

Britain after Brexit

Toxic referendums and territorial constitutions

By Jim Gallagher

Referendums are held up as the gold standard of democracy. After a state regulated and funded campaign, the people make a decision, which government then honours. But referendums can go toxic: two different pathologies can produce anti-democratic outcomes. The Brexit referendum suffered from both, but paradoxically it opens up opportunities for quite radical changes to the UK's territorial constitution. So Scotland has the chance to avoid compounding the UK's errors with another potentially toxic vote, and instead it and the UK can settle on a constitution that most Scots can assent to. This paper suggests what such a deal might look like if political leaders had the courage to make one.

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Two Nationalist Referendums: Contrasts and Parallels

In the last two years the United Kingdom has faced two existential referendums. The European referendum has produced an unexpected result whose consequences remain deeply uncertain. Two years earlier the Scottish referendum rejected a change whose consequences would have been even more radical and complicated. The parallels and contrasts between them illustrate the two pathologies referendums are prone to.

There are obvious similarities. Both were about sovereignty: Brexiteers were for "taking back control", while "decisions about Scotland taken by the people who care most about Scotland" was the SNP's best argument. Both movements are nationalist, against a supranational EU and a multinational UK. Ironically, the SNP support the EU, while Brexiteers typically support Scotland remaining in the UK. Brexit campaigners who say the English "do not want other people telling them what to do" show a cloth ear for Scotland or Northern Ireland; Scottish nationalists, happy to cede sovereignty to Brussels but not London, are deaf to any anti-English note in their song.

Both the campaigns against change were criticised for being "project fear". Certainly both addressed risks. In Scotland, Better Together tried, but sometimes struggled, to make a positive case for the UKⁱⁱⁱ. It was easy to identify the instrumental benefits of union, and the risks from losing them, but less easy to set out an attractive case for the status quo. This was much more marked in the European campaign. Remain – perhaps thinking they were learning from Better Together's success – were persistently and explicitly negative. Few leading politicians made any emotional, positive case for the EU. It was seen in purely instrumental and negative terms – the risks to trade and economic growth from leaving.

Voting against, and writing blank cheques

These similarities – emotional versus instrumental, hope versus risk in each case – are not just matters of campaigning style. They mask a more significant issue, which gives the first indication of how referendums can go sour. Especially in the Brexit referendum, the arguments for change were really negative. People were encouraged to vote *against* something.

It is easy to see why. The shortcomings of the status quo are tangible, and easy to caricature, and its merits taken for granted. Politics and the media focus on problems, not successes. Those who think they lose from the status quo argue for change; winners are silent. So Brexit campaigners pointed to intrusive EU rules (some real, many imaginary) or to EU migrants (largely real, but often not local). Benefits like the jobs created by EU trade, or still more the long absence of war in Western Europe, are harder to bring to the front of voters' minds. Pointing out the risks from losing them is easy to caricature as 'project fear'. Opponents were 'losing faith in Britain' just as supporters of the UK had been 'talking Scotland down'^{iv}.

But voting against something is writing a blank cheque for something else. The post-Brexit UK was, like an independent Scotland, a blank slate onto which voters could project their hopes. Britain could be outside the EU, but still inside the single market. It could have trade advantages without immigration responsibilities. It could simultaneously be Norway, Switzerland, Canada and Australia. Three months after the vote, the absence of a concrete plan endorsed by the voters is very evident. The UK still does not know what leaving means. The government cannot agree what relationship with the EU it wants, and still less is there a consensus within Parliament or the country, never mind what can in fact be negotiated with the other 27 member states. The process of negotiation was designed to make life hard for leavers, as giving Article 50 notification sets a hard deadline after which the UK will leave with no deal. So Ministers do not propose even to tell Parliament what they want or what they are getting, and will be strongly tempted to trigger the article on the basis of unrealistic and unscrutinised expectations of what can be achieved. That way Ministers can paper over their internal divisions and avoid facing upfront the trade-offs implicit in Brexit. When reality intrudes the EU can always be blamed.

