

# The end of the Union?

Gordon Brown has made clear that his first hundred days will see a major new push on the constitutional front. **Guy Lodge** and **Katie Schmuecker** argue that addressing the tensions within the Union between England and Scotland must play a central role in any reform agenda.

In politics, as with much else, timing is everything. And so it is with the Union between England and Scotland. On 1 May 2007 the Union reached its 300th birthday: quite some feat. Two days later, however, Scotland elected its first ever Nationalist government, which would like to take Scotland out of the Union. Then just weeks later, we learnt that the first Scottish Prime Minister since devolution would be entering Number 10.

The combination and coincidence of these events have raised profound questions about the nature and future of the Union. But the Scottish National Party's narrow victory does not automatically spell independence for Scotland. Support for the SNP does not necessarily equate to support for independence and no referendum can take place without the consent of the Unionist parties, who still dominate the parliament.

It is the wider implications of the SNP victory that may prove to be more significant. Two in particular stand out. First, the Union faces a new political landscape. With different parties in power in Edinburgh and London more tumultuous relations between the two capitals can be expected. We can also expect a greater degree of policy divergence, particularly in the public services, which could gradually unravel the UK's shared sense of citizenship, and solidarity.

Second, within England, the SNP's victory could be interpreted as a Scottish desire for independence. While English resentment of

current devolution arrangements – most notoriously, the 'West Lothian Question'<sup>1</sup> – has been slow to find political expression, there are indications that this may be changing. Furthermore, a Scottish Prime Minister might magnify the devolution anomalies and messy fights between Westminster and Holyrood are unlikely to endear the Union to the English. Unless a place can be found for England in this new Union, it might be the English who seal its fate.

This article considers the new political landscape, its implications for the Union, and how Gordon Brown should respond.

## The election

Friday 4 May 2007 is likely to be remembered as a momentous day in Scottish and British political history. For the first time in 50 years Labour lost a Scottish election, giving Scotland a Nationalist government.

The chaos of the election, which saw 142,000 ballot papers rejected – some 7 per cent of all votes cast – threatened to overshadow the SNP's historic victory, as did the narrowest of margins. As Table 1 shows, the SNP emerged as the largest party by just one seat, and less than two percentage points separated them from Labour.

Yet scratch beneath the surface and it is clear that this was a significant victory for the SNP, and a bad day for Labour. The SNP gained 20 seats and significantly increased their share of the vote by about 10 percentage points com-

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1. A reference to the ability of the Scottish MPs to vote on English matters.

**Table 1: Scottish Parliamentary Election Results 2007**

|                          | Constituency vote % (+/- compared to 2003) | List vote % (+/- compared to 2003) | Constituency seats | Regional seats | Seats +/- compared to 2003 | Total |
|--------------------------|--|------------------------------------|--------------------|----------------|----------------------------|-------|
| SNP                      | 32.9 (+9.1)                                | 31 (+10.1)                         | 21                 | 26             | +20                        | 47    |
| Labour                   | 32.3 (-2.3)                                | 29 (-0.3)                          | 37                 | 9              | -4                         | 46    |
| Conservatives            | 16.6 (=)                                   | 13.9 (-2.2)                        | 4                  | 13             | -1                         | 17    |
| Liberal Democrats        | 16.2 (+0.9)                                | 11.3 (-0.5)                        | 11                 | 5              | -1                         | 16    |
| Green                    | 0.2 (+0.2)                                 | 4 (-2.9)                           | 0                  | 2              | -5                         | 2     |
| Scottish Socialist Party | 0 (-6.2)                                   | 0.6 (-6.1)                         | 0                  | 0              | -6                         | 0     |
| Other                    | 1.2 (-2.2)                                 | 1 (-7.9)                           | 0                  | 1              | -3                         | 1     |

Sources: BBC Scottish Elections 2007; BBC Scottish Elections 2003

pared to their lacklustre 2003 performance.<sup>2</sup> Perhaps more notably they significantly increased their number of constituency seats and winning their first constituencies in Labour's central belt heartlands.

