

SCOTLAND AND THE UNITED KINGDOM

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SCOTLAND AND THE UNITED KINGDOM

A conference report written by Beth Foley



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Foreword

from the Presidents of the British Academy and The Royal Society of Edinburgh

In 2014, it is expected that the Scottish people will be asked, in one form or another, whether they would like Scotland to remain part of the United Kingdom or if they would like it to become an independent country. The issue of Scottish independence is one of the biggest constitutional issues facing the UK at the moment, with far-reaching consequences for all UK citizens.

Scotland's past, present and future relationship with the rest of the United Kingdom will have to be further explored and debated over the next few years, including complex issues such as defence, education, tax and spending, and relations with the EU.

With outstanding academics in the fields of constitutional law, politics and government, economics, international relations and history amongst our Fellowships, the British Academy and The Royal Society of Edinburgh are in a position to offer first-class scholarly insight and academic expertise on this topic, and to draw on expertise from other countries.

In 2012, the Academies convened a conference on Scotland's relationship with the United Kingdom to provide

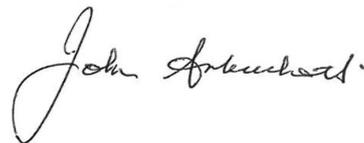
a platform for a frank and informed discussion on this topic. The conference, held over two days in Edinburgh and London, was attended by a range of academic and policy experts. This report is a record of the views expressed by the speakers and attendees at those events and it does not represent an established position of either the British Academy or The Royal Society of Edinburgh.

The British Academy and The Royal Society of Edinburgh are both independent organisations with no party-political agenda or positions. The purpose of this report is not to influence the referendum process in a particular way; the aim is instead to provide expert analysis and to encourage rich and informed debate on all aspects of a hugely important topic.

As national Academies, both our organisations recognise the responsibility we have to ensure that academic expertise and an independent perspective are brought to bear on matters of public concern such as this. The conference and the report represent only the beginning of our contribution to this area, and we will continue to play a role in forthcoming discussions of the United Kingdom's constitutional future.



Professor Sir Adam Roberts KCMG PBA
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1. Introduction

In 2011, the results of Scottish parliamentary elections created the most significant challenge in recent times to the very existence of the United Kingdom. The Scottish National Party (SNP) became the first party to win an outright majority since the modern Scottish Parliament was established in 1999. As the party's primary platform is the campaign for Scotland's independence from the rest of the UK, this result has posed serious questions for the historic union of nations on which the UK rests. The SNP's Manifesto contained a promise to hold an independence referendum; although there are legal doubts about the Scottish Parliament's powers in this respect, the UK Government agrees that an independence referendum should take place. On 10th January 2012, the Scottish Government announced their proposal that it should be held in Autumn 2014.

The outcomes of the debate that has begun in Scotland may have significant implications, both for the constitution of the UK and internationally. They will define future relationships between England and the devolved parts of the UK; they will raise questions about our country's economy, governance and international relations; and they will challenge those seeking to preserve the United Kingdom to present an account of what it means to be a UK citizen today.

In this context, the British Academy and The Royal Society of Edinburgh convened a conference intended to bring academic analysis to bear on these vital issues. The conference was held over two days – one in London and one in Edinburgh – to unite the often separate discussions taking place around Westminster and Holyrood. A variety of academic and policy experts – from economists to political theorists – presented their evidence and views on the political and economic future of Scotland and the UK. It should be noted that this report is a record of the views expressed by speakers and attendees at these two events and does not represent an established position on the part of the British Academy or The Royal Society of Edinburgh.

Full details of both events, including a list of speakers, are attached at Appendix 1.

This report is a distillation of the contributions made by the speakers and other contributors at the conference. It aims to provide an accessible summary of the discussions which took place. It will begin by setting out evidence presented on the constitutional options which may face the Scottish people. It will then address the constitutional questions these options raise about the practical implications of either greater devolution or full independence and the effects they might have on the UK as a whole. Finally, it looks at the changing meaning of the unions which have historically bound the United Kingdom together.

2. Constitutional Options

The debate over independence addresses more than a simple ‘for or against’ decision; Scotland is in fact facing a number of constitutional options. What’s more, none of these options has been fully elaborated, and all will be subject, in varying degree, to negotiation. The discussions provided speakers with an opportunity to explore the political and economic visions underlying each option, as well as to highlight the fault-lines around which debate is likely to revolve.

2.1. Independence

The victory of the SNP in 2011 has meant that, for the first time, the Scottish people will be asked to decide whether to leave the UK to become an independent, sovereign country. The prospect has generated considerable and sometimes emotive debate, with both those for and against independence conceding that the outcome of any referendum will rely to a considerable degree on the way in which independence is portrayed to the Scottish public.

Those pushing for independence within the SNP believe that the idea should remain closely linked to that of inter-dependence – of a Scotland anchored in the still-developing international community of the post-war world. Rather than viewing Scottish independence as a move to abolish the United Kingdom, they would rather represent the shift as a change, rather than an end, to the nomenclature. This is the idea of multiple ‘United Kingdoms’ replacing a single entity: just as Norway is a Scandinavian nation, Scotland would remain a ‘British nation’.

However, the transition – if it occurs – is unlikely to be a straightforward one. There is still a wide variety of questions about the process by which independence could be achieved, and even what independence actually means.

2.1.1. What is independence?

In some senses, the concept of an independent country should be a relatively simple one to outline; most people have an intuitive understanding of the central features of sovereign statehood. At its most basic level, an independent Scotland would require a repeal of the Acts of Union of 1706/07 (for more detail see Section 4.1), thus ending the authority of the Westminster Parliament to legislate for Scotland. The shift to sovereign statehood would provide Scotland with international recognition and legal personality.

Regaining sovereignty would mean the Scottish Parliament, as representatives of the people of Scotland, would take responsibility for all aspects of Scottish domestic and international affairs, including the ability to share sovereignty where appropriate. The Scottish Parliament would be able to legislate across the full spectrum of policy, with Westminster ceasing to play any role. Parallel processes have taken place as Commonwealth countries gained independence, culminating, for example, in the Canada Act of 1982 and the Australia Acts of 1986.

However, these legislative changes are fairly abstract; the concrete form that an independent Scotland would take remains unclear. The rapid proliferation of independent countries in the post-war world (from around 50 in 1945 to nearly 200 today) mean that modern concepts of independence can take many different forms. One analogy is the idea of a house. We are all able to identify a house, but there is a huge array of designs and sizes; we choose a house that meets our needs and then we make it our own. The concrete form of an independent Scotland will therefore be subject to a long process of discussion, negotiation and debate.

The option of independence also raises the question of retaining some version of the status quo and the ultimate form this would take. The SNP argues that Scotland’s

BOX 1: BECOMING INDEPENDENT – INTERNATIONAL EXAMPLES

Proponents of Scottish independence can also argue that such a shift is far from unprecedented. Other examples include Ireland's independence from the UK in 1922, and the break-up of Czechoslovakia in 1992–3. In both of these cases, while the path to independence was far from straightforward, the new countries created have been able to successfully establish themselves as independent countries, with close relationships with their national neighbours.

CZECHOSLOVAKIA

On 1st January 1993, Czechoslovakia divided into two successor states: the Czech Republic to the west, and Slovakia to the east. The process has often been termed the 'Velvet Divorce' due to the peaceful nature of the transition.

The Czechs and Slovaks had lived in separate areas of the Austro-Hungarian Empire, but came together to form Czechoslovakia following the Empire's break-up in 1918. The Czech and Slovak areas of the new state displayed a number of economic and cultural differences. These were exacerbated as the country underwent a rapid transition towards democracy and a market economy following the collapse of Communist rule in 1989. The Czech parts of the federation had modernised more quickly, and stood to gain far more from the economic liberalisation and privatisation of the post-Communist era. The Slovaks, on the other hand, were far more wary about the pace of economic reform and experienced a rapid rise in unemployment during the early 1990s. Here, it was felt that the reform process was redistributing economic power and influence in favour of the Czechs. Elections in 1992 indicated an increasingly polarised electorate, with the Czech Republic electing Vaclav Klaus, who was strongly in favour of accelerated economic reform, and the Slovaks opting for Vladimir Meciar.

The process by which Czechoslovakia divided was unusual in that there was no referendum on the issue and the process was largely negotiated between the two leaders. However, opinion polls, particularly in the Czech areas, revealed a growing support for independence; by Autumn 1992, most Czechs considered division of the country inevitable. In January 1993, two independent countries – the Czech Republic and Slovakia – applied for UN membership. Although a currency union was initiated, this did not work and the currency was divided in February 1993; while it was predicted that this would create major economic problems for the Slovaks, the country's economy remained stable. In short, the Czechoslovakian example has been a success story, with good relations between the two countries today.

IRELAND

The case of Ireland has a number of parallels to the Scottish situation, as an example of a country within the British Isles which saw a growing push for independence from the UK. Ireland was under varying degrees of English rule from the late twelfth century. This situation was punctuated by religious and political conflict and gave rise to a number of movements for independence. However, it was only in the early 20th Century, in the face of armed Irish rebellion, that Irish calls for independence were finally realised.

By 1914, the third Irish Home Rule Bill succeeded in gaining Royal Assent. However, when the start of the First World War and opposition in Ulster resulted in a deferral of its implementation, Irish nationalist opinion radicalised. Following the Easter Rising of 1916, Sinn Fein became the dominant nationalist party and issued a unilateral declaration of independence. The fourth Home Rule Bill saw Ireland divided in 1921. The largely Protestant North subsequently remained part of the UK, and the South gained independence as a British dominion in 1922.

However, the tangled historical relationships between Britain and Ireland meant that 1922 was not the clear-cut beginning of full independence. The position of Governor-General in Ireland (the representative of the British monarch) was only abolished in 1936. By 1937, constitutional change had removed other formal links with Britain. In 1949, Ireland finally left the British Commonwealth and became a Republic. Irish independence – like devolution in other parts of the UK – has been very much a gradual process, rather than a single event.

Despite independence, for much of its history the Republic of Ireland has maintained close ties with the UK, including retention of Sterling as its currency until 1979. The most decisive break came when Ireland opted to join the Euro in 1999, and moved to the new currency in 2002. While this initially led to a period of rapid economic growth, Ireland – like the UK – was hard-hit by the financial crisis of 2008 and is currently facing a period of great economic uncertainty, with intervention by a 'troika' comprising the IMF, the EU and the European Central Bank in 2010 placing effective restrictions on Irish economic autonomy.

Ireland in the 21st Century has thus established itself as an independent, sovereign state and now enjoys good relationships with its neighbours. However, the country's experiences over the last few years also suggest some of the challenges for small independent countries navigating an increasingly economically inter-dependent world.

basic claim is the sovereign right of the Scottish people to determine the form of government best suited to their needs. Therefore, some in the SNP and in civic Scotland have argued that arrangements short of full independence (such as devolution max) should also be included on the ballot paper.

2.1.2. The process to becoming independent

The process of Scottish independence would need to proceed through a series of stages. The Scottish Government has proposed the following timetable:

- 2012:** Consultation begins on the details of the referendum;
- 2013:** Legislation for the referendum passed;
- 2014:** The referendum campaign takes place. The referendum itself would be held in Autumn 2014. The SNP believes that the Scottish people should be asked the following question: 'Do you agree that Scotland should be an independent country?' However, the wording of this question is likely to be the subject of dispute;
- 2015:** Were Scotland to vote in favour of independence, it would need to be granted by an Act of the Westminster Parliament and almost certainly a parallel Act of the Scottish Parliament. This would be preceded by a process of negotiation, to finalise the terms of transition;
- 2016:** The first elections to an independent Scottish Parliament would take place.

2.1.3. Why independence?

Arguments in favour of independence can be divided between 'push' and 'pull' factors. The principle 'pulling' Scotland towards independence is one which has defined all struggles for national self-determination: the idea that it is fundamentally better that decisions about Scotland's future are taken by those who care most about Scotland – the people of Scotland.

However, there are also 'push' factors, mostly linked to the economic and social performance of other small independent European countries. The IMF reports that Norway, Sweden, Ireland, Iceland, Denmark and Finland all have higher GDP per capita than the UK. Official figures also suggest that inequalities of both income and gender are also greater in the UK than in many smaller northern European countries.

