

Scottish Devolution (1997-9)

Starting Point

According to the philosopher George Santayana's well-known maxim, "*those who cannot remember the past are condemned to repeat it*".¹ More than most, politicians and civil servants are often thought to be weak at learning the lessons of past failures, but in the case of Scottish devolution there was a real determination not to repeat the experience of the late 1970s. While the failure of the policy had acted as the catalyst that brought down the Callaghan government, twenty years on, Scottish devolution became one of the big successes of the Blair government. Rather than starting from scratch, policy makers reflected on not only what must be done differently, but also what elements should be retained from previous attempts. It was a process that heeded another Santayana phrase: "*progress, far from consisting in change, depends on retentiveness*".² Although no policy development was undertaken on devolution by the government during the eighteen years of Thatcher-Major rule, this time was used by supporters of devolution led by the opposition Labour and Liberal Democrat parties to develop a blueprint that was effectively implemented after the change of government. This case study looks at how the proponents of Scottish devolution prepared the ground and turned an opposition commitment for major constitutional change into a practical and durable policy success.

Policy background

While there had been repeated calls for devolution in Scotland, resentment at being governed from London tended to fluctuate. Post-war decline of industry, along with the break-up of an Empire that had helped forge a sense of Britishness, provided impetus to the political fortunes of the Scottish National Party (SNP). Having seen support grow considerably during the 1960s, the SNP made a significant electoral breakthrough when Winnie Ewing won the 1967 Hamilton by-election. At the time, Ewing famously declared: "*Stop the world, Scotland wants to get on.*"³ More generally, the fortunes of the SNP appeared to be on the rise; while the party had won 16% of the vote and gained 23 seats at the May 1967 municipal elections, it claimed a 30% vote share and more than 100 seats at the following year's local council elections.⁴ These results not only raised the SNP's profile, but also led both the Conservative Party and the Labour Party to reassess their views on Scottish devolution.

¹ George Santayana, *The Life of Reason*, vol. one (1905), cited in John McCormick, *George Santayana: A Biography* (New Jersey: Transaction Publishers, 2003), p. 144.

² Ibid.

³ Winnie Ewing, *Stop the World: The Autobiography of Winnie Ewing* (Edinburgh: Birlinn, 2004), p. 276.

⁴ J. G. Kellas, *The Scottish Political System* (Cambridge: Cambridge University Press, 1989), p. 133.

The changing electoral fortunes in Scotland and the election of Plaid Cymru's first MP in 1966 persuaded Prime Minister Harold Wilson to set up the Royal Commission on the Constitution (also known as the Kilbrandon Commission) in April 1969. Its remit was to consider a wide range of options for the future structure of UK government. During this period, even the Conservative Party flirted with the idea of devolution. Edward Heath's speech to the Scottish Conservative Conference at Perth, in May 1968, proposed a directly elected Scottish assembly. But, once in power, the party changed tack. When the final report of the Kilbrandon Commission was published in October 1973, it rejected independence or a federal solution, but did recommend devolved assemblies in Scotland and Wales elected by a system of proportional representation, as well as regional advisory boards for England. However, the recommendations of the Commission were not unanimous and two members published a minority report that advocated more powers to be invested in the proposed assemblies. Despite these pro-devolution verdicts, Heath's government decided against taking any of the proposals further.

The discovery of significant oil and gas fields in the North Sea in the 1970s reinforced electoral support for Scottish nationalism. This allowed the SNP to counter the argument that Scotland benefitted economically from the Union, in effect being subsidised by English taxes, and helped make the argument that an independent Scotland could be economically viable. The SNP adopted the slogan "*It's Scotland's oil*" at the October 1974 general election. It proved a successful campaign strategy and the party secured 839,000 votes, coming second in the popular vote, not far behind Labour, who received a million votes, and ahead of the Conservative's 681,000.