For Labour, the result was a significant blow. True, it was not as bad as some predicted, with a loss of only four seats. But their constituency base was eroded and their share of the vote continued on a downward trajectory.<sup>3</sup>

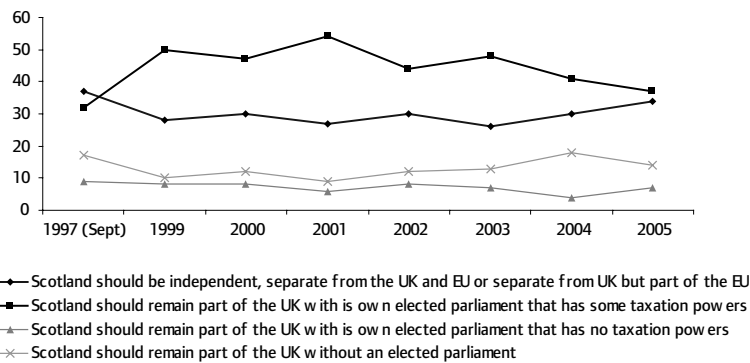
a sudden surge in support for separatism within Scotland: support for the SNP should not be conflated with support for independence. Though Labour attempted to make independence the salient issue of the election, the SNP used their pledge to hold a referendum on independence to neutralise Labour's key message. Voters could opt for the SNP knowing there would be another opportunity to vote on independence.

Figure 1 illustrates that while a consistently large minority support independence, a larger proportion favours the status quo: Scotland remaining part of the UK with its own parliament and some tax raising powers. The majority of Scots favour giving the existing

### Does Scotland want to leave the Union?

The election result does not, however, signal

**Figure 1: Support for Scottish independence compared to other options**



Source: Data taken from Curtice (2006a) and Scottish Social Attitudes 2004; 2005. (accessed through UK Data Archive 31/05/07)

2. Share of the vote calculated by unweighted average of constituency vote and list vote  
 3. As before, share of the vote calculated by unweighted average of constituency vote and list vote

**Table 2:** Response to the statement: 'The Scottish Parliament should be given more powers'

|                            | 2000 | 2001 | 2003 | 2005 |
|----------------------------|------|------|------|------|
| Strongly agree/agree       | 66   | 68   | 60   | 63   |
| Neither agree nor disagree | 15   | 14   | 16   | 17   |
| Strongly disagree/disagree | 17   | 16   | 22   | 18   |

Note: Missing years as question not asked every year

Sources: Scottish Social Attitudes Surveys 2000; 2001; 2003; 2005 (accessed through UK Data Archive, 31/05/07)

parliament more powers, however (Table 2).

Most significantly though, the make-up of the new Scottish Parliament in which Unionist MSPs control almost two-thirds of the seats makes it virtually impossible for the SNP to pursue a referendum on independence.

Thus the real story emerging is not a Scotland contemplating separatism, but a Scotland in the mood for political change, reflecting a general fatigue with the Westminster and Holyrood Labour governments, buoyed by the cash for honours scandal and Iraq in Westminster and McConnell's lack of charisma compared to Salmond. But it is too early to tell whether the result represents the 'wind of change' that Salmond has claimed.

### Scotland's new political landscape

The SNP's fragile margin means that Scotland now faces a new, delicately balanced political landscape. After failing to persuade the Liberal Democrats to form a coalition, the SNP have formed Scotland's first minority government, with support on an issue-by-issue basis from the two Green MSPs. This leaves the administration in a rather vulnerable position, particularly to the threat of a no confidence vote in the Parliament. There is also potential for gridlock over the passing of its budget.

Yet this does not mean that governing will be impossible. First, the Executive has an extensive range of non-legislative administrative powers at its disposal. Second, the SNP will be able to build informal alliances with other parties on an issue-by-issue basis.

Though this is time-consuming, there is definite potential across several areas because of many similarities – independence-aside – with the Liberal Democrats.