2.1.4. Can Scotland afford independence?

A figure often cited by those who feel that independence would bring problematic financial consequences is that Scotland currently receives 9.3% of UK public spending, despite being home to just 8.4% of its population. However, proponents of independence claim that this argument misses the other half of the equation, neglecting the fact that Scotland contributes 9.6% of UK tax revenues when North Sea oil revenues are taken into account. The economic debate also revolves around the question of national debt, and whether Scotland could secure an AAA credit rating if it took on its share of UK government debt. Here, again, those in favour of independence argue such predictions are misleading; first, because it is currently questionable whether the UK as a whole will be able to maintain its AAA rating and, second, that figures produced in January 2012 by M&G Investments suggest that, on government expenditure and revenue records, Scotland has been in a stronger position than the rest of the UK over the last five years, suggesting that while UK debt was 63% of GDP, an independent Scotland's debt would be 56% of GDP.

Economic issues are explored in more detail in Section 3.4.

2.1.5. A new concept of sovereignty

Were Scotland to become an independent country, proponents argue the shift would usher in a new, pluralist approach to the UK constitution, as opposed to the unitary understanding which dominates the status quo. The late Professor Sir Neil MacCormick FBA FRSE – a highly influential thinker in Scottish Nationalist thought – argued that the process of devolution was likely to lead towards either a federal or a confederal arrangement for the UK.¹ A federal arrangement might include devolution max (with all legislative powers over domestic policy transferred to the Scottish Parliament), while a confederal arrangement would see Scotland and the UK as two independent but equal entities within the EU and the international community. The SNP believes the key difference between devolution max and independence would be between the sharing and the delegation of power. An independent Scotland would mean Scotland agreeing on the powers it wishes to share, whereas devolution means the UK deciding on the powers it is prepared to delegate.

¹ MacCormick 1999.

Ultimately, supporters of independence argue that changes to the relationship between Scotland and the UK are now inevitable; they view the debate as one about finding the right form of partnership. An independent Scotland would settle debates in England about the ‘West Lothian Question’ (the current rights of Scottish MPs at Westminster to vote on policy applicable only outside Scotland – see Box 3 below) and Scotland’s appropriate share of public spending. Scotland would take its place as part of the British family of nations – the ‘United Kingdoms’. It would share certain institutions, such as the monarchy and currency, and would necessarily require significant cross-border cooperation. Yet an independent Scotland would be free to make different choices to reflect its differing social and political consensus. At their best, these choices could make Scotland more economically competitive, as well as reflecting the social democratic values of the Scottish people. The proponents of independence argue that it is this combination of cooperation and autonomy that would strengthen both Scotland and the UK – an improved and equal partnership for the 21st Century.

2.1.6. Will Scotland choose to become independent?

Reports from the Scottish Social Attitudes Survey in December 2011² indicate the choice of Scottish voters is likely to depend on the elements emphasised in any referendum campaign. The first split falls between the idea of separation and that of autonomy. When asked if Scotland should **separate from the UK**, 32% of Scottish respondents favour independence. When asked **which parliament should take decisions for Scotland**, 43% of respondents favour independence, with 29% backing ‘devolution max’, 21% in favour of the status quo, and 5% opposed to devolution.

The second division revolves around the financial implications of independence. When presented with a scenario in which they would be no better or worse off with independence, 47% of Scottish respondents were in favour, compared to 32% who were opposed. When the hypothetical scenario saw Scottish voters £500 better off as a result of independence however, 65% were now in favour, with 24% opposed. Overall, the SNP believes that recent opinion polls suggest Scottish public opinion as a whole is shifting in favour of independence, despite most polls showing the majority remain opposed.

2.2. Devolution Max

The second option for Scotland – that of so-called ‘devolution max’ – appears to be the most popular (on the basis of opinion poll evidence) but least well-articulated of Scotland’s constitutional choices. The concept represents a kind of ‘third way’ between full independence and the more conservative proposals of the Scotland Act 2012. At an abstract level, it would involve the Scottish Parliament taking more control of domestic policy, but stopping short of the responsibilities of independence. Its elements were set out in the consultation papers for the Draft Referendum (Scotland) Bill, where it was described as ‘full devolution’, with the Scottish Parliament taking responsibility for laws, taxes and duties in Scotland, with the broad exceptions of defence and foreign affairs and financial regulation, monetary policy and currency.³ However, this option has not yet been championed by any political party and, as such, has yet to be fully formulated as a policy position.

2.2.1. What is devolution max?

Given the unformed nature of the idea, at present there are various versions of the devolution max option being debated. All involve an extension of the current legislative powers of the Scottish Parliament that stops short of those required for full independence. The various versions under discussion include:

- The Scottish Parliament assumes responsibility for everything except foreign affairs and defence;
- The Scottish Parliament gains increased fiscal autonomy, collecting all taxes or most taxes (excluding VAT);
- The Scottish parliament gains most or all power over matters of social security;
- UK Government retains only residual domestic responsibilities for Scotland.

2.2.2. What is the basis for devolution max?

Those in favour of some form of devolution max argue it has firm philosophical and political justifications. Its philosophical basis lies in the concept of ‘post-sovereignty’: the idea that the world is moving beyond traditional conceptions of sovereignty towards a network of inter-relations. This is best represented by the co-existence of European and domestic law; each is a distinct

2 www.natcen.ac.uk/study/scottish-social-attitudes-2011

3 The Scottish Government 2010, p.12.

body, but there are many areas in which they merge. Small countries, in particular, do not possess absolute sovereignty in this emerging world – their existence is marked by inter-dependence and the need for continual negotiation at international and supranational levels. In recognition of this fact, international law is beginning to grapple with a version of the notion of ‘self-determination’, in which areas within nation states gain internal autonomy but not full independence. The concept is not yet a recognised one within international law, but would be useful in parts of the world where small states are demanding autonomy but may struggle to achieve full independence. Proponents of devolution max also argue its political basis lies in the substantial popular support which further devolution currently enjoys in Scotland, with the results of the Scottish Social Attitudes Survey indicating that 62% of respondents believed the Scottish Parliament, rather than the UK Parliament, should determine Scottish welfare benefits.⁴

2.2.3. Where would devolution max differ from current arrangements?

The major break represented by devolution max is the possibility of establishing a distinct socio-economic settlement in Scotland. By handing the majority of tax and spending powers to the Scottish Parliament, along with control of all domestic policy, the Scottish people would, for the first time, be able to create their own political and economic model. Yet these new powers, particularly those around taxation, would raise contentious decisions for Scottish voters. At present, Scottish political discourse often favours a neo-liberal attitude to taxation but a social-democratic stance on public spending. Taking greater ownership of the macro-economic situation would force choices and compromises on these neo-liberal and social-democratic options. Such decisions would fundamentally change the nature of Scotland as a polity. They would also depend on Scottish support for the argument that diverging views on social and economic policy between Scotland and the rest of the UK are too pronounced for existing devolved arrangements.

⁴ An Ipsos Mori opinion poll published in March 2012 revealed that, amongst those certain to vote in the referendum, around seven in ten backed the option of ‘devolution max’: <http://www.ipsos-mori.com/researchpublications/researcharchive/2928/Scots-back-inclusion-of-Devolution-Max-question-in-referendum.aspx>. See also Curtice and Ormston 2011

2.2.4. What would be the practical arrangements for a move towards devolution max?

There are clearly a large number of unresolved questions about devolution max. One is whether devolution max can be included as a third option in the independence referendum. Proponents argue that this is justified on the basis of public opinion in Scotland, which suggests that a simple yes or no question on independence forces voters into a choice between two polarised positions, which may not be representative of majority views. However, detractors argue that this third option over-complicates the voting process at a referendum. Indeed, the inclusion of three options would raise disputes over how the ballot paper itself should be set out. The Scottish Government would prefer the choice of devolution max to be included as a second question on the ballot, although this is opposed by the UK Government. An alternative would be a ballot which allows each option to be compared to the other two, which – while complex in terms of vote counting – may still be intelligible to voters.

Yet if the option of devolution max is to be included in the independence referendum, it is vital that a clearer account of its practical features is set out to the Scottish electorate. Internationally, it is possible to look at a number of similar proposals discussed in Canada and Spain – although none of these has yet been put into practice.⁵

2.2.5. What are the problems with devolution max?

While the devolution max option appears to be politically popular in Scotland, its terms have yet to be fully articulated and, if it were to be taken forward, are likely to be subject to intense negotiation. The first question is what Scotland’s new political and economic relationship to the rest of the UK would be. A more independent and powerful Scottish Parliament, with revenue-raising abilities of its own, would likely re-ignite the debate about fiscal equalisation and the principles which should be used to determine this (discussed in more detail in Section 3.4.2). Devolution max would also raise the significance of the ‘West Lothian Question’ and would very likely lead to some reduction of Scottish influence in Westminster. More generally, these kinds of discussion would necessitate the need for greater bilateralism between Scotland and the rest of the UK and new arrangements for negotiation.

This issue leads to the second area of negotiation: the international standing of a more independent Scottish

⁵ A summary of these proposals is set out in Keating 2012.

BOX 2: WHAT IS THE BARNETT FORMULA?

The Barnett Formula was designed when Joel Barnett was Chief Secretary to the Treasury in 1978. It allows the Treasury to automatically adjust budgets for Scotland, Wales and Northern Ireland to reflect changes in the budget for England; for devolved policy areas, the Formula contributes to the calculation of the block grant.

The use of formulae in territorial finance dates back to 1888, when the then-Chancellor, George Goschen, set out a new spending formula allocating 80 per cent to England and Wales, 11 per cent to Scotland, and 9 per cent to Ireland. This relatively generous settlement was intended to quash growing demands for Irish Home Rule. Thereafter, Scotland's 11/80ths proportion was used in a range of expenditure, though most was negotiated inside government.

The Barnett Formula is now applied to most devolved spending. It relates to *changes* in budgets and determines that any alteration of English budgets is matched by a proportional share of the change – according to relative population – which is then added to or subtracted from the pre-existing baseline in the devolved parts of the UK. This determines the new budget or block grant. Over time, it might be expected that, because these increments are *per capita*, *per capita* spending levels might tend to equalise. However, Scotland's population has declined relative to England in recent decades, leaving its *per capita* spending markedly higher than England's.

This leads to the two main criticisms levelled at the Barnett Formula. The first is the advantages it bestows on Scotland, as well as the disadvantages for Wales (discussed in Section 3.4.2). The second, less widely-cited but more basic, critique is the question of why the Formula should be leading to convergence in average *per capita* spending across the devolved parts of the UK, regardless of relative need. While the distribution of spending *within* England is determined by need, the Barnett Formula's only link with relative need is around crude measures of population. Significantly, even upon its introduction, it was assumed the Barnett Formula would form a temporary measure before being replaced by a needs-based alternative in the context of the devolved Scottish Assembly planned in 1978. All of these issues are further explored in Section 3.4.2.

Parliament as it is increasingly difficult to separate international and domestic affairs. European Union matters would present particular problems as, under devolution max, the range of matters in which powers are shared between Scotland and the EU would increase. This would lead to demands for more direct Scottish representation in European negotiations.

All of these potential new distinctions between Scottish interests and those of the rest of the UK lead to a third aspect of the debate: the new and potentially divergent loyalties of Scottish and UK citizens. At present, Scotland's ties to the rest of the UK are founded on common social entitlements, currently centred on tax and welfare benefits. If, under devolution max, these services, along with health and education, were now delivered by the Scottish rather than the UK Parliament, we would likely see a shift in the loyalties of Scottish voters. The strong sense of social citizenship which binds citizens to a national government would now be likely to tie Scots more to Holyrood, rather than to Westminster. Similarly, as Scottish interests and loyalties grew increasingly distinct, a corresponding shift could begin to occur within the English electorate, leading to growing support for full Scottish independence. Even proponents of devolution max acknowledge that it is a policy which would be hard to sell to English voters, contributing instead to a growing sense that devolution allows the Scots to 'have their cake and eat it'.

2.3. The Scotland Act 2012

The third constitutional option for Scotland is currently the most clearly articulated, in that its provisions are already set out in the Scotland Act 2012, which has recently passed into law. Its proponents characterise the provisions of the Scotland Act not as devolution 'max' but as devolution 'more', and in that sense it represents the least radical deviation from the previous status quo. One of the most potentially attractive elements of the Scotland Act is its certainty; it has now been approved by both the UK and Scottish Parliaments and it gained Royal Assent in May 2012.

2.3.1. What are the provisions within the Scotland Act and how were they decided upon?

The provisions of the Scotland Act emerged from the recommendations of the Calman Commission, which

was set up in 2007 by the main opposition parties within the Scottish Parliament as a unionist reaction to the advent of an SNP-led government in Holyrood. The Commission's analysis concluded that devolution had been a popular and successful move, but that there was also significant public support for remaining within the UK. It concluded that the current legislative powers of the Scottish Parliament were broadly appropriate, but that increased fiscal powers were needed to improve its accountability.