In the wake of these developments, there were divisions within the Labour Party about how to proceed. Labour's Scottish Executive Committee voted against a set of proposals for an elected assembly by six votes to five, but this was overturned by a conference of the UK wide Labour Party in August 1974. So, while devolution had not featured in Labour's February 1974 manifesto, it did appear in Labour's October 1974 election manifesto. Although there had always been an element of the Labour Party who had favoured devolution, as James Mitchell has suggested, this was a significant and controversial change in policy: "*Electoral pressure and expediency led Labour to support Scottish home rule which sat uneasily with the party's support for a strong central state, central demand management, and the provision of equal rights and benefits across the state.*"⁵ By the time James Callaghan became Prime Minister, in April 1976, he felt a significant shift in attitude had taken place: "*A seemingly unstoppable sentiment developed that Whitehall decision-making should be replaced by Scottish control of Scotland's economy, achieved through devolution of power from Westminster to Edinburgh.*"⁶ Callaghan's government introduced a Scotland and Wales Bill, but it faced considerable opposition in Parliament and the legislation became mired in a series of amendments designed to scupper the whole bill. On 22 February 1977, the government introduced a guillotine motion to bring proceedings on the bill to a close. However, the government lost the vote by twenty-nine votes and, in response, the bill was withdrawn.

⁵ James Mitchell, 'The Creation of the Scottish Parliament: Journey without End', *Parliamentary Affairs*, vol. 52:4 (1999), pp. 649-650.

⁶ James Callaghan, *Time and Chance* (London: Collins, 1987), p. 504.

Despite this embarrassing defeat, devolution remained a government priority as it represented a key area of agreement with the Liberal Party. When Labour lost its majority in the Commons, it found a short-lived solution by signing the Lib-Lab Pact in March 1977. The devolution package was reintroduced, although this time as separate Bills for Scotland and Wales, at the beginning of the following parliamentary session in November 1977. In the interim, detailed negotiations were carried out between John Smith, Minister of State at the Privy Council Office, and David Steel, the leader of the Liberal Party. Yet, when the new Bills were introduced to Parliament, the government was soon facing more difficulties. George Cunningham, a Labour MP who was opposed to devolution, successfully introduced an amendment that decreed if the consultative referendum resulted in less than forty per cent of the electorate backing devolution, then the Secretary of State for Scotland would be required to lay an order before Parliament that withdrew the whole Act. This provision proved decisive when the referendum was eventually held, as a majority voted in favour but failed to clear the forty per cent threshold.⁷ According to Vernon Bogdanor, the Cunningham amendment “has some claim to be the most significant backbench initiative in British politics since the war for it played a crucial part in securing the repeal of the Scotland Act, depriving the Scots of an Assembly for which a majority had voted”.⁸ It also precipitated the downfall of Callaghan’s government, as a motion of no-confidence was placed before the House and carried by one vote. At the subsequent general election, the Conservative Party secured victory. One of Margaret Thatcher’s first acts as Prime Minister was to repeal the Scotland and Wales Acts.

Despite the debacle of the referendum, disenchantment north of the border and talk of devolution did not disappear. Eighteen years of Conservative government at Westminster only heightened the sense of Scottish difference and public demand for a new constitutional settlement. In particular, the introduction of the Poll Tax in Scotland before the rest of the UK was hugely divisive. The resulting demonstrations and non-payment not only hastened the demise of this policy, but also galvanised opposition to Tory rule in Scotland. The Conservatives saw a rapid decline in the party’s number of Scottish MPs (from 22 in 1979 to 10 in 1987) and many disgruntled Scots felt the party had no mandate to govern their country. In her memoir, Margaret Thatcher acknowledged that her policies had rarely been welcomed in Scotland: “There was no Tartan Thatcherite revolution.”⁹

Under Thatcher’s leadership, the Conservative Party had reasserted its staunch Unionist position, ruling out any form of devolved regional assembly, and there was no change in direction when John Major took over as Prime Minister. He was particularly concerned about Scotland “sliding away to independence through the halfway house of devolution.”¹⁰ Indeed, in 1992, Major decided “to make the defence of the Union the key theme of the election campaign”.¹¹ After securing what had seemed an unlikely electoral victory, in which the Tories increased their Scottish representation from nine to eleven MPs, Major launched a listening exercise that resulted in the 1993 White Paper *Scotland in the Union: A Partnership for Good*. These proposals fell short of establishing a Scottish Parliament,

⁷ On the same day, the Welsh voted decisively by 80% to 20% against devolution.