That's what happens when you write a blank cheque: somebody else fills it in. By contrast, referendums where the proposed change is within the gift of the question-setters generally deliver. The 1997 referendum on Scottish devolution (like the repeated referendums in Wales) endorsed detailed proposals, which could be enacted after a positive vote. Similarly, the Alternative Vote referendum would have resulted in a known change to the electoral system. The Scottish independence referendum was a bit different. Sensitive to the charge that independence was a pig in a poke, the Scottish government produced a voluminous White Paper^v, aiming to answer all the questions voters might have. (Among other things they were reassured Scotland would be in the Eurovision Song contest.) But it too suffered from making promises that it could not deliver. Some were down to external realities, such as the unrealistic promises on oil revenue; others, as in Brexit, were promises dependent other parties, like whether the UK would agree a currency union.

This illustrates very clearly the first pathology of referendums. If people vote against something, rather than for a specific, deliverable proposition, then who knows what they will get? Indeed the outcome is quite likely to be one which a majority would have rejected had it been offered. So voters were told that the UK would remain in a single market stretching from Iceland to Albania^{vi}, whilst also controlling migration. Mr David Davis announced afterwards this was unlikely to be true^{vii}. Had it been acknowledged beforehand that controlling migration did indeed mean losing the single market, the referendum outcome might well have been different. A referendum which leads to an outcome the voters would have rejected had it been offered to them is surely undemocratic.

A second pathology: the poison left behind

There is a more significant pathology, for which toxic is not too strong a word. By polarising the question into a binary choice – remain or leave, yes or no – referendums guarantee to produce losers. This may not matter hugely in an unemotional or easily reversible choice. But

for an existential decision – of great political significance, not readily reversible, and carrying emotional heft – losers are left deeply uncomfortable. If they comprise around half the population that is a major problem. In Scotland many of the 45% of losers simply refused to take No for an answer. The issue has dominated Scottish politics since. Had the result been the other way round, half the population might now have been citizens of a state they had rejected. Under Brexit, about half the British population – majorities in Scotland and Northern Ireland – will find themselves in a radically different country from the one they voted for.

"Winner takes all" or "first past the post" is a particular, narrow definition of democratic legitimacy. If six meat eaters and four vegetarians are deciding what to have for dinner, a winner takes all vote between sirloin steak and organic quinoa is going to produce a lot of resentful diners; a compromise that most people can accept is a better and arguably more democratic outcome. David Cameron made an unsuccessful attempt to address this by negotiating changes to the terms of EU membership. These were intended as a concession to concerns of overweening European authority, but were swept aside in the debate, and banked, as it were, by the Leave cause. A referendum did not allow for further compromise and negotiation: it polarised the question.

After the Scottish referendum, there has been some attempt to seek an answer to which most people would assent. More powers for Holyrood – now enacted – were an attempt to develop a constitution most Scots would be comfortable with, even if it was not their ideal. No-one is trying this for Brexit. Admittedly, the scope may be limited, but there are two possibilities - one for the whole UK, and one, more complex but maybe more likely, for the parts of the UK which voted to remain.

The obvious strategic compromise for the whole UK would be to rejoin the European Free Trade Area. This is in some respects unsatisfactory, as it brings many of the obligations of EU membership, while giving up its powers: but at least avoids the egregious economic self-harm of leaving the single market. Conservative ministers, however, increasingly hint that this is ruled out, because the referendum, they say, was a rejection of free movement of labour. Here one pathology worsens another. The voters endorsed no specific proposition, so we do not know whether a majority voted against free movement. But it allows ideologically driven politicians to reject something a majority of the population might, grudgingly, have accepted.