The main element of domestic policy in which the Scottish Parliament does not currently have legislative or executive powers is social security. The Calman Commission took the view that social security should continue to be run on a UK basis, as redistribution was a process for national government. Next was the question of the Scottish Government's fiscal powers. The original devolution settlement had given the Scottish Parliament significant spending power but minimal powers of taxation. The Commission recommended additional powers on taxation and borrowing, and these form the main changes in the Scotland Act. This additional devolution of fiscal powers centres on income tax, with UK income tax reduced by 10 pence in Scotland, and the Scottish Government then given the option of adding a tax of its own; this, together with other devolved taxes, would increase the proportion of the Parliament's spending funded from taxation decided in Scotland to 30% in future. However, the Act does not allow the Scottish Government to operate a redistributive policy by altering the *progressivity* of income tax through varying bands or rates.

The main political changes likely to result from the implementation of the Scotland Act are an expansion of the breadth of Scottish party political competition; parties can now compete on taxation matters, rather than solely on spending decisions.

2.3.2. What are the criticisms of the Scotland Act 2012?

Critics of the Scotland Act have put forward four broad arguments in opposition.

1. **The proposals do not go far enough**, and certainly do *not* make Scotland fully independent. Allowing the Scottish Parliament to fund just 30% of its expenditure from its own resources will not be sufficient to ensure it gains full fiscal responsibility.

The response to this critique points first to the fact that this is not a plan for independence – indeed quite the opposite – and to the complexities engendered by further fiscal independence. The Scotland Act does however provide for an increase in the 30% proportion, by agreement between governments, acknowledging that constitutional change is inherently evolutionary. However, as with devolution max, any increase would inevitably raise questions about tax competition in the UK and the nature of fiscal equalisation between Scotland and the rest of the UK. The current recommendations of the Act remain compatible with the Barnett Formula (see Box 2 below), but extending them is likely to open up new negotiations

2. **Income tax is a problematic basis for revenue.** Critics have argued there are two reasons this is the case. The first is that income tax is a 'shrinking tax'; it grows too slowly, forming an ever-smaller proportion of government revenue. It is therefore too risky to rely on this as a source of revenue and it would be better to use a bundle of taxes rather than a single income stream. The second is that income grows too quickly; the majority of income tax is raised from higher-rate tax payers and fiscal drag effects⁶ (if they exist) would mean the Scottish Parliament would not get as large a share of that growth as the UK Parliament.

The response here is that a degree of fiscal power inevitably entails a degree of risk, though both these risks cannot crystallise at once. On the other hand, income can be seen as a sensible basis for tax, as it increases in proportion to the economy as a whole. Furthermore, under this scheme the Scottish Parliament's income stream would remain partly tax and partly grant funded, so does not entail as much risk.

3. Granting revenue-raising powers to the Scottish Parliament may create **uncertainty about the extent of the grant from Westminster.**

⁶ If incomes rise more quickly than tax thresholds are revalued, then more income is drawn into taxation and more into higher tax rates; if the Scottish Parliament has access to a smaller proportion of higher tax rate income, then it will not get as much revenue growth as Westminster. Opinion is divided on whether this effect exists: if it does, then it has to be taken into account in the grant the Scottish Parliament gets from Westminster.

4. The scheme **does not grant the Scottish Parliament the economic levers to determine the fate of the Scottish economy**, or to boost economic growth.

Proponents might respond that powers of taxation are not the only means of increasing economic growth. There are many other policy levers, such as education, most of which are already devolved. In the absence of full independence, it would be hard to add additional levers, with the possible exception of corporation tax. However, the Scottish Parliament already has control of business rates and has not been keen to cut them up to now.

2.3.3. What do Scottish Ministers think of the Scotland Act 2012?

There was considerable debate over the passage of the Scotland Act, with the governing SNP initially threatening to block the Bill unless it granted a more significant extension of powers – including devolution of broadcasting and corporation tax. The UK Government decided not to take the Bill forward without the consent of the Scottish Parliament (in accordance with established convention) and this was finally achieved following negotiations. UK Ministers agreed to drop proposals in the Bill to return certain powers to Westminster and to review the role of the UK Supreme Court in Scottish criminal cases. The Act does not devolve either broadcasting or corporation tax, but received an overwhelming majority in the Scottish Parliament. In the end, the Act granted the Scottish Government significant new financial powers, with new borrowing powers of about £5 billion and a new Scottish rate of income tax, as well as new legislative powers around air weapons, drink-driving and speed limits in Scotland, all as recommended by the Calman Commission.

The SNP was ultimately willing to accept the legislation, but maintained that its provisions would be rapidly superseded by the independence debate. For more unionist MSPs, the Scotland Bill had the advantage of straightforwardly granting a new and significant set of powers to Scotland with the approval of the rest of the UK.

The Scotland Act may come to form another stage of the evolutionary process of devolution. Its proponents argue it is a straightforward, useful and functional addition to the powers granted to the Scottish Parliament. However, the question of how the Act will fit into the context of a polarised referendum remains to be seen.

3. Constitutional Questions

As the previous section indicates, when Scottish voters go to the polls in 2014, they may not be choosing between two clearly defined options, but from a range of constitutional variations. None of these will have been fully elaborated, since all raise questions which would be open to debate and interpretation to varying degrees. Despite the lack of clear answers, the conference aimed to select and explore some of the most pertinent of these questions. These relate to the effects greater devolution or full Scottish independence would have on international relations, on the constitutional arrangements and relationships with the rest of the UK and on economic matters.

3.1. Would an independent Scotland remain in the European Union?

In the hypothetical scenario that the Scottish people vote in favour of independence, what would that mean for Scotland's status within the European Union? At present, there are broadly three possible answers to this question:

- Unequal succession: the UK remains a member of the EU but Scotland is no longer a member;
- Equal succession: the UK divides, with both parts succeeding to existing terms of membership;
- No succession: the UK divides, with neither part succeeding to existing terms of membership.

The likelihood of each of these outcomes will form an important aspect of pre-referendum debates. However, these relative likelihoods are currently far from clear. The most recent parallel situation may be that of Czechoslovakia, although it was not a member of the EU at the point of break-up in 1992–3. In this instance, the split was not treated as secession, and both successor states (the Czech Republic and Slovakia) had to rejoin the UN and renegotiate agreements with the EU. Yet

these principles cannot simply transfer to the Scottish case. Much depends on our understanding of both the constitutional foundations of the United Kingdom and the determinants of EU citizenship. The legal theorist Professor Sir Neil MacCormick FBA FRSE summarised the situation thus:

“There is no single authoritative text from which one can derive an answer. One must infer answers grounded in principles and in authoritative legal texts and the principles that you argue underlie them. When I argue that there is a clear answer, therefore, it is because I think that the decisive weight of the principles tells in favour of the answer I am going to give. Others will put counter-arguments. That is not a special feature of the Scottish situation, or Scottish or English constitutional law, but a feature of law, in particular law at its most abstract level.”⁷

With this lack of clarity, political rather than legal considerations are likely to take centre stage. As Bob Lane sets out:

“Independence in Europe for Scotland can be brought about only if action at the national level proceeds concurrently with action at the Community level, thus producing an agreed result which necessarily includes the concurrence of the Community institutions and all member states. A Scotland bent on independence grounded in the clear democratic support of the Scottish people would create a moral and, given the international law principle of self-determination, probably a legal obligation for all member states to negotiate in good faith in order to produce such a result, but **this solution lies essentially within the domain of politics, not law.**”⁸

⁷ MacCormick 2000, p730.

⁸ Lane 1991

Looking in more detail at political considerations at the UK level, any pro-independence campaign is likely to base its arguments on a Scotland that is a member of the EU, but will remain outside of both the Eurozone and the Schengen agreement (the agreement to abolish internal border controls between the 25 participating European countries). There is no reason why an independent Scotland would fail to meet the Copenhagen criteria (the basic standards required to be eligible for EU membership, including democratic governance, the upholding of human rights and a functioning market economy) but the question of whether it could continue to uphold the UK's opt-outs of the Schengen agreement and the Eurozone is not yet clear.

The reaction from the rest of the UK to these proposals will be shaped by the UK's largely pragmatic constitutional tradition. Scottish accession is therefore unlikely to be opposed, in the interests of maintaining advantages for the rest of the UK in the EU. Indeed, Scotland and the UK are likely to be fledgling allies at EU level; both would be net contributors in fiscal terms, with shared concerns around regulation and similarly Euro-sceptic electorates.

At the EU level, the discussion may well be influenced by those countries with secessionist movements of their own. Spain or Belgium, therefore, may be opposed to Scotland's accession, although the likelihood that they would veto entry remains questionable (speaking in February 2012, the Spanish Foreign Minister stated that, "if the two parts of the United Kingdom are in agreement that [Scottish independence] is in accord with their constitutional arrangement, written or unwritten, Spain would have nothing to say; we would simply maintain that it does not affect us."⁹) On the other hand, the EU has a well-established capacity to accommodate difference and has been responsive to unusual territorial changes in the past, such as the departure of Greenland in 1985 and the accession of the former German Democratic Republic as part of a united Germany in 1990. It is also unlikely that Scotland would be forced to 'join the queue' for membership, behind potential candidate countries such as Albania. Nevertheless, the issue would require intensive bilateral, trilateral and multilateral negotiations on the new and renewed terms of both Scottish and UK membership, and is also likely to raise new questions about membership of the Euro.

Whatever the outcomes, lessons of previous referenda on issues of independence and devolution suggest that the prevailing direction of Scottish public opinion on European matters may have some impact on the result. As discussed by the political scientist Paolo Dardanelli,¹⁰ the 1979 Scottish Referendum on creating a devolved assembly was framed by a debate in which the SNP stood for an independent Scotland outside of the then EEC, with party perceptions of the Community as a 'capitalist club'. Voters concerned about the risks associated with independence appeared ultimately to depress the 'yes' vote. By the time of the 1999 Referendum on Devolution, the EU was seen to be moving in a more centre-left direction, with EU social possibilities creating new opportunities for progressive campaigning. The SNP shifted its position towards 'independence in Europe', and pro-devolutionists may have become less concerned about the risks of possible independence. In the event, the result was strongly in favour of devolution.

By 2014, however, the EU may no longer be viewed as the reassuring presence it once presented to voters on the centre-left. The Eurozone crisis and the prospect of a fiscal union dominated by Germany have meant the majority of Scottish voters, while remaining in favour of devolution, are now looking for reassurance that an independent Scotland would keep the Pound. This shifting European backdrop is likely to push the SNP towards a campaign based on a more confederal relationship with the UK, maintaining fiscal coordination with the Bank of England, continuing to recognise the Queen as Head of State and sharing other services, such as vehicle licensing.

The final question relates to the less specified 'third option' in this referendum: devolution max. If this was indeed the outcome, Scottish Ministers might demand fuller rights to participation in UK negotiation within the EU on areas that affected Scottish domestic interests. Here the UK's constitutional arrangements would perhaps prove more inflexible. UK Ministers are unlikely to be receptive to the idea of a statutory right for Scottish Ministers to participate more extensively in negotiation and may be reluctant to codify any rights. At the EU level, dividing sovereignty by dividing the state may prove less contentious than the division of sovereignty *within* a state.

9 Eurotribune 2012

10 Dardanelli 2005.

3.2. Will Scottish debates affect the constitution of the rest of the UK?

While much of the discussion on Scottish independence revolves around prevailing conditions and attitudes within Scotland, the debate clearly has significant implications for constitutional developments in the rest of the UK. It is worth exploring these in more detail, looking at the imbalances of current arrangements, the momentum which has characterised the devolutionary process and the clues this evolving constitutional debate offer on future trends.

The debate on the UK's constitutional future is marked by the basic asymmetries within the current settlement. The UK is comprised of four parts, three of which (Scotland, Wales and Northern Ireland) possess devolved governments. England – the largest and wealthiest of the four – has no dedicated devolved administration and is governed only by UK institutions. Furthermore, there is variation in the institutional arrangements and powers granted to each of the devolved administrations, designed to reflect the political and legal traditions of each nation. Stronger demand for devolved arrangements in Scotland than in Wales, for example, led to the Scottish Parliament gaining general legislative competence (meaning it can legislate on all matters other than those specifically reserved for Westminster) whereas the Welsh Assembly was initially only granted secondary legislative powers (meaning it could only legislate on specific areas conferred from Westminster). This has now changed following the Welsh Referendum of 2011, though the extent and form of the powers remain different.

