Scotland’s Referendum, Britain’s Future
5 March 2014, at the British Academy

Introduction
The Chair, Sally Magnusson, Reporter for BBC Scotland, opened the eleventh event in the series with the observation that Scotland has been talking about constitutional matters for a long time, but with less than 200 days to go until the Referendum on Scotland’s future, England has only just begun to acknowledge and refer to the fact that the Scots will soon be making a decision which will affect them also. She added that nuance and subtlety have not been regular visitors to the independence debate, and welcomed the Enlightening the Constitutional Debate series as providing a more nuanced discussion of Scotland’s constitutional future. She then introduced the panel of speakers who would be addressing the topic. These speakers were invited by the British Academy and the Royal Society of Edinburgh to discuss aspects of the Referendum debate, including the legal and constitutional issues relevant to the debate, and the key factors influencing public opinion on what Scotland’s future could and should be. Closing remarks were provided by Professor Neil Walker FBA FRSE, Regius Professor of Public Law and the Law of Nature and Nations, University of Edinburgh.

Chair:
• Sally Magnusson, Reporter, BBC Scotland

Speakers:
• Professor Vernon Bogdanor CBE FBA, Research Professor, Institute for Contemporary British History, King’s College, London;
• Professor Michael Keating FBA FRSE, Professor of Politics, University of Aberdeen;
• Professor Adam Tomkins FRSE, Professor of Public Law, University of Glasgow; and
• Professor John Curtice FRSA FRSE, Professor of Politics, Strathclyde University.

Professor Vernon Bogdanor CBE FBA, Research Professor, Institute for Contemporary British History, King’s College, London.

Professor Bogdanor began with the question can the Union survive? and suggested that this is a question which only the Scots can answer. He added that this is a momentous question, and pointed out that those in favour of independence do not see themselves as seeking sovereignty, but rather as wishing to renegotiate the union. Under the current Referendum debate, the Scottish Government is not seeking sovereignty, but rather a shared monarchy, a shared currency, and a shared social union with the rest of the UK. Opponents of independence often highlight the constraints that would face an independent Scotland, in particular those that would follow from continuing to use the pound, which would probably also involve banking and fiscal union. Professor Bognador observed that the arguments which are raised by the Unionist camp are, paradoxically, not that different from the arguments raised in the nationalist camp. The nationalists in the Scottish independence debate have frequently argued that independence is not a radical step, but rather an adjustment. At the same time, the Unionists argue that an independent Scotland will not be able to make as many changes as it might wish to, so there is little gain to be made from Scotland becoming independent. Within the Eurozone, for example, there is little scope for sovereignty. In matters such as competition, trade, agriculture and fisheries, members of the Eurozone are constrained. An independent Scotland joining the Eurozone would be similarly constrained. Both unionists and nationalists therefore argue the same point; that we live in a world where sovereignty matters much less than it used to. We live in a global and interconnected world in which borders are no longer so important.
Professor Bogdanor expressed the view that both sides of the debate take this point too far. He pointed out that despite the rhetoric, the European Union (EU) has not succeeded in establishing a common foreign or security policy, and on all foreign policy issues in the last 25 years the EU has been divided. It would therefore be open to an independent Scottish Government to choose its own foreign and defence policy. He referred to the example of the Republic of Ireland, which has chosen its own foreign defence policy and which remained neutral throughout WWII and the Iraq war. Independence therefore is not just a further step along the path to devolution; devolution is a question of degree, whereas independence is absolute. Independence, he indicated, has two implications. The first is that Scottish representatives would become the representatives of an independent state, meeting in Edinburgh. The second, as a necessary corollary of this, is that Scotland would no longer send MPs to Westminster. Instead, Scotland would be represented in London by its own High Commissioner. This means that Scotland would no longer enjoy any leverage over decisions being made in Westminster.

Scottish nationalists have various aspirations for an independent Scotland, such as a shared currency and social union. However, Professor Bogdanor observed that an independent Scotland would have no right to these things. It could only propose them and see if the rest of the UK would agree to them in negotiations. A ‘Yes’ vote in the Referendum, he observed, is a vote to become a citizen of another country, distinct from the UK, after which it would not be possible for Scotland to pick and choose which aspects of the union it wished to enjoy. An independent Scotland would have to negotiate for those things it now enjoys as a right.

