

# Guest Post by Professor Lori Thorlakson: After the Scottish No vote: the politics of constitutional reform in the UK

Last week's No vote in the Scottish referendum may have settled the question of Scottish independence for a generation. Alex Salmond has announced that he will step down as first minister of Scotland, and the 307-year-old union will remain intact for the time being. Devolution and constitutional change in the UK is not off the agenda. Instead, the agenda is set for an intense year of political battles over constitutional reform

## The campaign

After a race in the few weeks leading up to the referendum became too close to call, the No side won the vote by a fairly comfortable ten-point margin—55.3 per cent to 44.7 per cent, with a remarkable voter turnout of 85 per cent.

The No victory was far from certain in the days leading up to the poll, with the early lead that the No campaign had established a year earlier all but eroded by early September when the race started to become too close to call, especially due to the undecided voters whose vote cannot be easily predicted. While the Yes campaign, led by Alex Salmond, mobilized a strong grassroots movement modeled after Barack Obama's campaign, the Better Together campaign, led by Alasdair Darling, was plagued by organizational difficulties and infighting. After a strong performance in the first televised debate, in which Darling successfully played on uncertainties surrounding the future of the currency and pensions in an independent Scotland, the momentum shifted back toward the Yes campaign. Salmond won the second televised debate handily and Better Together had difficulty matching the optimism, confidence and emotional appeal of the Yes campaign.

Some of the strongest arguments for the Better Together campaign had included the enormous economic risks and potential costs of separation, the uncertainties surrounding the continued use of Sterling as a currency and uncertainty about future EU membership. The prospect of a Yes vote was enough to trigger some of these consequences: the week before the vote saw nearly one billion pounds in capital outflows from UK equity funds. In the end, two eleventh hour interventions contributed to a shift in campaign momentum: a cross-party pledge to devolve further welfare, spending and taxation powers to Scotland, and an emotional appeal from UK Prime Minister Gordon Brown on the possibility of being part of both a strong Scottish nation and a strong unified state—the United Kingdom.

## Consequences of the No vote

A Yes vote would have caused an enduring change to the British party system in the rest of the UK. Without Scottish Labour seats, the chances of a future Labour government in Westminster would be made remote for possibly decades to come.

(Labour currently has 41 MPs from Scotland while the Conservatives have only one). In a different way, the No vote will also likely lead to a shift in political weight in England, as the Tories have sought to link further devolution in Scotland to reforms of English powers.

The British government will proceed with plans—hastily promised by all three pro-Unionist parties during the final days of the campaign—to devolve further powers over welfare policy, spending and taxation to Scotland. According to a timetable signed by David Cameron, Nick Clegg, Ed Miliband and Gordon Brown, draft legislation could be prepared as early as November, following a command paper and Commons debate scheduled for October. A committee on devolution, chaired by Lord Kelvin, will also discuss further devolution of powers to Wales, as well as how to ensure the effective functioning of institutions in Northern Ireland.

For the Tories, the quid pro quo for further Scottish devolution, however, is a clear call for an answer to the so-called 'West Lothian question'. In a speech delivered on September 19, the morning after the referendum, David Cameron called for further reform that would create 'a balanced settlement—fair to people in Scotland and importantly to everyone in England, Wales and Northern Ireland as well'.

'We have heard the voice of Scotland—and now the millions of voices of England must also be heard. The question of English votes for English laws—the so-called West Lothian question—requires a decisive answer'.

The 'West Lothian question' refers to the paradox that while issues such as education and health care have been devolved to Scotland, to be decided by the Scottish Parliament, legislation in these policies affecting English voters are currently decided by the entire parliament in Westminster, including Scottish and Welsh MPs. Prime Minister David Cameron, supported by the Liberal Democrats, has announced a plan for 'English votes for English laws'. This will have a dramatic impact on the balance of political power due to the Conservative party's dominance in England.

The Conservative party's plan to link the timetable of addressing the West Lothian question to that of settlement of the Scottish question is highly divisive, as the Labour Party stands to lose politically from constitutional reform for England. The issue is made no less contentious by Cameron's choice of William Hague to lead a cross-party Cabinet Committee to examine ways of reforming the scrutiny of England-only legislation. It is not yet clear how the government intends to go about reform for England. We are unlikely to see regional assemblies emerge and Hague has already warned of the dangers in completely excluding non-English MPs from entire areas of legislation.

