide a legal basis for the planned referendum on 9 November. Catalonia's political majority hopes to use the non-legally binding consultation on independence as a tactical tool to hold Madrid's feet to the fire to extract a vow to devolve meaningful power to Catalonia. The latter would notably include an overhaul of Spain's regional financing system that would bring an end to the current arrangement in which Catalan tax revenues subsidise poorer regions of Spain.

However, the central government has refused to discuss these issues in earnest. While insisting that Catalonia abide by Spanish law, Madrid has done little to entice Barcelona to stay. It has challenged the law on the referendum before the constitutional court. The court, which has previously asserted that the organisation of a referendum on Catalonia's (independent) statehood is unconstitutional, could suspend the referendum. Mas, on the other hand, has stated that the expression of the will of the Catalan people would not be deterred by Madrid's legal frameworks.

With relations between Madrid and Barcelona more polarised than ever, a constitutional crisis is in the making. Opinion polls suggest that Catalan voters are evenly divided over independence but have a clear desire for a greater devolution of powers. Like in the Scottish case, the pro-independence campaign might surge in the final weeks before the referendum. Rather than heading for a binary choice of in or out, and in order to avoid having to deal with the illegality of the secession under Spanish and international law, it is in the interest of both sides to seek and compromise on a negotiated solution.

The Scottish and Catalan referendum processes are being closely watched by independence-minded movements elsewhere in Europe – e.g. "Euskadi" (the Basque Country), Flanders, Corsica, and the northern Italian region of Padania – as bellwethers of their prospects. However, the risk is fairly small that these other separatist movements will dismember EU member states. Nevertheless, they signal that the process of constitutional adjustment ("devolution", "Estado de las Autonomías", "regionalismo", "federalisation") is an instrument for recognising and accommodating, rather than transcending, national diversity in certain EU member states. After all, democracy and self-determination are ongoing processes.

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