⁸ Vernon Bogdanor, ‘The 40 per cent rule’, *Parliamentary Affairs*, vol. 33:3 (1980), p. 249.

⁹ Margaret Thatcher, *The Downing Street Years* (London: Harper Collins, 1993), p. 618.

¹⁰ John Major, *John Major: The Autobiography* (London: Harper Collins, 1999), p. 415.

¹¹ *Ibid*, p. 424.

but they did recommend devolving more functions to the Scottish Office and more powers to the Scottish Grand Committee in order to provide more parliamentary time for Scottish bills and challenge contentious legislation. Meanwhile, for Labour, the party's attitude to genuine devolution was still being keenly discussed, especially since it was seen as important in fending off the potential threat from the Scottish National Party. But key figures within Labour had already recognised that this time the process had to be built from the ground up and would have to be done differently to in 1979.

Initiation

After the defeat of devolution in the 1970s, it was recognised that any attempt to revive the process needed to be led from Scotland rather than Westminster. In particular, the Scottish Constitutional Convention (SCC) played a leading role by creating a blueprint for change that was developed in Scotland and was "*strongly rooted in the elite of Scottish civil society*".¹² The SCC grew out of the Campaign for a Scottish Assembly, a cross-party organisation set-up on the first anniversary of the failed referendum. The Convention was a broad-based coalition that included representatives from political parties, local authorities, trade unions and small businesses, Churches, Women's Forum Scotland and the Racial Equality Council. This approach was important for fostering a spirit of inclusion, democratic dialogue and consensus building. In the words of John Smith to the Constitutional Convention, a Scottish Parliament would reflect the "*settled will of the Scottish people*".¹³ However, the Conservative Party refused to take part and, although initially supportive of the proposal, the SNP withdrew before the Convention's first meeting on the grounds that independence was not being discussed as an option. At this inaugural gathering on 30 March 1989, the members signed a 'Claim of Right', which declared the sovereign right of the Scottish people to determine the form of government in their country and pledged to devise a scheme for a Scottish Assembly or Parliament. Over the next seven years, the SCC produced several reports outlining the principles and practicalities of Scottish devolution, and these efforts culminated with the publication of *Scotland's Parliament. Scotland's Right* in 1995.

Despite the broad membership of the Convention, politicians remained integral to the process. The SCC's diversity was in many ways the campaign's greatest strength, but it also created difficulties in gaining a consensus and moving the discussion forward. When the Convention could not reach an agreement on key issues, Labour and Liberal Democrat leaders would come together outside to fashion a compromise. While the Convention was a truly Scottish initiative, the Labour leadership in London were also kept in touch with the process. Indeed, devolution was a key project for many leading Labour figures – Donald Dewar had been working on it for decades; it was close to the heart of John Smith as Labour leader and the commitment was kept intact as part of the "*inheritance*" when Tony Blair became leader – a contrast to many other areas where there were fundamental policy reviews. The political commitment of all these figures was crucial in sustaining momentum and then finally bringing the policy to fruition. Furthermore, according to Wendy Alexander (who

¹² Institute for Government, Policy Reunion on Scottish Devolution (30 March 2011); details available at: <http://www.instituteforgovernment.org.uk/our-events/97/policy-reunion-scottish-devolution>

¹³ Cited in Gary Hassan, *The Scottish Labour Party* (Edinburgh: Edinburgh University Press, 2004), p. 47.

was working as an adviser to Donald Dewar at the time), there was a sense throughout the process "that everybody was playing to their strengths."¹⁴

In the 1997 general election campaign, John Major was once again determined to turn the potential breakup of the Union into a central issue. As his autobiography reveals, Blair held some reservations about devolution, but viewed a Scottish Parliament as a necessity:

*I was never a passionate devolutionist. It is a dangerous game to play. You can never be sure where nationalist sentiment ends and separatist sentiment begins. I supported the UK, distrusted nationalism as a concept, and looked at the history books and worried whether we could get it right. However, though not passionate about it, I thought it was inevitable.*¹⁵