Professor Bogdanor concluded with the suggestion that there is an argument for saying that his opening question – can the Referendum question is clear in words but not in meaning, and provided two reasons for why independence and sovereignty no longer mean what they used to:

1. The functional meaning of independence no longer exists. This is the understanding of independence as macroeconomic management and the control of fiscal levels. Independence does not provide this anymore, but it does provide choices, for example about which unions to join and which opportunities to negotiate.

2. At a deeper level, the question of sovereignty is not straightforward, and this is particularly the case in the UK. Professor Keating suggested that the issue of sovereignty has never been resolved in the UK, nor has the relationship between England and Scotland. Sovereignty, and the relationship of nationhood to sovereignty, has taken different forms in the UK, which is why the UK has worked as well as it has as a state, up until now – except for the problem of Ireland. Professor Keating referred to the work of the late Professor Sir Neil MacCormick, who argued that there are at least two doctrines of sovereignty: either Westminster is absolutely sovereign and this is the sole condition of sovereignty; or there are other conditions of sovereignty. In the Scottish example, sovereignty has historically been divided between Parliament and the Crown, so there is no clear, absolute sovereignty as there is in England. Scotland is part of the UK and the EU, but it does not have absolute sovereignty. Therefore, unionists who argue that Westminster is sovereign and nations are either in or out, are arguing across others in the debate who have a different understanding of sovereignty. Professor Keating observed that multiple meanings of sovereignty can and have coexisted, until a crisis point is reached, and then there has to be a Referendum. He added that it would be a pity if the UK lost its notion of constitutional pluralism within the debate on Scotland’s constitutional future. He reiterated the point that the union is understood differently in different parts of the UK, and suggested that this has been forgotten by some of the unionists in the Scottish Referendum debate.

Having identified the theoretical framework for discussing sovereignty, Professor Keating went on to observe that the question of a middle ground is not only about devolution, but about the rights of nations within a complex union. The critical issue on which this discussion often centres is the issue of the welfare state. In Scotland, the welfare state is
a big issue, and taxation is clearly a further issue which directly corresponds with that. The nationalist argument is that welfare can be delivered better at the Scottish level. However, this does not pay attention to the way the welfare state looks now. The general feeling in debates about the welfare state is that the current welfare settlement in the UK is not sustainable. There is no clear consensus as to what should be done about this, other than the general agreement that employment policy is the best way to address the issue, on the basis that it is better to pay people to work than to pay them not to work. Professor Keating’s discussion of the welfare state and its relationship to the Referendum debate raised points discussed by him in more detail at the series event on Welfare and Public Services. This discussion is summarised under the chapter heading of that name.

Professor Keating observed that there is a territorial dimension also, and pointed out that many of the instruments of the welfare state are best handled at local, regional and sub-state levels. If we look at the political arena in Scotland, Scots don’t have different preferences with regard to social welfare, compared with the rest of the UK, but the social compromises in Scotland are struck differently. Scotland may not wish to have exactly the same welfare settlements as England; i.e. those determined by marginal constituencies in the south of England. Desire for a different kind of welfare reform in Scotland necessarily implies taxation powers, which in turn may imply people in Scotland paying more in taxation. Professor Keating predicted that in ten years’ time we will have a Scotland which is more autonomous, and which has its own welfare settlement, not radically different from that in the rest of the UK, but significantly different. He suggested that these changes would probably take place without Scotland becoming fully independent. Concluding his section of the discussion, Professor Keating suggested that the ‘third way’ does not need to represent a compromise between Scotland being independent and Scotland being a member of the UK, but that there is a foundation upon which we can build a broader consensus about where Scotland is going.

Professor Adam Tomkins FRSE, Professor of Public Law, University of Glasgow

Professor Tomkins focused his discussion on the legal and constitutional implications of a ‘Yes’ outcome in the Scottish Referendum in consideration of public international law. He made the point that in the event of a ‘Yes’ outcome, Scotland would become a new state and the rest of the UK would be the ‘continuator’ state. He observed that this position is the one set out in the very first of the UK Government’s Scotland Analysis series of reports, and is based upon published legal opinion. He added that this view is not generally contested, but is fairly widely accepted. What is less well understood are the consequences of this essential distinction. The consequences are that, in the event of Scotland becoming independent, the institutions of the UK would automatically become the institutions of the rest of the UK. These institutions include, for example, security and intelligence services, the Bank of England and the BBC. Scotland, Professor Tomkins suggested, would not have any claim over these institutions.