These asymmetries and debates around their justification have provided a momentum to devolutionary process: there is in fact nothing settled about the current 'settlement'. Like other federal systems – such as Belgium, Italy and Spain – devolved powers have developed over time. Devolution should therefore be viewed as a *process*, rather a single event, which unfolds according to the political context of each territory.

3.2.1. What's driving constitutional change?

There are a number of factors contributing to the recent momentum in constitutional change. The first can be termed **constitutional functionalism**. Any process of reform is likely to engender further change, and critics have highlighted a number of problematic features in the

new devolved arrangements. One example might be the current lack of financial accountability for the Scottish Parliament, which has led to new options for expanding fiscal powers.

The second is **public opinion**. Evidence suggests that whilst electorates in Scotland, Wales and Northern Ireland continue to be cynical about their politicians, there is strong support for their devolved administrations and institutions. There also appears to be public appetite for further strengthening these institutions.

The third is linked to **political catalysts** of various kinds. The most obvious has been the SNP's securing of an unprecedented majority in the 2011 elections to the Scottish Parliament. However, even the SNP's ability to form a minority government in 2007 contributed to the establishment of the Calman Commission to explore new devolutionary options. In Wales, the coalition between Labour and Plaid Cymru established in 2007 led to the All Wales Convention – a forum for exploring greater law-making powers for the Welsh Assembly which resulted in the 2011 referendum and the Assembly's subsequent acquisition of primary legislative powers.

The fourth can be termed **spill-over**. On the one hand, devolution has created four quite distinct political systems. On the other hand, with three different devolved administrations now operating in the UK, developments in one area can spark debates in others. If Scotland does gain greater financial autonomy, for example, this could ultimately raise similar debates in Wales or Northern Ireland.

3.2.2. What do current debates suggest about future developments?

The question most commonly raised in relation to recent developments is whether we are heading towards an "ever looser" union. While developments in Scotland continue, answering these questions will require a closer look at the possible future devolutionary trajectory in the three nations that make up the 'rest of the UK'.

Northern Ireland:

The prospect of independence for Scotland has provoked little public debate in Northern Ireland. This may appear extraordinary. Surely Unionists must be anxious that, having now secured Northern Ireland's position with the UK (as both the Ulster and Democratic Unionist Parties

assert), they could be left politically exposed by such a radical constitutional change? Surely Republicans and Nationalists must relish the expectation that Scottish independence will force a reconsideration of Northern Ireland's relationship with the rest of the island (as Sinn Fein and the Social Democratic and Labour Party advise)? That common unionist anxiety and that common nationalist expectation certainly exist. However, whatever they may think or hope for privately, there is little incentive for political leaders to raise the issue. This can be attributed, amongst other things, to two significant factors. First, the parties in the Executive have no wish to unsettle present arrangements by speculating about an outcome for which they have no responsibility and which may not come to pass. Second, the principle of consent at the heart of the Belfast Agreement, confirmed in joint referenda on the island, has generated a new confidence about the durability of institutional structures and constitutional relationships, irrespective of what happens in Scotland. For the moment at least, most politicians in Northern Ireland have been comfortable with this self-denying ordinance, especially so since experience obliges them to believe that their intervention for or against independence is likely to be counterproductive.

The main constitutional debate in Northern Ireland currently revolves around the possible devolution of corporation tax. This is a move which currently enjoys political support across the spectrum in Northern Ireland, but also raises a number of potential problems. EU rules would mean the devolution of corporation tax requiring a corresponding cut in the block grant from the UK to cover corporation tax receipts. This would then raise questions about the economic case for the policy. There is not a clear case that the change would increase inward investment and it is likely to lead to high administrative costs. The UK has set up a Joint Ministerial Working Group on the issue, which will report in summer 2012. While the UK Government has not yet made its position clear, it is likely to be concerned about the implications of agreeing to devolve corporation tax to Northern Ireland for similar debates in Scotland.

Wales:

The Welsh Assembly gained a limited ability to make a form of primary legislation called an Assembly Measure in twenty policy fields – provided assent was gained from Westminster – via the Government of Wales Act 2006. After a referendum in 2011, this system was replaced by a more complete version of the twenty fields for which

the Assembly has the power to pass primary legislation, which then receive Royal Assent. However, the scope of the legislative competence of the Assembly remains a 'conferred' one, not the 'reserved powers' model seen in Scotland.

However, Professor Richard Wyn Jones has discussed the substantial agenda for further constitutional change which must be dealt with in the coming years. It is expected that much of this agenda will be addressed by the Silk Commission, established in October 2011 for the purpose of exploring current financial and constitutional arrangements in Wales and making recommendations on future developments in these areas. The Commission is expected to present the results of its review of Welsh fiscal powers in the Autumn of 2012, and its recommendations around the status of the Welsh Assembly Government by the end of 2013.

The Silk Commission may – along the lines of the Holtham Commission on Funding and Finance for Wales in 2010 – recommend the devolution of some fiscal powers to the Welsh Assembly. Such developments may be given increased momentum if the Scottish Parliament were to be granted increased tax-raising powers, but Wales may face the limitation of a relatively weak tax base. The Commission will also review the size of the Assembly; it currently comprises 60 members, but in 2004 the Richard Commission recommended that this would need to increase to 80 members if the Assembly were to execute primary legislative powers.

The Welsh devolved settlement therefore looks likely to face significant developments over the coming years. Leading academic experts have pronounced the Welsh Assembly's assumption of primary legislative powers in 2011 as an important rupture in Anglo-Welsh relations. It is likely to raise new questions around the role of Welsh MPs at Westminster, with the West Lothian Question now clearly relevant to Wales as well as to Scotland. These new legislative powers are also likely to raise questions about a separate Welsh legal jurisdiction, and a possible move towards the Scottish Parliament's model of general legislative competence (where the Parliament is permitted to legislate on all matters apart from those specifically reserved for the UK Government). More generally, though, a more distinct Welsh political system has come into being, as opposed to the traditional nomenclature of 'England and Wales'. With such shifts bringing Wales more in line with Scotland and Northern

Ireland as separate political entities, the question remains of how these changes will alter the debate in England.

England:

One of the most significant questions raised by devolutionary developments so far is the impact they will have in England: are the English also a nascent political community? In fact, changes in the largest and wealthiest parts of the UK have been the hardest to gauge. The English have not embraced a move towards regionalism; in 2004, voters rejected proposals for an elected regional assembly for the Northeast and, in 2012, directly-elected mayors were similarly voted down in nine of the ten cities for which they were proposed. The English are also most likely to retain a dual sense of identity as both English and British. However, some evidence suggests the 'English' component of that identity has gained strength in recent years, and there are other signs of stirring around English constitutional questions.

Devolution in other parts of the UK has meant that the English are increasingly delineated at Westminster almost by default; it has become an English parliament for large areas of policy. The possible constitutional impact of this situation, plus enduring debate around the West Lothian Question, has, in recent years, become a focus for Conservative MPs. In 2006, the new Conservative leader David Cameron announced the formation of the Democracy Taskforce, led by Ken Clarke and intended to review a range of constitutional issues with the aim of enhancing public trust in democracy. One of the areas examined by the Taskforce was questions about devolution, particularly those related to MPs from the devolved parts of the UK, able to vote on policy only applicable in England (such as recent debates on tuition fees or foundation hospitals), but unable

to take decisions on aspects of devolved policy which affected their own constituents.

When it reported in 2008, the Taskforce suggested that one way around this issue – to avoid the threat to the Union which might be posed in establishing a full English Parliament – would be granting the right of the Speaker to certify certain Bills as English only. If this were the case, only English MPs would be involved in the Bill's Committee and Reporting stages where amendments can be made. However, all MPs would be permitted to vote at the Third Reading, when it is decided whether a Bill clears the Commons. This would effectively establish a 'mini English Parliament' in determining the content of Bills applying only to England, but would also ensure that all Bills continued to require approval from the House of Commons as a whole. The key concept was that of the double veto: under the proposal, nothing could be imposed on England that a majority of its MPs rejected but, equally, the provision for an all-Union vote on the Third Reading ensures that an English majority cannot impose on ministers from a government that lacks an English majority.

In recent years, this debate has been picked up by the McKay Commission, set up by the Coalition Government. The Commission is expected to report in Spring 2013. This will now be in the context of clearer evidence of English concerns about the unfairness of the devolved settlement – particularly on parliamentary voting rights and the distribution of public spending – and the capacity of UK-wide institutions to defend English interests (discussed in more detail in the following section). Ultimately, these growing concerns may be fostering a deepening sense of a previously elusive 'English' identity – the data is contradictory (see Section 3.3), but a recent survey found 60% of respondents felt that English

BOX 3: WHAT IS THE WEST LOTHIAN QUESTION?

The 'West Lothian Question' is one of the unresolved questions about devolution, and the issues in fact date back to debates on Irish Home Rule in Gladstone's era. However, the question was so named due to it being persistently posed by Tam Dalyell, the Labour MP for West Lothian. It refers to the ability of Westminster MPs from Scotland, Wales and Northern Ireland to vote on legislation applicable only in England, whilst being unable to vote on certain matters affecting their own

constituents. This occurs where a policy area has been devolved, meaning the authority of Westminster may only extend to England.

This debate also extends to the composition of the Westminster Parliament, with the possibility of a party gaining an overall majority at Westminster without an overall majority in England. However, analysis of past election results suggest this is a relatively rare scenario.

identity had strengthened in recent years.¹¹ And such developments in the largest part of the UK may, in fact, come to pose the most significant challenges for the future nature of the Union.

3.3. How will the English respond?

Critics of devolution have long predicted that the process is bound, at some point, to lead to a backlash amongst the English. In some cases, the reasons are linked to resentment of the perceived imbalances of the current settlement, such as the apparently privileged financial position of some of the devolved nations (Scotland's policies on university tuition fees and relatively high levels of public spending are frequently mentioned). In others, the suggestion is that the development of distinctively Scottish or Welsh political institutions and the perceived benefits such devolved arrangements offer will spur demands for a devolved parliament to address English interests and lead to the rise of a more 'English' sense of identity. Taken to extremes, either of these developments could lead to a situation in which English support for the Union begins to evaporate.

How realistic are these predictions? One way of addressing the question would be to look at the ways in which the English have been responding to the devolutionary process

so far. The British Social Attitudes Survey (BSA)¹² has been tracking public opinion in England on a variety of constitutional issues since 1983. Using this data allows us to build up a picture of trends in English public opinion.

3.3.1. Are the English resentful about the devolved financial settlement?

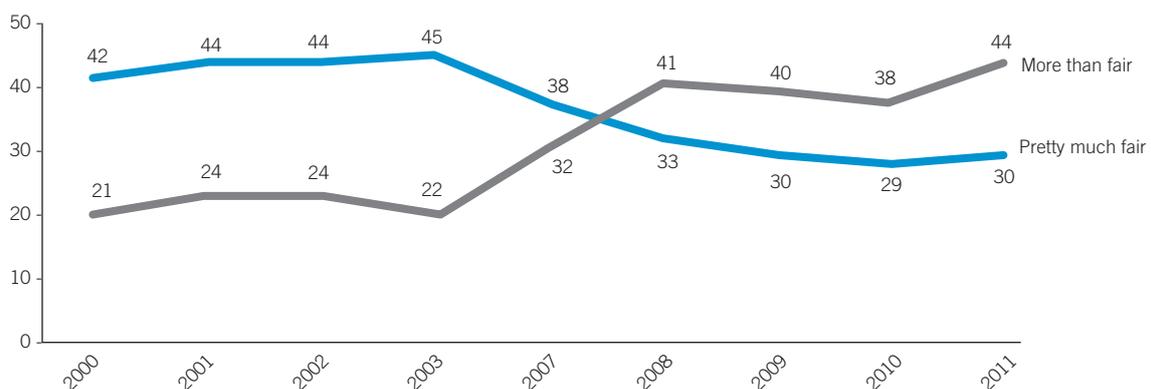
The first area of potential tension is the English perception of the financial imbalances of the current settlement. Higher public spending *per capita* in Scotland in fact pre-dates devolution, but the fact that the Scottish Government is now able to pursue distinct policies, eschewing university tuition fees and prescription charges, may have made this gap more apparent.

English respondents to the BSA are asked whether they feel Scotland receives more than, less than or pretty much its fair share of UK public spending. As Figure 1 illustrates, the data suggest that opinions on this have shifted quite substantially since Devolution; between 2003 and 2008 the proportion of English respondents who feel that Scotland receives more than its fair share of public spending has nearly doubled. However, it is also important to note that around a quarter of respondents consistently feel they don't know whether Scotland gets more or less than its share, suggesting the issue continues to have no impact on a significant minority in England.