Despite these reservations, Blair made devolution a flagship policy of his new administration. Unlike other major policy areas, where Blair used the run up to the election to go through and change policies which opened up potentially vulnerable flanks, he had accepted devolution as an aspect of the legacy from John Smith's tenure. The fact that John Major delayed the election to the last possible date, May 1997, allowed time for six months of talks between Labour's Robin Cook and the Liberal Democrat Bob McLennan, which laid the ground for cross-party agreement on how to proceed. Pat McFadden, an adviser who worked on devolution while Labour was in opposition and then at No. 10, has suggested Blair liked the fact that devolution was essentially a Lib-Lab project. The process appealed to his pluralistic tendencies, as it demonstrated that rival parties could work together in areas of common interest and on subjects of national importance.

As Labour committed itself to a radical programme of constitutional reform, the party looked for expert advice on how to put such changes into practice. The Constitution Unit (CU), staffed predominantly with former civil servants, analysed the proposals emerging from the SCC and set about making them implementable. The CU's report *Scotland's Parliament: Fundamentals for a New Scotland Act*, produced in June 1996, did a lot of detailed work on areas including the intergovernmental machinery, how to manage intergovernmental relations and on the EU. It was given extra credibility due to the fact that a Scottish Advisory Committee chaired by Sir William Kerr Fraser (a former Permanent Secretary to the Scottish Office) and Professor Gavin McCrone (a former government economist) acted as advisers. The CU work led to two big changes being put on the agenda – the idea of a pre-legislative referendum, driven by separate work the CU were doing on Wales (where devolution had failed by such a wide margin in 1979 that it did not seem worth the effort of producing detailed legislation if it was going to again be rejected by the electorate) and, secondly, the idea that the devolution legislation should mirror the 1920 Government of Ireland Act, which set out the powers reserved to Westminster and devolved everything else. The CU networked these proposals extensively with the Scottish Office, the Cabinet Office and government lawyers.

The civil service preparations for devolution were well advanced even before Labour's landslide victory. In part this was a result of the work done by the CU, but the civil service were also well

¹⁴ IfG Policy Reunion.

¹⁵ Tony Blair, *A Journey* (London: Hutchinson, 2010), p. 251.

aware that they needed to prepare for what was a major policy commitment of the likely next government. The Scottish Office, under Secretary of State Michael Forsyth, spent a lot of time on devolution as he was in the vanguard of opposition to it – and that meant they became very familiar with the issues. Indeed, the then Permanent Secretary, Muir Russell, had been in charge of the Cabinet Office preparations for devolution in the event of a change of government in 1992. By the time of the next election, the CU's report *Scotland's Parliament* was much read in the Cabinet Office where Kenneth Mackenzie and Bill Jeffrey in the secretariat "*carved it up into manageable chunks*" to start working out how they would take the issues through Whitehall.¹⁶ In particular, reflecting on the CU's significant contribution, Muir Russell pointed out that the reserved powers proposal guaranteed that the eventual settlement amounted to "*real and sustainable devolution*".¹⁷

Options

As plans were drawn up for a new constitutional settlement, debate centred on how much of the Convention's blueprint would be translated into the final legislation and what measures were necessary to successfully implement this policy. The SLP did not see a need for any referendum, regarding a manifesto commitment and election victory as sufficient mandate for action. However, Tony Blair regarded it as crucial, both to entrenching the policy but also demonstrating that devolution was not a threat to the Union. In June 1996, he proposed a twofold departure, not only pre-legislative endorsement by the Scottish people in a referendum, but also that tax varying power (of up to three pence on the basic rate of income tax) should be included as a separate question in the referendum. The effect of this commitment was to diminish the force of devolution as an election issue. However, in Scotland, the announcement of the referendum was considered a sudden U-turn. As Pat McFadden recalled, "*this was viewed as something of a betrayal because of the history of the George Cunningham amendment*" and the referendum was "*seen not as a way of endorsing the package but of stopping it*".¹⁸ George Robertson, Shadow Secretary of State for Scotland at the time, described the decision to go for a referendum as "*one of the worst periods of my political existence*".¹⁹ Yet, Tony Blair regarded it as a critical protection for him and for the government. As he later acknowledged, it was designed to ease the passage of the Bill through the House of Lords: "*The strategy was clear: to devolve after a hundred years of waiting. The tactic was obvious: get the people to say yes, then the Lords could not say no.*"²⁰ An additional benefit of this approach was that having secured the explicit backing of the Scottish people for this fundamental constitutional change, it would be politically inconceivable to reverse without holding another referendum.