The legal position with regard to assets and liabilities has slightly different implications to that regarding institutions, and the assets and liabilities of the UK would, in the event of Scottish independence, be apportioned equitably between the two states. This would constitute a large part of the negotiations which would take place between Scotland and the rest of the UK in the event of a ‘Yes’ outcome in the Referendum. Any settlements would take place within the broad framework of international law principles, meaning that UK fixed property located in Scotland would become the property of the new Scottish state, and conversely Scotland would have no claim over the UK’s fixed property in the rest of the UK, or overseas. The UK’s moveable property in Scotland would become the property of the new Scottish state where it was specifically for local use. Other assets and liabilities would be apportioned equitably; this could be determined by a population share, or in the case of national debt, by a GDP share. Historical contributions would have no relevance to this process, so it would not matter, for example, if UK fixed assets in Scotland had been paid for by the rest of the UK; they would still pass to the new Scottish state.

Dividing the assets and liabilities of the union is a hugely complex task, and Professor Tomkins observed that the UK Government, in its Scotland Analysis series, has given an indication of some of the key aspects of this complexity. In the Scotland Analysis paper on defence, for example, it was noted that an independent Scottish state could not simply co-opt existing units that are primarily recruited or based in Scotland, because these are an integral part of the UK armed forces. While many military bases are located in Scotland, these do not operate in isolation; they depend upon close integration with other capabilities, services and infrastructure spread across the UK. Moveable military and defence assets located in Scotland would not therefore pass automatically to an independent Scotland, because if they are integral to the UK as a whole then they are not specifically for local use.

Professor Tomkins observed that the Scottish Government White Paper on Independence has been written without regard for the legal distinction between assets and institutions. The White Paper makes the claim, for example, that the pound is as much Scotland’s as it is the UK’s; but this statement is legally incorrect. The pound is Scotland’s currency now, precisely because Scotland is part of the UK now. If Scotland leaves the UK it also leaves all UK institutions, of which the pound is one. This does not mean that Scotland cannot use the pound unilaterally, but that it cannot do so as part of a monetary union with the rest of the UK, unless the rest of the United Kingdom agree to this. If Scotland were to choose to use the pound unilaterally, it would have no control over interest rates and would therefore lose some of its autonomy, rather than gaining any.

With regard to UK embassies, the White Paper claims that Scotland is entitled to UK embassies overseas. Again, this is legally incorrect. These embassies would remain in the possession of the rest of the UK in the event of Scottish
independence, unless they were based in Scotland. If the Scottish Government wanted to use these institutions, it would therefore have to negotiate their terms of use. Professor Tomkins observed that many of the core elements of the Scottish Government’s approach to independence are based on assumptions that are highly questionable in law.

Professor John Curtice FRSA FRSE, Professor of Politics, Strathclyde University

Professor Curtice discussed public opinion in Scotland and England and, in particular, the implications of public opinion, on both sides of the border, for Scotland’s relationships with the rest of the UK in the future. He began with the suggestion that the Referendum in itself may be taken as evidence enough that Anglo–Scottish relations are not very rosy. He added that there tends to be a presumption that after 15 years of devolution, Scotland feels less closely tied to the UK than it previously has. He suggested that this is not the case, however. There is no clear evidence in the polls that Scotland is any keener on independence now, following this period of devolution, than it was before. What we have seen is the SNP succeeding in exploiting devolution in a way that has proved to be much more in tune with the preferences of the Scottish public.

In addition, Professor Curtice suggested that ‘accidents of history’ have played a part in bringing Scotland and the UK to the point that they are at now. He referred to ‘Black Wednesday’ of September 1992 and the fall in popularity of the Conservative Party across the whole of the UK. This ultimately led to the Conservative Party losing all of their representation in Scotland, and the SNP emerging as the SNP in a devolved election that in a Westminster one.

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Referring to England, Professor Curtice observed that while the Scots want more and more devolution, England still expects to be run by the House of Commons and is not looking for further devolution for itself. If Scotland does move towards funding more of its own public spending though, it will be reliant on taxation in Scotland rather than on the largesse of England. On this basis, England is likely to be happy for Scotland to adopt further devolution. England and Wales are currently three to one against Scotland leaving the union completely, and are beginning to accept that this outcome would not be good for them economically. England, he suggested, is increasingly keen to hang on to Scotland.