The Wrong Answer

The immediate reaction of many in the SNP was to say that the Brexit vote was a “material change of circumstances” meriting another Scottish referendum. It is easy enough to argue that another vote is not justified: the 2014 referendum was explicitly promoted as a "once in a generation"^{viii} event. But there are stronger arguments against: the pathologies shown in the European referendum would be even more powerful in the Scottish case. In the wake of Brexit, the case for independence would be even more negative: it would be a rejection of Britain, and its decision to leave the EU. And no matter what attempt was made to rewrite the independence White Paper, it would still be full of blank cheques. Whatever the emotions, the empirical case for independence is weaker post-Brexit, and so the temptation to gloss

over its difficulties is stronger. Scotland leaving the UK might indeed secure EU membership, but the process, timing and terms are not in the hands of the Scottish government. And if Scotland were an EU member state while the rest of the UK was not, there would be an EU border across the island of Britain, with a risk this would be a hard border for trade or even people. Moreover, the Scottish government's previous plan to continue sharing Sterling in a currency union with the UK is quite clearly incompatible with EU membership. The blank cheque would be written in and for a new currency. Additionally, Scotland's fiscal position has now been shown to be markedly weaker than in 2014^{ix}, and in another referendum as a result the incentive to obfuscate it would be all the stronger.

Another Scottish referendum would repeat and compound the UK's error. It could put Scotland in an even less stable position than the UK is today: committed to something called independence, but unable to deliver on many of the promises which persuaded the people to support it. One ill-informed and risky choice on Brexit doesn't make a case for another on independence.

The bigger objection to rerunning the independence referendum is the toxicity left behind. 2014 may have answered the question, but did not settle it: 45% of the population were disappointed, and many of them remain unreconciled. But if the referendum were rerun, and independence lost again narrowly (as polls suggest it will) why would they be reconciled then? Conversely, if independence secured a narrow victory (maybe, like Brexit, by promising the undeliverable) what future has a state in which around half the population have no stake? Perhaps they'd behave like Yes campaigners after 2014, and cleave to their UK allegiance. Either way, Scotland remains divided. Referendums produce division: running another and expecting anything else is failing to learn from experience.

Northern Ireland's position is similar but offers a lesson. After initial demands for a "border poll", there seems less appetite for one, North or South, now. So NI will have an EU land border, and the Brexit terms matter a great deal. Free movement of labour would make keeping the British-Irish common travel area straightforward, and avoid cross-border problems. If it rejects this, the UK government will have to think very carefully about how to achieve its stated objective of retaining an open border with Ireland. The implications are discussed below. A notable contrast with Scotland however is that the Irish political institutions were consciously designed to deal with constitutional division. Arguably too well-designed, as the elaborate processes of power-sharing are self-reinforcing and make policy change difficult (politicians play to their own support, rather than build cross-community consensus). But they are a lesson in acknowledging rather than overriding difference.

Getting beyond Yes or No: Brexit and the territorial constitution

If, as seems increasingly likely, the UK government prioritises immigration control over the single market, the Conservative leadership will have handed over policy control to its membership, and shown little willingness to compromise with pro-European voters in the UK as a whole. But Scotland and Northern Ireland both rejected leaving the EU by quite substantial majorities, and the argument for accommodation is even stronger where there

are devolved institutions which represent those voters' differing interests and priorities. Ministers would be wise to acknowledge rather than override difference, and look for strategic compromise with the devolved administrations, who, in their turn, would be wise to work for agreement, not just make demands and threats. The rest of this paper explores these possibilities, and makes some specific suggestions.

Three key things could lead to a constructive outcome:

- Substantial new freedoms are coming to the devolved administrations once EU law no longer applies, notably but not only to such important devolved areas as agriculture, fisheries and environment.
- The whole purpose of devolution is to reflect different interests and priorities, and to retain uniformity or central control only where this is necessary. For matters which are already or might in future be devolved, there is no reason to forbid the devolved administrations having relations with the European institutions. Indeed, I propose below that they should be given new powers to do so.
- Increased devolved powers and responsibilities will change the nature of the intergovernmental relationships in the UK. The devolved administrations already exercise very real powers, but mostly over areas in which the UK government does not have to compromise with them to achieve its objectives. That will inevitably now change, and should change more.

These changes, on top of the major changes already being made, will add up to a radical redistribution of governmental and legislative powers inside the United Kingdom. They are a *de facto* rewriting of its territorial constitution, and will need new institutions to manage them. It implies both new freedoms for the self-ruling parts of the UK and new mechanisms to support shared rule. (I consider later whether this should also result in a statutory codification of the territorial constitution.)