11 Wyn Jones 2012, P.3

12 For more information see www.natcen.ac.uk/series/british-social-attitudes

Figure 1: English attitudes to whether Scotland receives more than or pretty much its fair share of UK public spending, 2000-2011. Source: NatCen, data from the British Social Attitudes survey.



In fact, the BSA finds the majority of people in England have agreed that Scotland should pay for its own public services from taxes collected in Scotland since the early years of Devolution. What's more, strength of feeling on this appears to have grown; the proportion of English respondents who agree *strongly* that Scotland should pay for its public services out of its own tax revenue has increased from 22% in 2003 to 36% in 2009.

These figures all provide evidence that there is increased concern and possible resentment in England about Scotland's current share of public spending. However, these opinions may well be affected by the recent introduction of 'devolution max' as an option for Scotland, which would see the Scottish Parliament gaining a much greater degree of fiscal independence. It remains to be seen whether an arrangement on these lines might go some way to addressing the concerns within England.

3.3.2. Are the English starting to feel more English and less British?

A second possible consequence of more distinct devolved administrations in the rest of the UK may be the development of a stronger sense of a separate 'English' identity. There are a number of measures of national identity incorporated into the BSA. Some give respondents a free choice when describing their identity, allowing them to choose 'English', 'British' or 'both', while others force respondents to select one identity which best describes them. Both the 'free' and 'forced' choice questions reveal that, in the years prior to Devolution in 1999, there was a

slight increase in the number of respondents in England identifying themselves as English. However, in the years since Devolution there has been no clear trend. Figure 2 shows the responses to the forced choice question. Where respondents have a free choice, 'British' remains the most popular option; in 2011, 66% of English respondents identified themselves as 'British' and 61% as 'English' (37% selected both). These results suggest a need for caution around predictions of any upsurge of a uniquely 'English' sense of national identity.

3.3.3. Is support increasing for a devolved administration for England?

Finally, we might expect that devolution across the rest of the UK could alter English attitudes to the way in which England itself should be governed. The BSA suggests that there is increased dissatisfaction with the status quo, particularly in relation to the West Lothian Question. Since 2000, the survey has asked English respondents whether Scottish MPs should be permitted to vote on legislation which is applicable in England, but not Scotland, as under the current settlement. A majority has been opposed to this situation ever since the question was included, but strength of opinion appears to have grown over recent years; in 2000, 18% of respondents 'strongly' agreed that Scottish MPs should not be allowed to vote on English laws; a figure which had increased to 31% by 2010.

But this increased dissatisfaction does not appear to have translated into new demands for changes to the way England itself is governed. The survey gave respondents

Figure 2: English attitudes to national identity, 1992-2011. Source: NatCen, data from the British Social Attitudes survey.

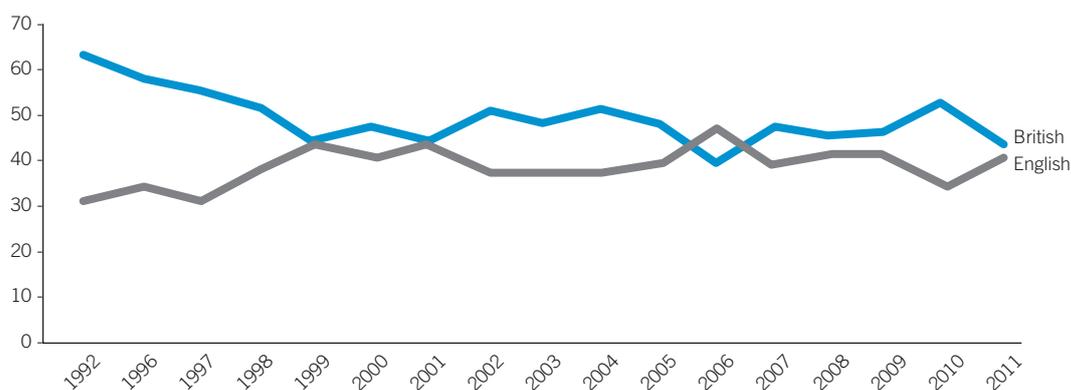
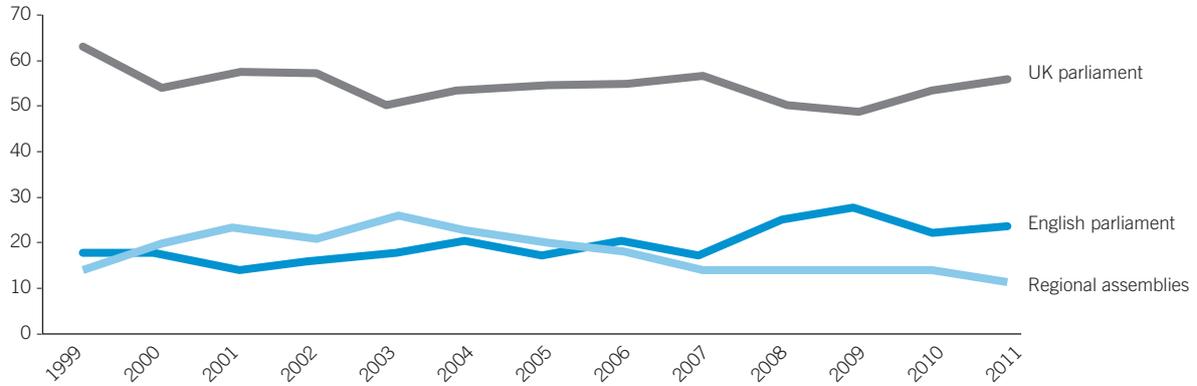


Figure 3: English attitudes to the way in which England should be governed, 1999 –2011. Source: NatCen, data from the British Social Attitudes survey.



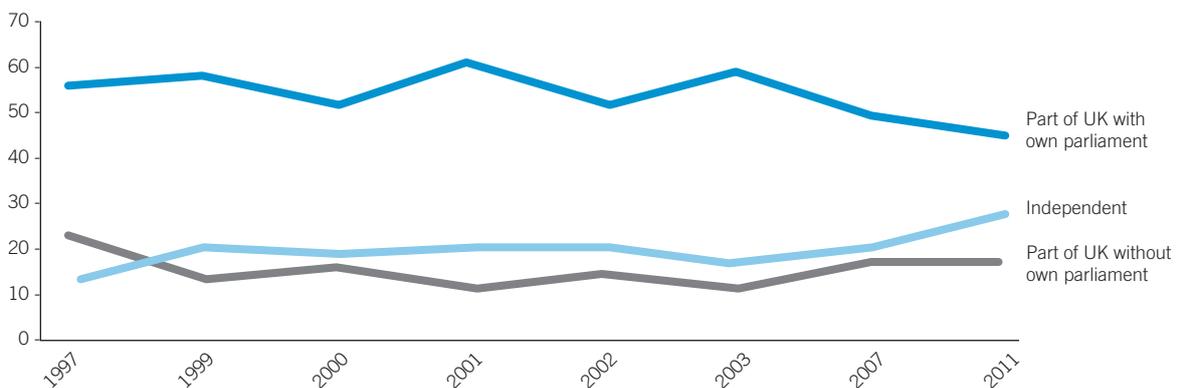
three options for changes to the structure of government in England: a system of regional parliaments with authority over certain devolved areas; a new parliament with law-making powers to govern England as a whole; or retention of the current status quo, with laws made by the UK Parliament. As Figure 3 illustrates, a consistent majority favours the status quo, with 56% backing this option in 2011. Amongst the remainder, support for an English Parliament has increased, while regional assemblies have seen a slight fall in support in recent years, but both of these remain minority positions.

In summary, whilst there does appear to be growing resentment within England about the public spending

and legislative imbalances associated with the current devolved settlement, there is no evidence of a corresponding increase in a more specifically ‘English’ identity or demand for an English Parliament.

How does this evidence suggest that England will respond to the latest proposals for increased devolution in Scotland? Given that an important source of present tension appears to be spending levels, it may be that the tax powers of the current Scotland Act on their own will not be seen to go far enough to resolve these matters in the eyes of English voters. In fact, devolution max could provide an answer to both English and Scottish concerns in this area, since opinion amongst both electorates

Figure 4: English attitudes to increased devolution in Scotland, 1997-2011. Source: NatCen, data from the British Social Attitudes survey.



appears to favour a situation in which the Scottish Parliament has greater tax-raising powers and pays for most of its services out of taxes collected in Scotland – a set-up which could be achieved under devolution max. This option may also go some way towards addressing the West Lothian Question, since if Scotland were no longer reliant on the block grant, it would not be possible to argue that Scottish MPs continue to have an interest in English decisions on public spending that might affect this.

The third possible future scenario is, of course, that Scotland opts for full independence and leaves the UK altogether. At present, evidence from the BSA suggests that few English voters would prefer this route. The most common preference has continued to be a Scotland which is part of the UK, but with its own parliament, as Figure 4 illustrates.

While these figures again suggest that most of the English continue to favour the status quo on the UK’s constitutional make-up, responses to this question in 2011 should also be noted. The most recent survey¹³ found a small but significant increase in English respondents who favoured full independence for Scotland, from just under one in five respondents in 2007, to just over one in four by 2011. This is certainly not a large

swing, or anything close to a majority opinion, but the possibility of growing minority support for a break-up of the Union suggests the future could still hold greater threats for the UK’s constitutional stability.

3.4. How do the numbers add up? The economic arguments

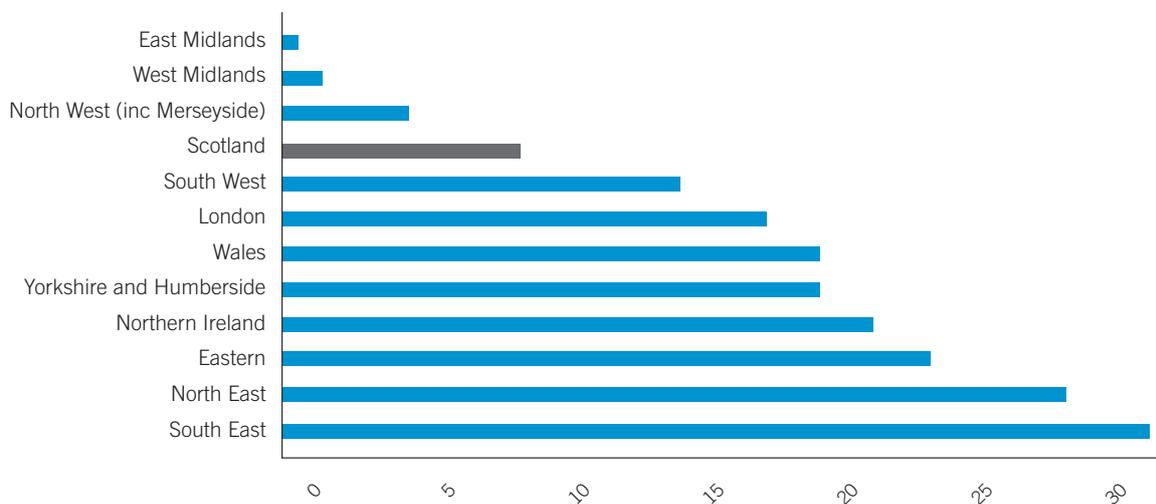
One of the most hotly contested areas in the debate around Scottish independence is the impact it would have on the financial positions of both Scotland and the rest of the UK. Financial implications also appear to be central to the degree of support for independence from within the Scottish electorate (see Section 2.1.6). There are a number of disputed areas in the debate on finance, which it would be pertinent to look at in more detail. Broadly, these relate to the overall fiscal situation in Scotland relative to that of the UK, the rates of public spending in Scotland and the potential sources of tax revenue in an independent Scotland.

3.4.1 What are the differences between the Scottish economy and that of the UK as a whole?

To begin with, it is important to establish how far the state of the current Scottish economy deviates from that of the UK as a whole. We can examine this issue by

13 www.bsa-29.natcen.ac.uk/

Figure 5: Comparing the aggregate difference of each region of the UK’s ranking from the median. Source: Office for National Statistics, calculations by Professor David Bell.



(Aggregated Difference – larger values imply greater dissimilarity from UK median)

forming an aggregate index based on seven representative indicators.¹⁴ Comparing the aggregate difference of each region's ranking from the median (see figure 5) in fact reveals that the Scottish economy is well-matched to that of the UK as a whole, being one of the closest regions to the median. Far greater deviations can be found in the English regions of the Southeast (performing relatively better across the indicators) and the Northeast (performing relatively worse).