At this stage in the discussions, Sally Magnusson (the Chair) put some questions to the whole panel, for brief discussion before the open Question and Answer session.

Sally Magnusson referred to the evidence that women in Scotland are apparently less keen on independence than men, and asked the panel why they thought that was the case. She suggested the interpretation that this is because women tend to be more pragmatic than men with regard to things such as the household budget, and less directly concerned with identity.

Professor Tomkins responded that the gender gap is not to do with identity but with certainty and uncertainty, and observed that women tend to be more sceptical than men that Scotland would be better off under independence. This scepticism makes them less certain of Scottish independence and therefore less likely to favour it. Professor Bogdanor argued that the key question is not about Scottish identity, but whether Scottish identity is felt to be compatible with British identity. He added that the status quo is likely to benefit the closer we get to the Referendum.

Sally Magnusson then opened the floor for questions from the audience.
A member of the audience asked the panel to speak a little more about what is meant by ‘Scottish identity’ and how this manifests itself in the debate about Scotland’s constitutional future. He also asked the panel to discuss how ‘Scottish identity’ differs from ‘British identity’. Professor Tomkins responded by stating that he disagrees profoundly with the SNP’s constitutional policy; however, he added that the SNP deserves considerable credit for shifting the nature of Scottish nationalism away from ethnic nationalism and towards civic nationalism. He made the point that people born outside Scotland but living there will have a vote in the Referendum, but Scottish-born people living outside Scotland will not. This supports the civic dimension to the Scottish nationalist position. The debate is not really about identity, he suggested, but about the nature of Scottish nationalism.

Professor Curtice made the point that there is no difference between Scottish and British identity, in the sense that they are both forms of psychological identity. They both represent an emotional attachment which helps people to distinguish whom they regard as ‘us’ and whom they regard as ‘other’. He suggested that one of the fascinating things about Scotland is that a lot of people feel both Scottish and British, although for many the Scottish identity is the stronger of the two. These are all social identities, which are created by people’s sense of emotional attachment. Professor Bogdanor restated that the question is not really about which identity – Scottish or British – is stronger, but rather whether Scottish identity is compatible with British identity.

Professor Keating argued that if you have to define identity, then you have lost it. Identity is a complex set of relationships. Referring to the unionist position, he suggested that unionists in Scotland used to be very good at playing on Scottish identity; if you are a patriotic Scot then you are a unionist. Being a unionist in Scotland and being a unionist in Ireland therefore meant very different things. The unionists have lost that, Professor Keating argued, because they have tried to pin down what Scottish identity is. Scottish identity, he suggested, is very politicised, although it does not map very well with politics. Scottish nationalism made that connection between identity and politics, which was not there in the past. In practice, Professor Keating suggested that people have multiple identities, and often refuse to be put in boxes.

A member of the audience asked the panel what the political implication of a ‘Yes’ outcome in the Referendum would be for the rest of the UK, and made the observation that this would presumably result in the loss of 39 or 40 Labour MPs in Westminster. Professor Curtice responded that moving Scottish MPs would be nowhere near as significant for the Labour Party as moving boundaries in England and Wales. He made the point that if we go through historical records, we discover that Labour usually end up with a majority in England and Wales, and added that Scotland is not really a Labour fiefdom anymore. However, he observed that if Scottish Labour MPs were taken out of Westminster, the boundaries in England redrawn and Wales’ overrepresentation reduced, then things would become much more difficult for the Labour Party. He concluded that the removal of Scottish MPs alone would not have a very significant impact, because Labour does not typically rely on Scottish seats. Professor Bogdanor agreed, observing that there have only been two occasions when a Labour Government has depended on a Scottish vote. He acknowledged that there is more of a disparity now than has previously been the case, but suggested that the Labour party would simply need to adapt to that. Professor Tomkins observed that all MPs elected in 2015 will be elected for the duration of that Parliament. If, during that time, Scotland did become independent the House of Commons would have to resolve what to do about Scottish representation there. He added that it is not at all clear what the correct constitutional position would be, but much would depend on the position that the political parties take in the general election campaign in 2015. By the time we get to that campaign, the outcome of the Referendum will be known, and if there has been a ‘Yes’ outcome, negotiations will probably be already underway. One of the big political themes in the 2015 election campaign will therefore be precisely the question of what each party would try to do with regard to representing the interests of the rest of the UK during the completion of the independence negotiations. He therefore concluded that the question will be resolved by the political parties during the 2015 election campaign.