The implications of repatriation

Once EU law no longer applies, all the UK's governments will have greater freedoms. Westminster will regain the sovereignty it previously shared with the EU, and do things the EU now does. Devolved legislative competences and executive powers too will no longer be constrained by European law. Today, rules from Brussels ensure a common UK framework in many significant devolved areas: agriculture, fisheries, or environmental protection are uniform across the UK because they are controlled by Europe. This will cease, and the devolved administrations will, following the pattern of the devolution settlements, exercise these powers. UK ministers might be tempted for to take on the mantle of Brussels and impose the controls it presently imposes.

This temptation should and, most likely will, be resisted. Not only is it politically unwise, it is unconstitutional. There has been much talk about whether the Scottish Parliament might be able to withhold consent to the UK leaving the EU. This is clearly not within its powers. But it

is entitled to say in any changes to those powers, and subjecting them to control from Westminster on matters which are already devolved would under the Sewel Convention clearly require Holyrood's consent. The same issue arises for both Belfast and Cardiff.

So on a range of important policies the devolved bodies will in reality have substantial new powers. But these are subjects which need intergovernmental cooperation: that's why they are today managed at the European level. So the three devolved administrations will want to treat with the UK government to avoid unhelpful policy spillovers. And in contrast with much present intergovernmental relations, agreements will have to be reached for things to work. Of course, the UK government will remain the most powerful player – it will have access to more taxable capacity, say to support farm subsidies. But as these will no longer be issues of international relations, it will have less of a whip hand than today.

A New European Power

This extension of devolved powers is inevitable, but another is desirable, and could further transform the landscape of UK politics. At the moment, international relations are a reserved matter, dealt with by the UK. This is almost the definition of a nation-state. But there is scope to alter that in relation to the EU. The devolved administrations can be given power to enter into international agreements with the EU in relation to the matters for which they are responsible. To take a simple example, they are responsible for health, and at the moment the UK has EU agreements for reciprocal access to health services. These will cease, but there is no reason to deny the devolved administrations the ability to enter into such agreements for their own citizens, offering reciprocal access to EU citizens. A list of similar possibilities can easily be drawn up: for universities, Erasmus studentships, and access to EU research funding; in justice, co-operation on policing, such as the European arrest warrant or the enforcement of judgments; and others, though it is maybe too much to expect the Scottish government's European enthusiasm to run to keeping the common fisheries policy. But if devolution is about accommodating different preferences or circumstances, it should be able to accommodate difference in relation to the European dimension of devolved matters.

As with other devolved powers, the boundary with the UK government's proper role needs to be managed, perhaps through something like the Sewel Convention, so that the exercise of devolved powers does not undermine the UK's powers. Agreements on, say, agriculture might have to be subject to the UK's more general trade responsibilities. It might be objected that it is improper for a sub-state entity to enter into international treaties. This is nonsensical. Not only is it seen in other countries (in Belgium, for example, Flanders enters into international agreements) but the Northern Ireland Executive is today empowered to make international agreements with the Republic^x. Others might object that the EU would refuse to do business with parts of the UK. Admittedly, nothing can compel them: but if it is in the interests of their citizens, they might well be prepared to. I discuss examples below.

Further powers? One important example

It is also worth asking whether the new background suggests other powers which would be better exercised at the devolved level. One example which has already been suggested relates to the protection of workers' rights – some of which are currently dependent on EU law, and which might be protected by devolved legislation instead. But there is a linked, but more radical, possibility which, ironically, is created by UK ministers' likely refusal to allow free movement of labour.

On the face of it, refusal of free movement for labour would appear to require much more stringent UK border checks than today. EU citizens would find it harder to come here, and so British citizens to visit the European mainland. This however would create real practical problems at every UK port of entry, and very serious problems for Northern Ireland. If there is to be a common travel area with the Republic of Ireland, there cannot be a hard border for people between the North and the South. This is neither physically realistic, nor remotely politically acceptable.^{xi} So, almost inevitably, the UK will have to offer visa free travel to EU citizens, even though they may not have the right to work and settle here. As a result, there will have to be what is sometimes described as point control of immigration^{xii}: in other words, major responsibilities will fall upon employers, or potentially providers of public services or even landlords, to ensure that individuals have the right to work or settle in the UK. This might involve UK work permits, or perhaps EU citizens would simply be able to work here if offered a job. But in any event, point control is open to geographical variation within the UK in a way in which border control is not.