Even without the details ironed out, what is clear is that one of the losers in this scenario is the Labour Party, which stands to see its influence over English domestic legislation diminished. In the event that the Labour Party should win a majority in Westminster in the future, it would be unlikely to be able to command a majority over legislation in areas of domestic policy in England. In response, the Labour Party has called for a separate timetable for the English question, with a Constitutional Convention in autumn 2015—well after the May 2015 general election in the UK.

## **Broader impacts of the referendum**

Another impact of the Scottish no vote can be found beyond the borders of the UK.

Despite the Scots' rejection of independence, the referendum campaign has added fuel to secessionist campaigns elsewhere. The day after Scotland's No vote, the Catalan parliament passed a law calling for a non-binding referendum to be held on November 9, 2014. Catalan President Artur Mas has yet to sign a decree that will formally call for the referendum. When he does, it will likely be challenged in court by the Spanish government. The Spanish Prime Minister Mariano Rajoy has vowed to put a stop to the non-binding referendum, declaring that such an act would be illegal due to provisions in the Spanish constitution that assert the 'indissoluble unity' of the country. Spain is one of a number of EU member states that face their own internal territorial challenges and so are careful not to even indirectly support secessionist movements in other member states. Had Scotland voted Yes, Rajoy was prepared to use Spanish veto power to ensure that an independent Scotland's path to EU membership would be long and full of roadblocks.

## **The referendum as a 'triumph for the democratic process'**

The United Kingdom has some important work ahead to develop a settlement for all of its constituent countries and address the divisions raised by the campaign. The Yes side may be bitterly disappointed by the outcome, but if there is a positive outcome for those on the losing side of this referendum, it is perhaps found in Alex Salmond's assessment that the referendum was a 'triumph for the democratic process'.

The Scottish independence referendum was, arguably, a great success as a democratic exercise. Referendums on independence and secession can be fraught with difficult issues, such as how the clarity of the question, the requirement for a simple or supermajority or the territorial concentration of oppositions can affect the legitimacy of the outcome. The nationalism issue in Scotland is not complicated by uneven distributions of ethnic minorities—Welsh or English enclaves dotted in Scottish territory—but it does have geographically distributed preferences that could have led to some complications in the event of a Yes vote. In the Shetland Islands, more than 1000 Shetland, Orkney and Western Islanders signed a petition calling for a separate referendum on their own independence from Scotland (in the event of a Scottish yes vote). This was rejected by the Scottish government. The UK Scotland secretary then suggested before the vote that oil-rich Shetland might become a self-governing territory rather than part of an independent

Scotland, should Shetland vote clearly against independence.

The No result has dodged these thorny democratic issues and instead the referendum is likely to be best remembered as a triumph of democracy and democratic innovation. Alex Salmond called the turnout of 86 per cent the 'highest in the democratic world for any election or any referendum in history,' adding 'this has been a triumph for the democratic process and for participation in politics'. In Glasgow, Scotland's largest city and one of the few areas that returned a majority for the Yes side, the turnout was nearly double that of the last election for the Scottish Parliament.

One of the innovations in this referendum was the Scottish government's decision to lower the voting age to 16 from 18. This is the first jurisdiction in the UK to adopt this reform, which has been championed by the 'Votes at 16' campaign for several years. The decision to lower the voting age was a contentious one. Across the UK, this campaign has been supported by Labour and the Liberal Democrats, but opposed by the Conservatives. In Scotland, the decision resulted in a surprisingly high youth turnout and likely benefitted the Yes side. While we don't yet have figures of actual turnout among the 16 to 18 year old age group, we know that approximately 80 per cent of 16 to 18 year olds registered to vote. This is a remarkable achievement, given the low and declining levels of turnout among the youngest voters, not only in the UK, but across western democracies more generally. A poll commissioned on the referendum day found that the 16 to 18 year old age group was more likely than older cohorts to vote yes. (This was not a foregone conclusion—results from earlier survey research suggested that these young voters would be slightly less likely than 18 to 24 year olds to support independence). This youth turnout will be an attractive argument in favour of lowering the voting age elsewhere in the UK. The Welsh first minister has already called for lowering the voting age to 16.

As the dust settles after the Scottish vote, the pressures for constitutional reform that lay ahead for the UK in matters of devolution and electoral reform are emerging, and political battle lines are being drawn.

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