A member of the audience observed that Professor Curtice had mentioned the possibility of a conditional ‘No’ outcome and asked if there could be a conditional aspect to a ‘Yes’ outcome. She also raised a question about the envisaged timeline for independence of March 2016, suggesting that this timeline seems quite short. Professor Curtice said that a conditional ‘Yes’ outcome was not likely. The UK Government was concerned that if there was the prospect of a second Referendum then voters might be more likely to vote ‘Yes’ in the first instance; and the SNP were concerned that if there was a second Referendum, voters would vote ‘Yes’ in the first, but then vote ‘No’ in the second. This means that whatever the outcome of the Referendum, this is the final outcome. Professor Tomkins observed that the Referendum is taking place on the basis of the Edinburgh Agreement, which requires the Referendum to be fair, legal and decisive. This means that in constitutional terms, this Referendum must determine the outcome, even if this is determined on a small turnout or a narrow majority. In the event of a ‘No’ outcome, how long Scotland continued to remain in the Union is another question, and one which would depend on the size of the margin and also on the political mood in Scotland. He suggested that immediately following the Referendum, Scotland might feel completely exhausted and want anything but another round of constitutional arguments. Alternatively, Scotland might feel that nothing had been resolved, and the big question around what a ‘No’ outcome actually meant might still be to play for. He suggested that the beginnings of that political argument are already playing out amongst the Scottish political parties.
On the question of the SNP’s proposed timeline for independence, Professor Keating suggested that the time frame depends upon the negotiations and the attitude of the two parties. If there is goodwill on both sides, then the March 2016 deadline could be realised. However, he added that in the event of a ‘No’ outcome, the issue would not go away. Territorial tensions would remain, and the issue would return in later generations. Professor Bogdanor argued that the rejection of the proposal for a further Referendum is precisely due to the fact that the debate is not about economics. The vote is not conditional upon the terms of a negotiated settlement, but is absolute. He observed that originally, referenda were binding on Government, but not on Parliament, and asked whether the Scottish people count as a third chamber of Parliament for this purpose.

A member of the audience asked the panel why all of the ‘disenfranchised’ Scots, who live outside Scotland and cannot vote in the Referendum, have not made more of a fuss? He also asked; if the third way were to take place, what will happen with regard to the West Lothian Question?² Responding to the first part of the question, Professor Curtice suggested that the Referendum is a residential franchise, so any disenfranchised Scot wishing to vote in the Referendum can do so simply by becoming resident in Scotland for the period leading up to the Referendum, and getting themselves on the electoral register. On the West Lothian Question, he suggested that something probably is going to have to be done with regard to Commons procedures. He referred to the Commission, chaired by Sir William McKay, established to examine this question. This Commission came up with a sensible principle that somewhere along the line there should be a vote limited to English MPs. However, Professor Curtice indicated that this Commission had suggested too many options for how that proposal might be implemented. He suggested that as a result of this, the proposal may be at risk of running into the sand. To a degree, he observed, the West Lothian Question is going to keep on dogging this issue, but so long as England continues to want to be ruled by the House of Commons there is not going to be any neat solution. Professor Bogdanor suggested that a ‘dog which hasn’t barked’ yet is the role of the cities in the North and Midlands, which lack the leverage of either Scotland or London. He suggested that these are the areas where UKIP – which is essentially an English nationalist party – will make gains.

A question was raised about the role of Europe in the Referendum debate. The point was made that the prospect of a Referendum on the UK’s membership of the EU could reopen the whole business of Scotland’s place in Europe. The panel were also asked, in the event of a ‘No’ outcome in the Referendum on Scotland’s future, what would happen to the Barnett Formula? This Formula benefits Scotland at present, but this may unravel in the event of a ‘No’ outcome. Professor Bogdanor responded that both supporters and opponents of the EU tend to exaggerate the degree of power sharing that is brought forward. He suggested that the EU is moving in an intergovernmental direction, and that the economic crisis of the Eurozone has been resolved broadly through intergovernmental actions. Countries within the EU are now resisting further extensions of sovereignty; for example, Germany, which in many ways appears to be the most Federal of all EU countries, does not want a sharing of economic burdens with the poverty-stricken countries of the Mediterranean. He therefore argued that both sides are using the European argument irrelevantly, because it is not going to develop into the integrated Europe that its founding fathers perhaps hoped it would.