So it would be entirely possible – and for a number of reasons desirable – for the devolved administrations to be able to manage immigration from the EU to their jurisdictions. (This makes it no more difficult for England to manage immigration, as EU citizens will be able to come there anyway and point controls will be operating there too.) This is desirable in policy terms, as well as reflecting different preferences. Scotland in particular has sought a different migration policy for decades (under varying political leadership) recognising that its demographic challenges differ from those in the rest of the country^{xiii}. The ability to manage EU migration differently would give them a valuable tool of economic development. It would also give them something substantial to talk to the institutions of the EU about, opening up scope for negotiation on other devolved matters.

A different kind of UK?

The repatriation of EU competences and the extension of devolved powers in the way proposed will change the nature of the UK. Change inevitably results from the Brexit vote and should be welcomed rather than resisted. But it does require quite a different approach to intergovernmental relations, and not merely between the UK government and the devolved administrations, but between all of them and the government of the Republic of Ireland. The devolved administrations will change: they will have an international personality and real autonomy over areas on which the UK government will need to treat with them – fisheries, agriculture, environmental protection, regional economic development and maybe the

migration. This presents an opportunity for wholesale review of the current arrangements for intergovernmental working: not just the joint ministerial committees (which have struggled to find a role^{xiv}) but also the British-Irish Council, which also sometimes casts around for meat to chew upon. Indeed perhaps these institutions could in some way be merged.

This argument has been made for Scotland and Northern Ireland, given their populations' views on Europe. But there is no reason of principle to deny the same flexibilities to the Welsh Assembly government. An intriguing thought: London took a different line too, and it too has its own political representation. Might London to manage its EU relationship, within the mayor's responsibilities, and also for movement of labour?

Shared Rule as well as Self Rule

These changes represent markedly greater self-rule for the devolved nations. Their administrations would have greater powers, powers in new areas, and real if limited international personalities. But the UK will remain a Union, and attention must be paid to shared rule as well as self-rule. Here again the consequences of Brexit offer opportunities. This paper makes three suggestions:

- New powers for the UK government to promote economic and social solidarity
- The new, more powerful intergovernmental bodies that are now needed
- A new, pan-UK forum to which these new bodies will account.

First, central government's powers. While it would be an error for the UK simply to arrogate to itself all the powers of the EU, there are powers repatriated which only Westminster can exercise. The most obvious are external relations, with trade at the head of the list. But a significant change is likely to be that the UK will for the first time since 1972 be free to develop its own, unconstrained, regional economic development policies. Regional variations in prosperity have been stubborn, and stubbornly increasing, over decades. Successive governments have tried and failed to reverse them. It is implausible to blame the EU for that failure, but the UK will nevertheless be able to direct resources to different nations and regions which have fallen behind, and spend them in new ways. Only central government can do that. Alongside the existing system of allocation of public resources for welfare and public services, this shows how shared rule allows for social and economic solidarity. This matters hugely for the poorer regions of England, and so far as the devolved nations are concerned, it will mean in practice the ability to direct more new resources to Northern Ireland and Wales (recognising that Scotland as a whole is the third richest part of the country).

Shared rule however needs not just policies but institutions. The UK Parliament and government will remain the most significant of those, but Brexit means that the present, exiguous, mechanisms of intergovernmental relations will inevitably become real places of political power, where deals are done and choices made. If devolved powers are extended as proposed here, they will be more significant still. These bodies need to become more substantial, frequent and formal, and properly supported with, like the British-Irish Council ,

an independent secretariat, which might become more powerful in setting agendas and brokering deals, rather than simply taking minutes and issuing press releases.