For instance, the SNP, Greens and Liberal Democrats are united over their being no new nuclear power stations in Scotland. With some negotiation and compromise there is also scope for agreements to be reached over cutting small business rates, monitoring sex offenders and raising the smoking age (Salmond 2007, MacLeod and Elias 2007). The SNP and Liberal Democrats also share common ground in wanting to abolish the council tax in favour of a local income tax.

But informal alliances are also open to other parties. Within the first month, the opposition parties had used their combined muscle to fire a warning shot at the SNP over its manifesto pledges to scrap Edinburgh's planned tram network and airport rail link. If Labour adopts a strategy of finding common ground with other parties, they could effectively run an alternative government from opposition, using backbench power to initiate legislation. But this is a difficult balancing act: while Labour does not want to help show the SNP can run a competent administration, it will not look good if seen to be deliberately undermining it.

### What does it mean? Implications for the Union and a Brown premiership

This new political landscape has implications that reach way beyond Scotland, raising questions about the relationship between England and Scotland, and the Union itself.

***Constitutional commotion?***

The benign circumstances into which devolution was born have begun to unravel: Labour's hegemony across Britain has come to an end. Under these conditions disputes were kept to a minimum, and when they did arise, they were dealt with quietly and behind the scenes (Trench 2005). Now, with Salmond in Bute House, Brown in Downing Street, the restoration of devolution in Northern Ireland, and a more unstable Labour minority administration in Wales, we can expect more turbulent intergovernmental relations.

This is not to overdo the apocalyptic predictions, as Salmond has a tricky political paradox confronting him. The SNP has an interest in demonstrating how the Union holds Scotland back, but equally it needs to show Scots that they can be trusted with power. If they fail on this, their goal of independence will drift out of reach. So fights will be chosen tactically.

Nonetheless Salmond can be a thistle in Brown's side, already demonstrated by early skirmishes. Most significant was the row over the UK government signing a Memorandum of Understanding (MoU) with Libya on prisoner transfers, without first consulting the Scottish Executive. It was a gift to Salmond and he capitalised on it, making an emergency statement in Parliament, in which he accused the UK government of betraying the spirit of devolution. Even Jack McConnell backed him. This demonstrates the weakness of our current constitutional machinery in handling such events, and the failure of Whitehall to develop a devolution mindset. More is likely to follow as Salmond, keen to wash the dirty linen in public, seeks to demonstrate that the Union undermines Scottish interests.

But Brown's government too will have a delicate balancing act. While he has spent much of his life fighting 'the Nats' – and the fact that it took him over four weeks to phone Salmond to congratulate him – is an indication of how soured relations are. An overtly

obstructionist approach could risk fanning the flames of Scottish Nationalism.

So there will not be endless titanic clashes – but certainly a new territorial politics, characterised more by conflict and confrontation than in the past. Intergovernmental relations may also come under further pressure as a result of policy divergence. The UK state is simply not equipped to deal with this: intergovernmental institutions are weak, untested and based on gentlemen's agreements and Blair's sofa-style approach to politics.

***It's the English, stupid – why the English Question matters***

The SNP's victory comes at a time when the 'English Question' – the place of England in a devolved United Kingdom – seems to be climbing the political agenda. Initially content for their neighbours to enjoy self-government, the English seemed either unbothered by, or oblivious to, the implications of devolution (Curtice 2006b). But is this situation changing?

A number of opinion polls carried out to mark the anniversary of the Act of Union suggest that change may be afoot although they came with health warnings about how questions were worded (Monitor May 2007). Between 1999 and 2003 support for an English Parliament was consistently around 17 per cent (Curtice 2006a), but recent polls have seen support rocket to over 60 per cent.<sup>4</sup> One poll even suggested a majority in favour of the English going it alone (Telegraph/ICM 2006). Add to this the growing tendency for the English to define themselves as 'English, not British', up from 30 per cent in 1992 to 40 per cent in 2005 (Stone and Muir 2007), and we may see a sense of frustration or even antipathy.

These polls may exaggerate the true feeling of opinion, or misrepresent support for particular policies, but they at least give a sense of the direction of travel. And there are two reasons to believe that English indifference to the Scots and the Union may be transformed into frustration and antipathy.