A further difference within the Labour Party related to how much of the devolution package should remain open for debate. Wendy Alexander pointed out that the difference could be summed up as the SLP believing the 1997 general election constituted a vote for "*the*" Scottish Parliament

¹⁶ IfG Policy Reunion.

¹⁷ IfG Policy Reunion.

¹⁸ IfG Policy Reunion.

¹⁹ Interview with IfG (March 2011).

²⁰ Blair, *A Journey*, p. 252.

whereas Tony Blair and Donald Dewar took the election result as an endorsement of “a” Scottish Parliament, with the detail still up for discussion and needing scrutiny through normal Westminster processes, though Donald Dewar would see his role as maintaining the integrity of the SCC scheme in those discussions. There were other issues which were hard for some Labour members to accept, such as the adoption of a form of proportional representation (which meant that having waited for power, Labour was making it unlikely it would ever have a majority in Holyrood) and the reduction in Scottish representation at Westminster. These measures showed the extent to which Dewar and Blair “were both Labour pluralists” and did not want devolution to be viewed as “a tribal payoff to the Scots for sticking with Labour for all those years”.²¹ With this in mind, George Robertson saw as critical the decision not to subject the Convention’s blueprint to the normal national policy forum process:

*Getting the national party to agree that they would not change or even suggest they would look at the package from the Convention... was one of the biggest successes of all. If I had lost that battle... it would have been seen to have the London stamp on it, it would have undermined the integrity of the process we had done.*²²

Nevertheless, while the principles from the Convention remained largely intact, details about the implementation were inevitably influenced by party dynamics. Devolution was the subject of Labour’s only formal Shadow Policy committee, which included many who were sceptical about the proposals and provided an internal forum in which to hammer out a consensus on a range of contentious questions. Outside expertise also played a vital role. When considering the need for a referendum and discussing the benefit of reverse powers, in the view of Wendy Alexander, the “Constitution Unit helped build an understanding of the issues involved”.²³ Indeed, the CU’s activities filled a gap of experience on the workings of the machinery of government that was inevitable for a party that had been in opposition for eighteen years. Following the release of the CU’s report, Labour published the *Road to the Manifesto* two days later with the inclusion both of the pre-legislative referendum and the reverse powers proposal.

One of the most striking things about Scottish devolution was what was left out. In the words of Jim Gallagher, a senior civil servant in the Scottish Office, there was a “willingness to tolerate small, unanswered questions and a capacity to leave some things untidy”.²⁴ In particular, the West Lothian question was sidelined by the decision to reduce the number of Scottish MPs at Westminster from 72 to 59. This measure was considered a partial solution to Scotland’s historic over-representation, but it did not represent a solution to the intrinsic problem posed by Tam Dalyell’s original question about Scottish MPs being able to vote on English laws when the reverse would no longer be possible. In terms of funding, the Barnett formula that determined the annual Scottish block grant was left untouched. In addition to this settlement, the Scottish Parliament was given the ability to raise the basic rate of income tax by three pence in the pound, but no power over other taxes levied by central government. However, there was still a need to produce a lasting settlement and not risk

²¹ IfG Policy Reunion.

²² Interview with author (March 2011).

²³ IfG Policy Reunion.

²⁴ IfG Policy Reunion.

a recurring debate over these same issues. In contrast to 1979, the Bill outlined those powers which were to be reserved for Westminster decision-making. While previous attempts had become bogged down when attempting to list the powers to be transferred, legislation listed only the areas that Westminster retained control over such as the constitution, macroeconomic management, foreign affairs and defence.