The Scottish economy is currently very closely integrated into that of the UK, with closely connected labour markets and very similar debt ratios and fiscal deficits. What is more, it appears that, over time, business cycles, rates of inequality and unemployment rates in Scotland and the rest of the UK have all become more aligned; from divergences in the unemployment rates of England and Scotland of almost four percentage points in the mid-1980s, this gap has reduced to virtually zero since 2000. Rates of inequality in Scotland are also now around average for the UK as a whole. This gradual harmonisation is linked to a new world of fiscal and monetary arrangements where appeals to the past are becoming less relevant.

3.4.2 To what extent is Scotland benefiting from a generous public spending settlement?

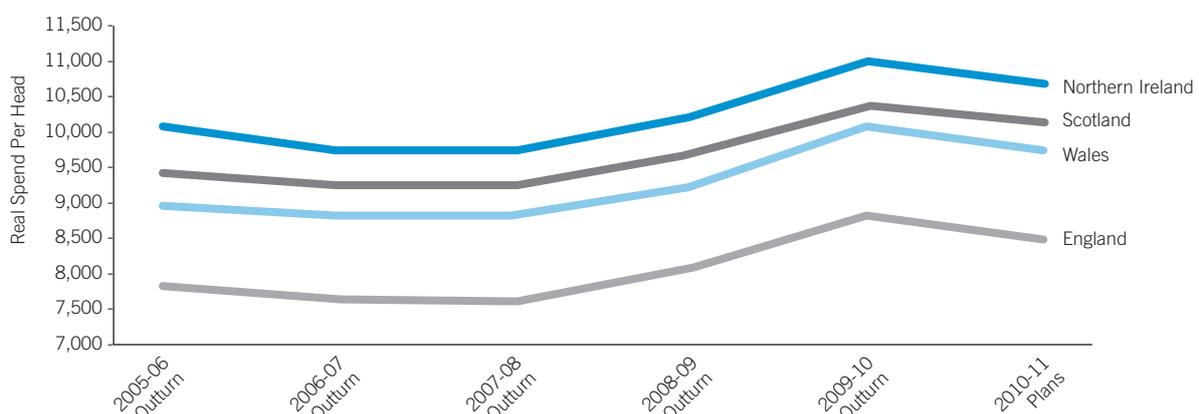
14 The seven indicators used are: Knowledge-intensive services (as % of total employment); R&D Spending by business as share of GDP; House Prices; Average Weekly Earnings; Unemployment Rate; Gross disposable household income (£ per head); Workplace-based gross value added (GVA) per head at current basic prices.

The question of equity in public spending is always likely to be a fraught one. The very meaning of spending 'equity' and how it interacts with ideas of relative contribution or need is clearly open to a wide array of interpretations. When applied at the UK-level, these arguments are further complicated by the question of national loyalty and the extent to which the UK's citizens perceive they are part of a single nation. There are two frameworks through which we can analyse the question of spending equity: the 'union' framework on the one hand and the 'federal' framework on the other. These two frameworks lead to quite different conclusions and the choice of which to adopt depends on an individual's circle of affinity – or whom they care most about.

The 'union' framework is underpinned by the idea of the moral equivalence of all citizens in the UK – those living in Cornwall should be entitled to the same range of benefits and services as those living in Perthshire. The logical conclusion of this premise is that taxation should be centralised and distributed according to need. This framework still forms the staple principles behind the current distribution of public spending, from health expenditure to local government. However, in this context, the Barnett Formula appears something of an anomaly. The devolution of certain areas of policy means that the devolved parts of the UK receive a block grant from the centre to distribute internally. This breaks the link to need for individual services.

It is the Barnett Formula that has given rise to arguments about Scotland's apparently privileged position with regard

Figure 6: Comparing real public spending per head in England, Scotland, Wales and Northern Ireland, 2005-06 to 2010-11. Source: HM Treasury: Public Expenditure Statistical Analysis.



to the distribution of UK public spending (see Box 2). As discussed in Section 3.3.1, this has been a growing source of dissatisfaction within the English electorate. But to what degree can we argue that Scotland really is receiving more than its fair share of spending?

Figure 6 reveals that, on average, public spend per head in Scotland is well above that in England and slightly above that in Wales. But these figures alone do not account for relative need or for the significant proportion of public spending, such as that on social protection, which continues to be distributed by the UK Government, unaffected by the Barnett Formula. One team of economists sought to address this issue by replicating the distributive formulas used to allocate public spending within England and applying them to devolved spending in Scotland and Wales. They found that, if spending were distributed purely on a needs basis, Wales should be receiving about 116% of the average spend per head in England, and Scotland should be receiving about 105%. However, under the Barnett Formula, Wales currently receives a little less than this, at 111% of the English average. Scotland, on the other hand, receives around 117% – significantly more than a purely needs-based approach would recommend.

This problem could be avoided by using an alternative framework to examine the question. Rather than the focus on need advocated by a ‘union’ approach, we could turn to the ‘federal’ framework. This is the argument that we have *circles* of affinity, which may be based on the UK’s constituent nations. On this premise, Scottish citizens will feel greater ties and responsibilities towards citizens living in Perthshire than those living in Cornwall. By this approach, we might argue that the people who raise the taxes should also spend them; there is now a case for looking at *where* taxes come from and not just to whom they are given. Given that Scotland’s proportional contribution to UK tax revenue is relatively similar to its proportional share of UK public spending, the Barnett Formula is more easily justified. However, the situation for Wales and Northern Ireland also looks quite different under this Formula. Both parts of the UK have a much weaker tax base than Scotland, and are thus receiving a substantial transfer when revenue is compared to spending.

If the UK does move towards this federal framework, it raises several issues. The first would be its likely detrimental effects on the fiscal situation for Wales and

Northern Ireland if size of tax revenues begins to shift some of the focus from needs-based considerations. The second would be the implications for tax policy. If Scotland were to insist on full tax devolution, the UK would be vulnerable to internal tax competition (although both the Treasury and the EU would likely be strongly resistant to this step). An alternative might be a model of tax revenue assignment, similar to that which currently operates between the federal states in Germany. Tax levels and collection continue to be determined at the federal level, but states are then free to spend the revenues as they wish.

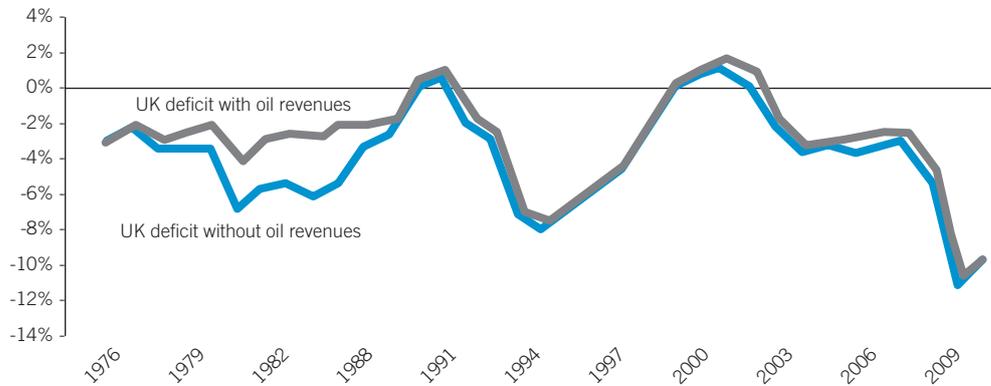
3.4.3 Will increased tax-raising powers allow the Scottish Government to boost Scotland’s economic growth?

Arguments for both full independence and devolution have focused on the new tax-raising powers these models would grant the Scottish Government. Proponents argue such powers offer both increased fiscal autonomy and the opportunity for the Scottish Government to set out a tax and spending regime designed to enhance Scotland’s economic position. However, some economists claim that Scottish politicians have been too focused on the potential of increased tax-raising powers to generate economic growth. First, this focus has led to a tendency to ignore the role of the public spending powers currently under control of the Scottish Parliament – in areas such as infrastructure investment, business support and human capital enhancement – which can be equally instrumental in affecting economic growth rates. Secondly, Scottish politicians may also be ignoring some of the constraints on tax-raising powers.

The most prominent area of debate about the potential benefits of Scottish taxation has been centred on North Sea oil. Many Scottish politicians have long argued that Scotland’s fiscal position would improve considerably if it could take full control of oil revenues from the North Sea. However, while the North Sea oilfields have certainly been profitable in the past, the extent to which revenues will continue to flow is less certain. As Figure 7 illustrates, it appears that the bulk of the fiscal benefits of oil revenue occurred between 1980 and 1987.

Since the mid-1990s, oil production has been declining steeply and taxing it in future is not likely to be a growing or stable source of revenue. This is not to say that oil revenues would have no impact on Scotland’s fiscal

Figure 7: Comparing UK fiscal deficit with and without oil revenues, 1976 – 2009. Source: Office for National Statistics, calculations by Professor David Bell.



balance; on 2009–10 figures, Scotland's fiscal deficit (produced by the Scottish Government as a percentage of GDP) would have been over 17% excluding North Sea oil revenues, but just over 10% including oil revenues (better than that of the UK as a whole). However, neither of these scenarios would represent a strong fiscal position for a small, newly-independent country. What's more, the gains from oil revenue would also have to be set against the losses incurred by the ending of Scotland's block grant and risks resulting from an end to the UK's automatic regional stabilisers.

The second set of taxation constraints includes the following:

- The Scottish economy would be unable to maintain a simultaneously low-tax/high-spend position. The Scottish Government would have to contend with establishing a new, politically-palatable balance between tax and spend.
- The outcomes of the major structural changes associated with independence will be uncertain. Outcomes may be better or worse, but bond markets are likely to extract a risk premium until these uncertainties are eliminated.
- Agreeing the terms of separation will take time and involve substantial set-up costs. Debates will centre on the allocation of debt and assets, as well as new institutional arrangements.
- Finally, there will inevitably be conflicts. Parties other than the governments of Scotland and the rest of the UK will become involved in negotiations on an independent Scotland's proposed fiscal arrangements. Questions likely to be raised include the prospect of fiscal integration

with the Eurozone, and opposition from larger countries should Scotland seek to reduce taxation rates in line with other small country 'tax havens'.

3.4.4 What would be the currency options for an independent Scotland?

Against a backdrop of a global economic crisis dominated by troubles within the European single currency, the question of an independent Scotland's future currency options has become increasingly salient. As a small independent country with fiscal devolution, Scotland would face several options on its currency arrangements:

1. **The status quo:** a devolved Scotland would remain part of a currency union with the UK. As a result, it would not be able to establish an independent monetary policy and would remain within the UK's regulatory and financial stability regime. This model would inevitably involve close fiscal integration and so limits the scope for fiscal devolution.
2. **The crown dependencies' model:** a second alternative would see Scotland attempt to follow the path of the Crown dependencies, such as Jersey. The country would be formally independent but retain Sterling as a currency. It would operate its own fiscal policy and have freedom to set its own framework around financial regulation, for example. Scotland would be able to alter tax rates (such as corporation tax), although both the EU and HM Treasury are likely to be strongly resistant to the creation of tax competition or a large tax haven within the UK or a single monetary area.

3. **Membership of the Euro:** Scotland could also choose to follow the path taken by Ireland, and seek membership of the European Single Currency. This option was previously favoured by some in the SNP, but has rapidly lost ground following the recent considerable economic troubles of the Eurozone.
4. **A separate currency:** the final option would be both to break away from Sterling and reject membership of the Euro, and to establish a separate currency for Scotland. This would place Scotland as a small European nation outside the Euro, along the lines of Denmark or Norway. It is an option which brings a number of potential gains and losses. On the one hand, it would allow for a separate fiscal policy geared to Scottish conditions; having this flexibility has brought the UK significant benefits in comparison to many Eurozone nations. It would also impose greater incentives for fiscal discipline. On the other, this option would also entail significant early risks, particularly those associated with the loss of the UK's automatic stabilisers and risk-sharing mechanisms, and speculation around possible devaluation. To avoid some of these risks, the exchange rate might be pegged to the pound. Full fiscal independence is also likely to entail a painful process of extrication from current closely integrated arrangements.

At present it appears most proponents of independence are in favour of retaining the pound, but achieving any of these options will of course be subject to a number of negotiations, not least with the UK Treasury. Indeed, much of the debate will centre on the extent to which greater fiscal devolution or full fiscal independence is even possible in the current era. As debates about future currency arrangements for an independent Scotland intensify when the referendum campaign begins in earnest, politicians on all sides might benefit from closer examination of the problems currently besetting the European currency union, particularly if an independent Scotland looks likely to retain the pound.