4 An ICM poll for the *Telegraph* in November 2006 found 68 per cent support for an English parliament; an ORB poll for *Newsnight* in January 2007 found 61 per cent support for an English Parliament; an ICM poll for the Campaign for an English Parliament in April 2007 found 67 per cent of respondents favoured an English Parliament.

First, there remain unaddressed 'wicked issues' of devolution that fuel a sense of injustice within England. Scottish MPs continue to vote on laws that apply only to England, sometimes with the effect – as in the case of tuition fees and foundation hospitals – of overturning the majority view of English MPs (Russell and Lodge 2006). The Barnett Formula for distributing public money continues to generously reward Scotland: public spending per head is 20 per cent more than in England (McLean 2007). For some these anomalies jar against an English sense of fair play.

Second, a new era in intergovernmental relations, combined with the arrival of a Scottish Prime Minister might further catalyse opinion in England. The right-wing press will do their best to bring these issues to the fore, and galvanise perceived grievances. They have already started to play the 'English card'.

This presents a political opportunity for Salmond, who knows that in picking fights with Westminster he can fan the flames of English nationalism. But it remains to be seen whether the Conservatives to choose make this an explicit part of their strategy against Brown. It must be balanced with their own historic attachment to the Union and Cameron's desire to break into Labour's Celtic heartlands. Nonetheless, there are signs that the Scottishness of the prime minister may be their new subliminal message for middle England (MacWhirter 2007). They have already played up the 'constitutional outrages' of Scottish MPs voting on English matters. But the underlying reasoning is almost certainly driven by political calculation: with just one MP in Scotland and three in Wales, it will become ever more tempting for the Conservatives to play English politics.

For Labour, the issue has drifted since the North East referendum on regional government in 2004. Cynics suggest that Brown has deliberately sought cover, with his Britishness agenda a means of bypassing the controversy. His recent pamphlet on Anglo-Scottish relations conspicuously failed to mention the English Question (Brown and

Alexander 2007).

But the English question will not go away and unless addressed, it may be the English, rather than the Scots, who determine the fate of the Union.

### **How should Gordon Brown respond?**

Gordon Brown has already made clear that his first hundred days will see a major new push on the constitutional front, and addressing the tensions within the Union must play a central role. Public support for the Union remains strong; but its maintenance will require reform. Above all, Brown needs to articulate a more positive case for the Union and address the consequences of devolution.

#### *A new approach to Union-wide relations*

To manage Union-wide relations, Brown – who is widely tipped to rearrange Whitehall's deckchairs – should create a new Department for the Nations and Localities of the UK. The Scotland, Wales and Northern Ireland Offices should be incorporated within the current Department for Communities and Local Government (DCLG), in effect a department for *English* governance. The new department would be responsible for servicing the Joint Ministerial Committees (forums to facilitate meetings between UK and devolved administration ministers). This would provide, for the first time, a focus within Whitehall for dealing with Union-wide issues and the relationship between the constituent nations.

But the Department should be about more than conflict resolution and managing disputes. It would have a crucial role to play capturing policy innovation and learning, as well as providing UK-wide leadership on the changes unleashed by devolution, particularly the impact of increased policy divergence on the nature of UK citizenship. Such a Department could also be given responsibility for constitutional policy and Brown's Britishness agenda, which links naturally to DCLG's citizenship and integration remit.

## Options for England

'Purist' solutions which directly attempt to address the English Question:

- English votes on English laws (EVOEL)
- English Parliament

'Mitigating' solutions which aim to mitigate the impact of devolution anomalies:

- Reducing the number of Scottish (and Welsh) MPs
- Creating forums for giving England a stronger voice at Westminster such as an English Grand Committee and English Regional Committees
- Proportional representation in Westminster
- Replacing the Barnett Formula
- Decentralisation within England