Decision

In the build up to the 1997 general election, with a Labour victory looking increasingly likely, Whitehall had set about planning how best to implement devolution. A decision had been made in 1992 that any devolution proposals would be led by the territorial departments, the Scottish and Welsh Offices, but driven through from the centre with a strengthened Cabinet Office. The groundwork done in 1992 laid the foundations for what was set in place in 1997 and the Cabinet Office also looked into what went wrong on devolution in the 1970s. In possible anticipation of devolution being a key topic for a newly elected government, a Scot, Kenneth MacKenzie had been put in charge of the Cabinet Office's Economic and Domestic Affairs secretariat in the mid-1990s. He had already established his Whitehall credentials by handling the BSE crisis. In his view, Whitehall's managing of devolution had to strike a careful balance: "*this was not to be run from the centre, on the other hand, it wasn't to be encouraged to run very far from the centre.*"²⁵

There was no devolution team in place under the Conservatives, but the Cabinet Office held informal talks in the weeks before the election to identify people who would move over to the Cabinet Office to work on devolution in the event of a Labour victory. This group, described by Lord Irvine as "*the brightest and the best*" in Whitehall, were sworn to secrecy and did not meet until after the election.²⁶ In the lead up to the election, there was an assumption within the civil service that there would be great difficulties getting this legislation through Parliament. According to Robin Butler (Cabinet Secretary at the time), the "*whole area of devolution was a tremendous source of anxiety to us*".²⁷ Given the protracted difficulties encountered in the 1970s, this was hardly surprising, especially as few would have foreseen the size of Labour's eventual majority. Moreover, although there had been internal civil service preparations, there had been relatively little opportunity to engage on the subject with the Labour Party and a good working relationship with incoming ministers would prove essential to the next stage of the process.²⁸

When Labour took power in 1997, there was still no guarantee that commitment to devolution would smoothly translate into legislation. Skilful and dedicated leadership was now required. Overseeing the delivery of the policy was Donald Dewar, who was appointed Secretary of State for Scotland and acted as a strong advocate of devolution within the Cabinet. In this respect, Dewar's

²⁵ IfG Policy Reunion.

²⁶ IfG Policy Reunion.

²⁷ IfG Policy Reunion.

²⁸ Peter Riddell and Catherine Haddon, *Transitions: Preparing for Changes of Government* (London: Institute for Government, 2009), pp. 46-48; Peter Jones, 'His Obedient Colleagues', in Wendy Alexander (ed.), *Donald Dewar: Scotland's first First Minister* (Edinburgh: Mainstream Publishing Company, 2005), pp. 119-24.

previous experience as Chief Whip was hugely valuable. On his first day as Secretary of State, Dewar was presented with a black book of key decisions to be made that weekend, to prepare him for the first meeting of the Cabinet Committee on Devolution to Scotland, Wales and the English Regions (DSWR) on the following Tuesday. Over the coming months, Dewar forged an effective partnership with Derry Irvine, the Lord Chancellor, who chaired the DSWR, which he had been asked to chair along with the other constitutional reform Cabinet Committees. His instruction was to get devolution through quickly; if possible, by the summer. He had conveyed the same instruction to Robin Butler at a meeting that took place a few days before the General Election. Decisions were taken at such speed that departments were taken off guard.

According to those present at our policy reunion, what happened was a “*guerrilla raid on Whitehall*” with the Scottish and Welsh Offices, for whom this was the top policy priority, working with the Cabinet Office secretariat to push decisions through before the naysayers in the rest of Whitehall could start to mount objections. All in all, the Committee, which comprised a large number of secretaries of state and important junior ministers, had 15 meetings, lasting two hours each, in 11 weeks and considered 39 papers in that period. It needed to get agreement on every detail of the referendum, and then of the legislation. The Scottish Office saw its role as continually “*rolling the pitch*” with Whitehall to enable pace to be maintained though there was still a feeling in Whitehall that they should not “*be letting the Scots get away with this*”. The Cabinet Office Secretariat also maintained strong links into No.10 through Pat McFadden.²⁹

The Committee had to consider the nature of devolution; whether the legislation should provide a Unionist sop of a declaration that the power of Westminster was undiminished, as well as settling the issues of dispute resolution, the West Lothian question, EU relations, tax varying powers and budget issues. Some Scots on the Committee were “*sotto voce*” in voicing departmental concerns. DSWR was unwilling simply to rubber stamp the Convention blueprint and both Donald Dewar and Derry Irvine saw merits in getting endorsement from a UK government cabinet committee – and Irvine thought that that process produced a “*superior product able to withstand Parliamentary scrutiny*” though George Robertson saw the big success as maintaining the integrity of the SCC package. The two departures from the Convention were on the holding of a pre-legislative referendum and the inclusion of a separate question about tax varying powers. The positive referendum results gave considerable momentum to implementing the legislation as it was easy to point to the declared will of the Scottish people.