3.4.5 Cautionary tales from the Eurozone

The Eurozone now forms a serious cautionary tale for countries considering currency union. The original arrangements for the European single currency saw fiscal policy remain devolved to national governments, but constrained by the terms of the Maastricht Treaty. However, even prior to the financial crisis, the system

was showing signs of strain. This was linked to the high degree of variation between the unit labour costs and competitiveness of the member states, making countries such as Germany increasingly competitive and the more peripheral countries such as Greece and Ireland less so. This led to Germany developing high real interest rates, while peripheral countries saw real interest rates fall. The ultimate result has been a sovereign debt crisis with which the Eurozone, lacking provisions for fiscal backing behind financial support operations, has been ill-equipped to deal.

The key issue here is that the economic crisis now facing many European nations has been allowed to develop due to the lack of both fiscal integration and a pan-European fiscal regulatory framework. The Eurozone is being forced to consider far greater integration in order to save its currency. Ironically, the debate in Scotland is almost the exact inverse, as the nation decides whether to extricate itself from a fiscal union and push for greater devolution, or even full fiscal independence with a devolved regulatory system. It is therefore vital that full consideration is given in Scotland to the potential loss of inter-regional stabilisers and how an independent nation in an increasingly integrated world would secure itself against significant new risks.

4. Whither the Union?

Of all the questions raised by the prospect of Scottish independence, perhaps the most important is what it indicates about the current state of the unions that bind the United Kingdom. Having formed part of this Union for over 300 years, why is Scotland currently contemplating leaving it? To answer, we need to look at both the distant and more recent history of the Union and its impact in Scottish political culture.

4.1. The meanings of Union in Scottish political culture

2012 marked the centenary of the founding of the Scottish Unionist Party, formed in 1912 through a merger of the Conservatives and Liberal Unionists. This Unionist party was defending not the Anglo-Scottish Union of 1707, but the British-Irish Union of 1800-1. The vexed debate over the British-Irish Union dominated territorial politics in these islands during the late nineteenth Century and for much of the twentieth Century.

The 'Union' is in fact the product of three distinct unions: the Anglo-Scottish Union of Crowns of 1603, the Anglo-Scottish Union of Parliaments of 1707 and the British-Irish Union of 1800. For most of modern Scottish history the Irish Question was much more controversial than a virtually non-existent Scottish Question. As Professor Bill Miller has noted, visitors to Scotland were unlikely to find '1707' - as opposed to '1690' - in graffiti.¹⁵ When we examine the Anglo-Scottish Union of 1707 in historical perspective, it is perhaps its long-term lack of salience in Scottish political culture which is most striking.

This is not to say that the Anglo-Scottish Union was an issue of no significance, but that, from the 18th right

up until the 20th Century, the debates it inspired were not political. In fact, the main source of tension for the Anglo-Scottish Union between 1712 and 1920 was religious. Conceptions of the appropriate relationship between Church and State diverged markedly between Scotland and England. The English Reformation principle of State authority over the Church clashed with the values of Scottish Presbyterian ecclesiology, which asserted the autonomy of the Church of Scotland from State interference. The dispute was only resolved in the Church of Scotland Act in 1921. Up to this point, it was religious rather than political issues which caused friction between Scots and the British State.

Until very recently, the Anglo-Scottish political union has for most of its history been largely uncontroversial. The Union did not attract much comment except at particular moments of stress. Otherwise, Anglo-Scottish relations followed a rhythm of punctuated equilibrium, with long periods of stasis, virtual silence and the under-articulation of constitutional issues, interspersed with short bursts of debate. These moments include the Union debates of 1698-1707 in Scotland, the reforms of 1746-48 which followed the Jacobite rebellion of 1745, the run-up to British-Irish Union (1799-1800), and the Irish Home Rule debates between the 1880s and 1914. However, outside of these brief periods, Scots have largely taken the Union for granted.

So what has been the function of the Anglo-Scottish Union in Scottish political culture? It is commonly assumed that Unionism has always stood in opposition to Scottish nationalism. This, however, is to overlook the vital role played by Scottish political thinkers in the development of the idea of union. Unionism was, arguably, a Scottish rather than, as is sometimes supposed, an English invention. Pioneers in the unionist tradition, such as John Mair of Haddington, intended Anglo-Scottish Union as a means of preserving Scottish autonomy in the face of the ongoing claims of the English Crown to

¹⁵ Miller 1981, p1.

BOX 4: A BRIEF HISTORY OF THE UNION

Anglo–Scottish Union of Crowns (1603): the Union of Crowns took place upon the accession of James VI of Scotland to the throne of England, after Elizabeth I died childless in 1603. However, this union was only a dynastic one; the two Crowns remained separate (albeit held by one person) and England and Scotland remained separate sovereign states despite sharing a monarch.

Anglo–Scottish Parliamentary Union (1707): following the Union of Crowns, there were numerous proposals to unite the two countries of England and Scotland, but it was only in the early 1700s that the idea gained the support of the political establishments in both countries. This was linked to a decline in Scotland's economic fortunes during the late 1600s and a desire to access the new English colonial markets. However, while ratified by the Scottish Parliament, there was little popular support for the Union amongst the Scottish populace.

The Acts of Union took effect on 1st May 1707, with the Scottish and English Parliaments uniting to form the Parliament of Great Britain, based in Westminster. Was Scotland to vote in favour of independence, it is these Acts which would be formally repealed.

British–Irish Union (1800): Ireland had been ruled at least nominally by the English King since the twelfth Century, but separate representative and governmental institutions had been put in place. However, the British feared that democratisation of the Irish Parliament would lead to its domination by Catholics and Protestant radicals, who might be disposed to break away from Britain and ally with the French. The British therefore decided to push for a full union between the British and Irish Parliaments. The Act was passed by the Irish Parliament, partly achieved through bribery from the British and partly through a promise of Catholic emancipation (although this was not in fact realised until 1829).

Irish independence (1922): following the partition of Ireland in 1921 and the establishment of devolved institutions in Northern Ireland and Southern Ireland, Southern Ireland left the United Kingdom in 1922 as the Irish Free State, a British dominion. By 1949, it had achieved formal independence as the Republic of Ireland. Northern Ireland's devolved institutions were suspended in 1972, but were restored in a power-sharing arrangement after 1998.

an empire over the whole of Britain. The true opposite of Scottish unionism is not Scottish nationalism, but English imperial pretensions.

The ideological significance of the Union has varied over the course of its history. During the 18th Century the Union was valued largely as conferring on Scots as individuals the same rights and privileges as their English counterparts. However, the ideal of Anglo–Scottish equality changed its meaning gradually during the early decades of the nineteenth Century. By the mid-19th Century, equality within the Union had come to mean not the equality of freedom enjoyed by Scots and English as citizens, but an equality of standing between the two historic kingdoms of Scotland and England within the United Kingdom.

Once the long-running ecclesiastical disputes between the Kirk and the British State had been settled in the 1920s, political divisions came to assume a greater salience in Scottish culture. Between the 1930s and the late 1970s, the dominant understanding of the Union was as a 'union-state Union', in which the centre tolerated a considerable measure of diversity and asymmetry within a capacious multi-national state. On the other hand, this

was a classic era of two-party politics, with class identities and partisanship trumping sectional allegiances within the Union. Indeed, there was a powerful, if instinctive and under-articulated, sense of belonging to a 'British nation'. This had been reinforced by the common experiences of the two World Wars, and was perpetuated in the post-War era by way of an increasingly important 'welfare union'. The Union was valued as much on the Left as on the Right. The focus of Labour on nationalisation and welfare provision was underpinned by the notion that capitalism could not be tackled at the level of small nations, but should be addressed from the more powerful platform offered by Britain and her Empire. Among the middle classes there was also a quiet recognition that the Union – insofar as it preserved distinctive Scottish institutions – protected separate, or at least semi-autonomous, professions north of the border. In an under-stated way, the Union, which was largely unchallenged and as such required no overt justification, guaranteed both welfare for the working classes, and a professional establishment for the bourgeoisie.

During this period, even the Conservatives, who would later become identified as opponents of devolution,

acknowledged and indulged a Scottish dimension in British public affairs. Indeed, Edward Heath's Declaration of Perth in 1968 committed the Conservative Party to the introduction of a devolved legislature in Scotland. The SNP remained marginal to the constitutional debate, however; only in 1970 did the SNP win its first seat at a General Election, though it had won seats at by-elections in 1945 and 1967. The SNP breakthroughs in the two general elections of 1974 did not in themselves lead to any new articulation of Unionism, though Labour was won over to the need for devolution.

The era of the 'union-state Union' came to an end in the late 1970s, when the Thatcher administration moved towards what might be termed a 'unitary-state Union'. This meant the enforced assimilation of Scotland to the free market values associated with the City of London and the Southeast of England. No longer did the Conservative ideal of limited government hinge on the functioning of intermediary institutions, whether the traditional Scottish institutions preserved by the Union or the devolved legislature for Scotland to which the Party had been committed; instead Thatcherites promoted a sort of authoritarian individualism, which exalted the individual consumer within the operations of a free market overseen by a powerful central state committed to *laissez-faire* dogma. This brought into focus weaknesses in Britain's uncodified Constitution, and provided a boost to the campaign for devolution, which was implemented by New Labour after its decisive election victory of 1997.

The anti-Conservative mood which marked Scottish electoral politics prior to 1997 has recently been replaced by the development of an anti-SNP, pro-Union alliance amongst the UK-wide political parties. This shift in alliances springs from the rising fortunes of the SNP in elections to the Scottish Parliament and the party's commitment to bring in a referendum on Scottish independence.

Yet what has also become clear is the difficulty the anti-SNP alliance has had in articulating a compelling and vivid case for the Union. This is hampered by the fact that the SNP has cleverly appropriated for itself certain essential ingredients of unionist rhetoric. Alex Salmond has promoted not only the ideal of Scottish independence but also a vision of a continuing 'social union', which would preserve a common currency and the British monarchy. The SNP promotes both the ideal of independence and the safety net of continuing

supranational association with the rest of the UK in a 'social union' and membership of the European Union, to which Salmond can plausibly boast he is much more committed than David Cameron's Conservatives.

4.2. The welfare union in the 21st Century

One reason why the concept and purpose of the Union has been under-articulated in British political culture may be the fact that the idea encompasses several different versions of 'union'. Over the past fifty or sixty years, notions of union attached to a sense of shared social citizenship in the welfare state have become particularly salient. We can use the term 'welfare union' to describe the shared ideas, rights and duties involved here. As important as the welfare state may have been – and continues to be – for the Union, however, the idea of welfare union lacks clarity and precision. Confusion over labels exacerbates this difficulty. The phrase 'social union' is often used interchangeably with the welfare union, but it is helpful to distinguish them: the latter to refer to the social rights and duties of UK citizenship, the former to the personal, familial and communal ties across its nations and territories. The social union describes the long and continuing historical relationship between peoples and societies, the welfare union symbolises a more distinct set of political and institutional ties which form the redistributive basis of the UK-wide dimensions of the welfare state. Before moving on, it will prove helpful to make two further distinctions: the first is that between the *governance* of welfare – the means and levels through which it is arranged and administered – and the *politics* of welfare – its political and ideological foundations. The second is between distributive or allocative welfare policies and redistributive welfare provision.

The devolution of responsibility for distributive or allocative welfare policy in education and health provided the substantive core of the new dispensations for Scotland and Wales after 1998. The significant autonomy they gained in the governance of these policy fields was matched by the wide discretion that the devolved governments and legislatures enjoyed in the allocation of their budgets within and across the policy fields for which they were responsible. They could – and did – vary the pattern of spending on and between areas such as education and health provision. Of course, the devolved authorities had little or no control over the overall size of

these budgets, although the sustained growth in public spending during the early years of Devolution meant that it may not have felt like they were operating under a strict budget constraint. On the other hand, responsibility for redistributive policies – taxes, benefits and the social security system – was retained for the Union and exercised at Westminster and in Whitehall. It is worth noting that these policies also provide the core of the ‘automatic stabilisers’ that may help the UK economy as a whole to ride out periods of economic difficulty, as well as aiding any particular part of the state that faces special difficulties. The balancing effect of these measures is augmented by other factors, such as standardised public sector pay scales.