A major defect of intergovernmental processes worldwide is that they are opaque. Governments set out aims for their domestic audiences, negotiate something different, and return home to blame the other players. There is no accountability for collective behavior, and no place where it is scrutinised. Clearly, individual governments are accountable to their own voters, but inside a union there is scope, at the least, for scrutiny of shared rule, and how the different governments have (or have not) worked together.

Here is a way in which the UK might do that. It is often noted that in many federal states the upper chamber of the national legislature plays an integrative function. This can be overplayed: the German Bundesrat's explicit role for Land governments in Federal debates is an outlier, but even the US Senate consciously over-represents small States. This raises the question whether the House of Lords might play some such role for the UK. Any discussion concerning the Lords has to begin by acknowledging the strong theoretical objections to a body which has been going through a process of stuttering reform since 1911; but it must also acknowledge the its practical usefulness.

It is hard to see how the whole House of Lords could discharge this function, at least not without root and branch reform, and perhaps not even then. But it would be possible to envisage a different kind of Lords committee, perhaps called a Grand Committee, with a different sort of membership and quite specific powers. Such a body might, like other houses in federal countries, be consciously geographic in composition, and with disproportionate representation for the small parts of the UK. It could be drawn from the Lords, and like the House as a whole not have a partisan majority because of crossbench peers. It might, for the sake of argument, over-represent the devolved nations by a factor of three, so that its membership was 55% representative of England. There is the difficulty that the SNP, although dominant in Scottish politics, refuses to nominate Peers. If that continues to be so, then the Grand Committee might supplement its membership with suitable nominations: they need not title themselves Laird.

Such a body would need explicit powers, many of which can be drawn from the upper chamber's existing repertoire. It would have to be able to summon the UK and devolved governments individually and collectively (and any intergovernmental secretariat too) to give an account of their intergovernmental activity. As well as taking evidence, it should debate, and come to conclusions about the effectiveness of what the governments have been doing. It might also be given powers to set the agenda. For example, one of the disappointments of devolution is the paucity of comparison between policy and practice in different parts of the UK: devolution has been anything but a laboratory for policy development. The new Grand Committee might be given the power, example, to commission comparative research and assessment, perhaps making use of the existing capacity and powers of the audit functions of the UK and devolved legislatures.

Constitutions and politics

Even today the UK does not fit into tidy constitutional categories – despite much loose use of the word, it is not a federal country. Nor will these changes make it one: in some respects they go further than federalism, into something which might be described as confederalism, a union of nations of quite different sizes with common purposes and shared powers, notably in the spheres of defence, the economy and social welfare, but also very distinct self-rule for the smaller nations with their different identities. It certainly reasonable to ask whether this requires a complete rewrite and codification of the territorial constitution, as some have proposed^{xv}, or whether we should continue to let it evolve. What would be codified would be different from the codification proposed only last year, so it might be wiser to wait a little before thinking of that option.

These suggestions may sound complex and highly theoretical, though in truth they are incremental developments of existing institutions and trends. In the absence of a constitutional ground zero, that is how constitutional change proceeds. But it is fair to ask whether they are in any sense practical in the political reality of the UK today, and especially the fevered hothouse of Scottish constitutional politics. In particular, why would Scottish nationalism – running high in the polls, and with (to put it neutrally) an exceptionally enthusiastic activist base clamouring for radical change – wish to engage in a strategic compromise which does not deliver a separate state?

There are two possible reasons. First, the objectives of the SNP are twofold: independence, certainly, but also doing what is best for Scotland. Not only is it increasingly clear on objective evidence^{xvi} that independence would have real economic and other downsides for Scotland, there are many SNP supporters whose real objective doing the best for their country rather than pursuing the idea of a separate state as an end in itself. Secondly, the SNP leadership faces a tactical political dilemma: support for independence is very high, but could have plateaued, if not actually started a gentle decline. No one knows how it will go in future, but it is possible that the Scottish government will never again have as much leverage to negotiate with the UK as they have today, and they would gain much of both their objectives. Nicola Sturgeon's rhetoric is gradually cooling: referendum is not now "highly likely" but "on the table". Indeed it is striking to see just how many senior SNP figures are publicly counselling against another referendum, with one even talking of post-Brexit "neo-independence"^{xvii}. How the SNP leadership can deal with the clamour of the fundamentalist campaign their referendum created is not easy to see: but they face that difficulty in any circumstance.