Responding to the question on the Barnett Formula, Professor Keating suggested that this Formula has survived simply because we cannot think of an alternative to it. He observed, however, that the UK is not unique in having this problem; all European countries in recent years have had debates about the regional distribution of Government spending. None has come up with an answer to this issue. Professor Curtice suggested that one of the implications of the 2012 Scotland Act and further devolution with regard to taxation in Scotland is that resources coming to Scotland under the Barnett Formula will cover a lower proportion of Scotland’s spending. He suggested that this creates the potential for a win-win situation, with further devolution actually solving the Barnett problem. Professor Keating suggested that we cannot address Barnett without addressing the concerns of the Welsh, who are being seriously disadvantaged by it. Professor Tomkins agreed that further fiscal devolution makes the Barnett problem less important, however he added that further fiscal devolution also makes answering the West Lothian Question mandatory.

A question was put to the panel about the players in the Referendum debate. It was suggested that the debate so far has appeared to assume that the only players are England and Scotland, with Wales on the sidelines. The suggestion was made that this is not the case, and that in Ireland there is a great deal of awareness that the outcome of the Referendum will break the St Andrews Agreement and the Irish Settlement. A further question was put to the panel about who the negotiating body should be in the event of ‘Yes’ outcome in the Referendum. The observation was made that the Government of the UK has been referred to as taking on this role; however it was argued that this makes little sense. Professor Tomkins responded that it may be the case that the SNP are the players on the Scottish side between now and March 2016, but that Scotland will then have its own election, meaning that the SNP may not be the ones conducting the negotiations on the future of an independent Scotland. Professor Keating raised the concept of a ‘pluri-national’ state, and suggested that within the UK it is less significant that the nations of the UK are different, but more significant that the meanings of nationality in each nation are different. This is an additional complication; a multi-national state is a mosaic of separate nations living under a common roof, but the very meaning of nationality in England is distinct.

²The question in the UK as to whether devolved regions of the UK – Northern Ireland, Scotland and Wales – can vote in the Commons on issues affecting only England.
In Scotland, nationality is, almost by necessity, a dual nationality, and in England it is not. This additional layer of complexity needs to be faced. This ties in with the point about the other parts of the UK, and who is a player in the debate. It is not just England as a nation versus Scotland as a nation; there is a very complex set of relationships to consider.

Professor Tomkins added that the serious mistake of Scottish politics has been to treat the Referendum debate as though it is a question about the relationship between Edinburgh and London. He pointed out that we hear a lot about the idea of the Union, but suggested that nobody in the UK is taking a pan-Union approach to this question. He suggested that in the event of a ‘No’ outcome, what needs to happen is for the future of Scotland’s constitutional position to be put in the context of the whole of the UK, including relationships between Edinburgh and other cities in the UK and in Scotland. He argued that the voices of governments and peoples in Northern Ireland, Wales and the north of England have to be brought to the table. At the moment, he observed, there is no table for these voices to be heard; one has to be built. He argued that we have reached the end of the road in terms of delivering devolution in the way it has traditionally been delivered. Devolution has never been imposed on anyone, it has been voted for after a coherent demand has been made in the relevant place. The process is therefore one of local demand followed by state delivery. Professor Tomkins expressed doubt that we can continue with this pattern. Whatever happens with regard to Scotland’s future cannot be dictated by Scots alone.

A member of the audience asked a question about the role of identity in the Referendum debate, and suggested that making the Referendum on Scotland’s future a question about identity, rather than a question about economics, was dangerous for Scotland. She argued that the arguments made about national identity tend to be very emotive, and expressed concern that now that 16 and 17 year-olds are to be allowed a vote in the Referendum, they will be particularly vulnerable to nationalist propaganda, which is being advanced in the absence of rational argument. Addressing the issue of 16 and 17 year-olds being allowed to vote in this Referendum, Professor Curtice suggested that he has reservations about this, simply because 16 and 17 year-olds are less likely to vote. However, he added that it is not necessarily the case that an older person should have a vote when a younger person does not, given that the younger person will have to live with the outcome for longer.