### *Answering the English Question<sup>5</sup>*

There are two 'pure' responses to addressing England's place within the Union. The first, and certainly the most seductive, is *English Votes on English Laws* (EVOEL), which would bar Scottish MPs from voting on English matters. It sounds perfectly simple, but in practice it would be fundamentally unworkable, as Gladstone discovered during the Home Rule debates.<sup>6</sup>

The first problem is technical: it is very difficult to certify a bill as 'England-only'. For instance, the bill introducing tuition fees in England contained clauses extending to Scotland. Breaking down the territorial extent of each clause of each bill would lead to legislative 'hokey-cokey' within the Commons. The second and most fundamental problem, however, is constitutional: EVOEL would raise the prospect of a UK government unable to govern England if the party composition of the governing majority of English MPs differed from that for the UK. Imagine a UK Labour government unable to legislate for English domestic policy, or an English Conservative government unable to make fiscal and foreign policy. This chaos would have affected eight out of 32 parliaments elected since 1885 (McLean 2007). In other words, EVOEL could create a constitutional crisis

greater than that posed by the West Lothian Question.

The creation of an English Parliament is the second 'pure' solution. Proponents argue such a body would bring symmetrical balance to the Union. However, the reality is that an English Parliament would more likely bring instability, since it would create a totally lopsided federation, given the dominance of England, with over 80 per cent of the UK's population and wealth (Hazell 2006).

Whereas a Scottish Parliament can be seen to have staved off independence, an English Parliament might seal the fate of the Union by calling into question its very purpose.

Brown therefore needs to address the English Question differently. A number of options would mitigate, rather than solve, the devolutionary riddles, but would nonetheless provide a new deal for England.

First, the number of MPs from the devolved territories could be decreased, reducing the possibility of Scottish MPs carrying votes against an English majority. The number of Scottish MPs has already been reduced, but they are still overrepresented compared to England. Such a move would also be justified on the grounds that, since devolution, Scottish, Welsh and Northern Irish MPs have less to do at Westminster.

5. See *The English Question* by Hazell (2006) for a comprehensive list of options

6. Indeed the 'in and out' solution, as Gladstone called it, has been consistently rejected by those who have examined it as a policy option since it was first raised in 1886 (Russell and Lodge 2006)

A second, more radical, option would be to introduce proportional representation (PR) at Westminster, enhancing the political representation of the Conservatives in Scottish and Welsh seats, taking some of the politics out of the issue. PR would also probably ensure, via coalitions, that the governing party (or parties) had a majority in England. This solution demonstrates the need to think about how the various pieces of the constitutional reform jigsaw fit together. Lords reform could be seen as an opportunity to give the voices of the constituent nations a stronger voice. For England, it might also be worth establishing an English Grand Committee or Regional Select Committees for discussing English matters.

A third option would be to deal with another core injustice: the formula for distributing public money. The Barnett Formula – widely perceived as unfair, even by its name-sake – is ripe for reform. Within England, voices such as Ken Livingstone's are demanding it be re-examined. Brown should look seriously at replacing the formula with a fairer and more transparent needs-based model.

But the best answer to the English Question would be to address the real grievance in England: the curse of overbearing centralism. Perhaps the most compelling argument against an English Parliament is that its creation would be an act of centralisation – the last thing England needs. Instead, England would do better from a new deal in central-local relations, with powers devolved to localities and communities. Gordon Brown, keen to demonstrate his ability to 'let go', could make this the centrepiece of his new constitutional settlement.

## A British Constitutional Convention

Asymmetry has been an ever-present feature of the British constitution. Scotland has always maintained a separate educational and legal system, and both Scotland and Wales are overrepresented by MPs at Westminster. The key has been to find solutions that are politically acceptable and widely perceived as

fair. One way of reaching this goal may be through a British Constitutional Convention, tasked with engaging civil society across Britain to consider the tensions the Union faces at present. Under Blair, constitutional reform dealt with different parts of the UK in isolation. For Brown, the key to success is in looking at the UK in the round, and how the different parts fit together.

*Guy Lodge is a Senior Research Fellow at ippr and Katie Schmucker is a Research Fellow at ippr north*

Note: web references correct June 2007

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