From the perspective of the UK government, some constitutional change as a result of Brexit is inevitable and desirable. They should be prepared to be as radical as suggested here, but only if this results in constitutional stability for the UK. There is no point in negotiating an elaborate and imaginative set of constitutional changes unless they produce a settled arrangement not destabilised by unceasing irredentist demands. It would have to be agreed that 2014 had indeed been a once in a generation event.

So the political challenges to any scheme of this sort are great. Imagination and determination would be demanded of political leaders. But the prize is a big one: settling a generational

constitutional challenge. From Scotland's perspective, an outcome of this sort might represent the kind of accommodation to which a substantial majority of Scotland's population would assent, rather than face yet another referendum, which could well be more toxic than the EU one. Whether our political leaders in Edinburgh and London have the courage to take this route remains to be seen.

ⁱ www.voteleavetakecontrol.org/why_vote_leave.html

ⁱⁱ "The most important decisions about our economy and society will be taken by the people who care most about Scotland, that is by the people of Scotland." *Scotland's Future*, p.3

ⁱⁱⁱ See, eg, *We Belong Together: the Case for the United Kingdom* at b3cdn.net/better/8e048b7c5f09e96602_jem6bc28d.pdf

^{iv} Nationalists will say that their independence campaign was relentlessly positive, and certainly they repeatedly said so. But slogans like vote Yes 'to save the NHS' or 'and get rid of the Tories forever' were prominent and quite possibly effective. The case for independence was mainly getting rid of supposedly bad things about Britain.

^v *Scotland's Future* at <http://www.gov.scot/resource/0043/00439021.pdf>

^{vi} According to Mr Michael Gove, see, eg, www.independent.co.uk/news/uk/politics/eu-referendum-britain-will-act-like-bosnia-and-ukraine-in-event-of-brexit-says-michael-gove-a6991711.html

^{vii} "The simple truth is that if a requirement of membership is giving up control of our borders, then I think that makes that very improbable." Mr David Davis, Hansard, 5 September 2012 Col 54.

^{viii} This description comes from the Scottish government's White Paper *Scotland's Future*.

^{ix} See *Government Expenditure and Revenue Scotland* at <http://www.gov.scot/Publications/2016/08/2132>

^x Northern Ireland Act 1998, Schedule 2, Pqra 3

^{xi} For the options, see the (pre-Brexit) House of Commons, First Report of the Northern Ireland Affairs Committee Session 2016/17, HC 48 at <http://www.publications.parliament.uk/pa/cm201617/cmselect/cmniaf/48/48.pdf>

^{xii} There are major objections to point control: its most likely effect is large numbers of illegal migrants, living insecurely and paying no tax. But it is a road down which the government seems to be heading. Another part of the blank cheque filled in.

^{xiii} On top of that, many of the policy areas in which mechanisms of point control would have to be developed are devolved, so cooperation is needed at least.

^{xiv} See for example the account of the work of the JMC's for a full year at <https://www.gov.uk/government/publications/joint-ministerial-committee-annual-report-2012-to-2013>, which shows the thinness of the gruel on their table.

^{xv} As proposed by for example Lord Salisbury and his constitutional reform group at <http://www.constitutionreformgroup.co.uk/lord-salisbury/>

^{xvi} The latest edition of *Government Expenditure and Revenue Scotland* at <http://www.gov.scot/Publications/2016/08/2132> shows that oil revenue in 2015-16 was essentially zero. Furthermore it is likely to remain close to zero since North Sea companies may now set trading losses and decommissioning costs against Petroleum Revenue Tax paid in past years. This puts to bed 40 years of argument as to whether it is Scotland's oil or not. 85% of zero (Scotland's production share) is the same as 9% of zero (Scotland's population share).

^{xvii} See Alex Neill at www.telegraph.co.uk/news/2016/09/25/how-my-party-leader-nicola-sturgeon-could-get-neo-independence-f/