A member of the audience questioned some of the points raised by the panel during the discussion. He observed that several of the panel have implied that we shouldn’t be asking this question, about Scottish independence, at all; it is the wrong question to ask, or it is not a sensible question. However, he suggested that we have been forced to ask this question, by the outcome of a political process. In this respect, the Referendum perhaps represents an opportunity for the UK to explain itself more fully. He suggested an understanding of the UK not as a union state, but as a multi-national state, and asked if the panel would accept that description, and in particular if they would accept the proposition that, by the very act of agreeing that there will be a decisive Referendum, the UK has acknowledged that the Scottish people are, apparently, sovereign. Professor Curtice agreed with this position, and likened the Scotland example to when the UK acknowledged Northern Ireland as sovereign. He observed that the UK has been here before, and suggested that there is consensus that Scotland and Ireland do have the right to leave the UK, if they choose to. He agreed with the view of the UK as a multi-national state.

Sally Magnusson (the Chair) brought the discussion to a conclusion by putting the question to the panel; how will the Referendum outcome go? Professor Bogdanor suggested that Scottish independence will be heavily rejected, but that the political problem which will be faced will be that of the English cities in the Midlands and the North. Professor Tomkins agreed that Scotland will reject independence, but suggested that the interesting question will be what happens next; what will ‘No’ mean? He added that there is a further question around how unionists can ensure that the union is strengthened robustly enough that the issue of Scottish independence does not have to be revisited again. Professor Curtice indicated his view that this is a Referendum that the unionists would have to make a mess of their campaign to lose. He advised that the audience follow the debate about what might happen with regard to further devolution, which is not a debate which is going to stop following a ‘No’ outcome in the Referendum. He predicted that the ‘victor’ will end up being the option that is not on the ballot paper, i.e. significantly increased devolution. Professor Keating agreed with Professor Curtice and added that he was impressed with the way people in Scotland are taking the debate out of the hands of the politicians and asking questions about pensions and the economy. He suggested that this is very healthy, and observed that associated with the Referendum question is a question about the future of the country and the future of society. He expressed a hope that this type of discussion remains open following the Referendum.
Closing remarks

Professor Neil Walker said that the debate had been very enlightening, and he suggested that although the discussion may not have thrown up any firm answers to the key questions surrounding the Referendum debate, it had certainly brought increased clarity to the analysis of the key issues. He then provided a brief summary of the key issues which had come to light during the discussion:

The role of identity: Professor Walker suggested that the discussion about the role of identity in the Referendum debate had been very interesting, and added that when we speak about national identity it is an umbrella term for two different types of identity. There is a cultural identity, and also a political identity. We should not necessarily take the view that there is a dichotomy between reason and identity; sometimes reason is built into identity.

The question of spectrum: Professor Walker expressed interest in the question of whether the Referendum represents an either/or choice, or whether it occurs along a spectrum. He referred to Professor Bogdanor’s point that neither side of the debate is taking sovereignty seriously enough, and suggested that there is a genuine set of questions about the extent to which this is a debate which is on a spectrum. He added that this question is not just one about the here and now, but is one about what happens over the next ten to fifteen years, and observed a general consensus that the debate will not be over after the Referendum. This is consistent, he suggested, with the view that this is a debate on a spectrum.

The role of legal arguments: Professor Walker referred to the arguments presented by Professor Tomkins, which he regarded as largely correct. He suggested that the Scottish Government has made a strategic mistake in trying to base their arguments on legal grounds. He added that an interesting issue is not so much what the legal positions are, but the extent to which this is a legal question. He asked at what point this becomes a mixture between a legal and a diplomatic question, and observed that on both sides of the debate it has been treated very much as a legal question. This has polarised the debate, but has also diverted attention from what would be reasonable compromises.

Multilateral vs unilateral debate: Professor Walker questioned the extent to which this is a multilateral rather than a unilateral debate, and suggested that in Scotland the debate feels very unilateral. He argued that the debate is not, in fact, a unilateral debate. This is the case for pragmatic reasons; for example, negative feeling in the rest of the UK may affect Scotland’s ability to negotiate a desired outcome for itself. What is more, there is a more creative debate to be had about the Union, which would be more successful if more people participated in it.

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