Across the UK, public discussion about devolution and the welfare state has focused almost exclusively on the governance and funding of distributive or allocative policies and very little on redistribution. This may reflect relative interest in, and support for, different dimensions of welfare provision: the NHS enjoys widespread public support, the system of social security benefits does not. But public debate about the implications of devolution for distributive welfare provision is often muddled. Headlines have been dominated by the advantages enjoyed by the Scots or Welsh in terms of support offered for university students or free prescriptions, without acknowledging that any extra spending in these areas must have been matched by reduced expenditure in other areas (compared to England). Of course, a case can be made that the overall size of the devolved budgets is unfair – perhaps even that the general munificence of devolved governments is at the expense of the English taxpayer. But in public discussion, the argument is not generally made in this way; instead the capacity of devolved governments to make particular allocative decisions is attributed to the English taxpayer. These problems are compounded by the absence of a clear justification for the Barnett Formula, a spending arrangement which has generally proved unpopular. The question of whether it was intended to facilitate a similar basic package of devolved services, designed around local needs or aspirations but retaining a common overall value, or whether it was instead intended to reflect the fiscal contribution of the devolved nations has yet to be settled (see Box 2, above).

Equally, where welfare policies have been invoked by Unionists as a justification for the continued relevance of the UK, the focus has been on distributive or allocative provision – particularly the NHS. No doubt this reflects

the enduring popularity of the service, which sometimes seems to have attained iconic status. While the NHS may enjoy a special social resonance across the UK, growing variations in its devolved governance weakens the power of an appeal to the NHS as a common, pan-UK institution. In a sense, the idea of the NHS may be part of the UK’s social union – the set of social and personal connections and understandings – even if it is no longer viable as a strong element of the (institutional) welfare union. If the NHS has an enduring appeal to Unionists, its core – and arguably historically ‘British’ – values are also invoked by Scottish Nationalists. For example, advocates of independence in Scotland have argued that they are more prepared than those in England to preserve the basic tenets of the NHS and protect it from marketisation. The fact that politicians in devolved nations continue to play on this common inheritance, arguing that the English rather than the Scots have been diverging from the historic traditions of the welfare state, suggests that elements of the social union form an integral part of the debate about devolution, independence and the welfare state.

On the other hand, we may also be witnessing a common shift in popular attitudes towards the welfare state across the UK nations. Public opinion in both Scotland and England seems to have begun to move away from social democratic attitudes towards the welfare state. Although this trajectory has perhaps been more pronounced in England, it might suggest that an underlying social union continues to be reflected in public attitudes.

By contrast, with distributive provision, redistributive policies have attracted little positive political attention in public debate, both within and beyond debates about devolution and independence. But this is not because the substance of these policies has been neglected. Despite widespread perceptions that the welfare state is in decline, the last Labour Government engaged in new policies of large-scale redistribution. However, these policies were developed stealthily, not celebrated. The Government appeared reluctant to engage in debate on explicit political justifications for the redistributive elements of the modern welfare state, perhaps due to the Labour leadership’s fear of losing votes in middle England. The lack of any recent clearly-articulated political justification for the redistributive welfare state has made it harder to develop a positive case for the redistributive welfare union. If politicians are not prepared to engage in serious debate on the purpose of redistribution, an appeal to the idea of the UK founded on the basic and equal

rights to particular standards of living for all citizens – wherever they live – based on the surviving redistributive welfare union of common tax and spending arrangements becomes impossible.

The question now will be how the welfare state becomes implicated in debates and developments around devolution and independence. While neither is yet clearly defined, both devolution max and independence imply a substantial, perhaps even a complete, unpicking of the redistributive apparatus connecting Scotland and the rest of the UK. The process of disentangling today's closely enmeshed redistributive welfare union could prove complicated and contentious. Such a situation would perhaps force the UK's nations to engage in an explicit political debate about welfare spending which has so far been avoided; tensions between aspirations for a social democratic welfare state on the one hand and proposals on reducing taxation to pursue economic competitiveness on the other would quickly be exposed. Of course, if public opinion across the union is moving against the traditional bases of the UK welfare state, the prospects for social democracy in the UK do not appear good. Yet, for the moment, pro-welfare state values remain important. As devolution seems set to accelerate, and full independence is considered for Scotland, politicians will be unable to avoid political debate on the future of welfare. Those in England and the devolved nations who wish to retain some of the old social democratic principles on which the UK's traditional welfare model was based will need to put forward a positive case for their existence, or risk the further dismantling of the historic welfare state.

5. Conclusions

It could be argued that, until very recently, devolution was viewed from Westminster as more of an event than a process. It was hoped that the establishment of distinct administrations for Scotland, Wales and Northern Ireland would put an end to some of the arguments about identity, citizenship and the appropriate distribution of political powers which have defined the history of the British Isles – or, in the words of then-Shadow Secretary of State for Scotland, Lord Robertson, would “kill nationalism stone dead”. However, this has clearly not been the case. It has taken the possibility of Scottish independence – and the consequent break-up of the United Kingdom as we know it – to remind Westminster of the continuing salience of these questions across the country.

This conference provided a timely re-assessment of the most important choices currently facing Scotland, and their implications for the UK as a whole. Speakers outlined the three broad options which may be put to the Scottish people: ‘devolution more’ (represented by the current Scotland Act), ‘devolution max’ and full independence.

There was also an opportunity to explore the numerous questions that these options raise: their likely effect on the standing of Scotland and the UK internationally, the relationships between the UK’s home nations and the economic choices which greater devolution or full independence would necessitate. How should current inequities in UK public spending be resolved? What will be the future status of the Westminster Parliament in an increasingly devolved UK? How will the English, whose political and economic voice remains such a dominant part of the UK, respond to greater political power and strengthening nationalism in the devolved nations? There are no obvious answers but, regardless of the referendum outcome in 2014, these are the debates which will define the economic, political and constitutional future of the UK.

Finally, the conference considered the current ‘state of the Union’. The referendum that will take place in

2014 represents the United Kingdom’s most significant existential threat for nearly a century. Speakers highlighted a rapidly changing economic and political context over the last thirty years. This includes an economy less focused on the manufacturing centres of Scotland, Wales and the North of England and increasingly oriented towards London and the Southeast, as well as new attitudes towards the welfare state and a declining sense of shared responsibility for welfare provision. These developments have placed the unspoken ties that have long united British citizens under increasing strain.

Whatever decision people in Scotland make, this debate will remain relevant well into the future. As this conference highlighted, the discussion is certainly not confined to Scotland, and developments in Wales, Northern Ireland and, particularly, in England will shape the future path of the devolved settlement. The process of devolution will continue to form part of an ongoing debate on citizenship, governance and national loyalties that has defined the history of the British Isles and its peoples. As Scotland seeks to enhance its status and purpose as a nation in rapidly-changing economic and political circumstances, this is a process and a discussion that can only take on greater significance.

Appendices

6.1. Appendix 1: Conference Programme

The British Academy and The Royal Society of Edinburgh Scotland and the United Kingdom

MEETING 1:

Tuesday 28 February 2012 at the British Academy
10-11 Carlton House Terrace, London SW1Y 5AH

BA Welcome

Professor Sir Adam Roberts KCMG PBA, President, British Academy

Introduction and Overview

Professor Iain McLean FBA FRSE, Official Fellow in Politics and Professor of Politics, University of Oxford

Session 1: The Constitutional Options

INDEPENDENCE

Mr Stephen Noon, Policy Adviser, Scottish National Party

DEVOLUTION MAX

Professor Michael Keating FRSE FBA, Chair in Scottish Politics, University of Aberdeen

THE SCOTLAND BILL SCHEME

Professor Jim Gallagher FRSE, Visiting Professor of Government, University of Glasgow

QUESTION AND ANSWER SESSION

Session 2 Constitutional Questions

SCOTLAND IN THE EU

Professor Charlie Jeffery FRSE, Head of the School of Social and Political Science, University of Edinburgh

THE CONSTITUTION OF THE REST OF THE UK

Mr Guy Lodge, Associate Director for Politics and Power, IPPR

HOW THE ENGLISH WOULD RESPOND

Ms Rachel Ormston, Research Director, Scottish Centre for Social Research

HOW DO THE NUMBERS ADD UP? TAXING AND SPENDING

Professor David Bell FRSE, Professor of Economics, University of Stirling

QUESTION AND ANSWER SESSION

Closing Remarks

Professor Sir Adam Roberts KCMG PBA, President, British Academy

MEETING 2:

Friday 27th April 2012 at The Royal Society of Edinburgh
22-24 George Street, Edinburgh, Midlothian EH2 2PQ

RSE Welcome

Sir John Arbuthnott MRIA PRSE, President, The Royal Society of Edinburgh

Introduction and Overview

Professor Alice Brown CBE FRSE, General Secretary, The Royal Society of Edinburgh

Session 1: Independence: Challenges - Politics

THE DIVISION OF CZECHOSLOVAKIA: POLITICAL ASPECTS

Karen Henderson, Senior Lecturer, Department of Politics and International Relations, University of Leicester

IRELAND FROM 1920

Professor John Coakley, Director, Institute for British–Irish Studies, University College Dublin

Session 2: Independence: Challenges - Economics

THE SPLITTING-UP OF CZECHOSLOVAKIA

Dr Lubomir Lizal, Member of the Bank Board, Czech National Bank

CURRENCY OPTIONS

Christopher Allsopp CBE, Director, Oxford Institute for Energy Studies

QUESTION AND ANSWER SESSION COVERING SESSIONS 1 AND 2

Session 3: The Union: Challenges

THE MEANINGS OF UNION IN SCOTTISH POLITICAL CULTURE, 1912–2012

Professor Colin Kidd FBA, FRSE, Professor of Intellectual History and the History of Political Thought, Queens University Belfast

THE WELFARE UNION IN THE TWENTY-FIRST CENTURY

Professor Daniel Wincott, JLS Chair, Cardiff Law School

Session 4: Greater Devolution: Challenges

WHAT ABOUT THE ENGLISH: REPRESENTATION AND THE WEST LOTHIAN QUESTION

Roger Gough, Cabinet Member for Business Strategy, Performance and Health Reform, Kent County Council

EQUITY IN SPENDING IN A CONTINUING UK

Professor Gerald Holtham, Visiting Professor, Cardiff Business School

QUESTION AND ANSWER SESSION COVERING SESSIONS 3 AND 4

Reactions from Scotland - Panel Discussion

Panelists: Professor John Curtice FRSE, Professor of Politics and Director of The Social Statistics Laboratory, University of Strathclyde; Douglas Fraser, Business and Economy Editor BBC Scotland; and Dr Alison Elliot FRSE, Associate Director, Centre for Theology and Public Issues, University of Edinburgh.

Closing Remarks

Sir John Arbuthnott MRIA PRSE, President, The Royal Society of Edinburgh

6.2. Appendix 2: Future Work

The British Academy and The Royal Society of Edinburgh plan to do further work to explore the issues which have been raised in this conference. In the first instance, we will focus in more detail on particular areas which have been identified at the events in London and Edinburgh. We will hold seminars covering different topics, with further papers produced on options and questions as appropriate. It is intended that this work will inform public debate, and both the British Academy and The Royal Society of Edinburgh will be happy to assist both the UK and Scottish governments in bringing academic resources to bear on these important public policy questions. The list of issues to be covered will include:

- Historical, legal and constitutional issues
 - The real economy - performance, infrastructure, labour markets, energy and oil
 - Monetary issues - currency, and banking and financial services
 - Fiscal issues - tax and spending, and borrowing
 - Defence, international relations
 - EU issues
 - Borders, immigration and citizenship
 - Welfare
 - Culture and Broadcasting
 - Science and higher education
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About the author

Beth Foley is a researcher at the Institute for Employment Studies. Prior to this, she spent two years as a Researcher for the Social Market Foundation think tank, carrying out projects on public service reform, mental health and welfare reform, behavioural economics and its impact on policy-making, and the issue of insecure employment. She has also worked as a freelance researcher for both the British Academy Policy Centre and for the Local Authorities' Research Councils Initiative.

The issue of Scottish independence is one of the biggest constitutional issues facing the UK at the moment, with far-reaching consequences for all UK citizens.

In early 2012 the British Academy and the Royal Society of Edinburgh organised a pair of conferences to discuss Scotland's past, present and future relationship with the rest of the United Kingdom. The events brought together academics and policy experts in the fields of constitutional law, politics and government, economics, international relations and history. It provided a platform for a frank and informed discussion on this topic, including complex issues such as tax and spending, the English response and relations with the European Union.

This report is a record of the views expressed by the speakers and attendees at those events. It aims to provide expert analysis and to encourage rich and informed debate on all aspects of this hugely important topic. It does not represent an established position of either the British Academy or the Royal Society of Edinburgh. The British Academy and the Royal Society of Edinburgh are both independent organisations with no party-political agenda or positions.



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