Consensus

During eighteen years of Conservative rule, when discussion of Scottish devolution could have easily disappeared off the political radar, the Scottish Constitutional Convention acted as the principle forum for building consensus around the subject. By bringing together a wide range of political and organisational actors, who had their own specific priorities, the SCC inevitably involved compromise on all sides and this helped legitimise the process. Nevertheless, partisan

²⁹ IfG Policy Reunion.

politics continued to play a part in proceedings. The Conservative Party refused to join the SCC as a matter of principle and designated themselves as defenders of the Union. Meanwhile, the SNP quickly pulled out of the Convention on the grounds that independence was not being considered and, moreover, seeing devolution as a Labour ploy designed at reducing their support. The remaining representatives managed to agree the principles of an initial devolution package in 1990, but a number of issues still remained unresolved by the 1992 General Election.

Yet, after the further setback of John Major's victory, there was disillusionment with no immediate prospect of significant constitutional reform, the SCC lost momentum and did not meet for a year. Once re-established, the Convention began detailed negotiations over contentious issues such as the electoral system and the gender balance of a future Scottish Parliament, as well as the constitutional relationship that would exist between parliaments in Edinburgh and Westminster.³⁰ In particular, by agreeing that a form of proportional representation should be used in elections, Labour signalled their commitment not only to work with other parties in the short-term, but also to establish a new type of politics in Scotland, where 'power-sharing' – later formalised as one of the four guiding principles of the Scottish Parliament – would be the norm.³¹ However, although the SCC promoted a less partisan approach, political considerations were still evident. Indeed, any electoral system designed so no single party was likely to form a majority government, it could be argued, was simply intended to prevent the SNP from gaining outright control and pushing through a referendum on independence. Of course, the 2011 Scottish election results demonstrated that any such calculations were misconceived.

Labour's landslide victory in 1997 allowed devolution to ride on the new government's wave of optimism, but arguments still had to be won inside government. While acknowledging the historical importance of the SCC, Derry Irvine has noted that "*there was, in fact, no seamless transition from Convention to Statute*" and "*every detail was debated closely*" in the DSWR.³² Yet, as John Sewel has explained, Donald Dewar managed to build a consensus within the Cabinet and drafted a White Paper that made a convincing case for devolution "*which in essence would survive all the way through to the final Act.*"³³ By the time the referendum was held in September 1997, the SNP had come on board; having decided that devolution could provide a stepping stone to full independence. The final results showed the majority of Scottish people were in no doubt about self-government, as 74.3% voted in favour of a Parliament and 63.5% endorsed tax-varying powers (with a very healthy 60.4% turnout). When Dewar launched the Bill in Glasgow, two months later,

³⁰ For an overview of the Convention during this period and an account of these deliberations, see Peter Lynch, 'The Scottish Constitutional Convention, 1992-5', *Scottish Affairs*, vol. 15 (1996), pp. 1-16.

³¹ The SCC proposed to establish a Scottish Parliament with 129 SMPs, with 73 elected by first by the post and a further 56 elected proportionally on the basis of regional lists.

³² IfG Policy Reunion.

³³ John Sewel, 'Getting the Act Together', in Wendy Alexander (ed.), *Donald Dewar: Scotland's first First Minister* (Edinburgh: Mainstream Publishing Company, 2005), p. 132.

he described it as a “*genuinely historic document*” and he drew particular attention to clause one, subsection one: “*There shall be a Scottish Parliament.*”³⁴

Reflections

Looking back on Scottish devolution, the critical success factors stem from a willingness to learn lessons from the failure of devolution in the 1970s. These were, firstly, that the Bill proposed in 1979 was seen as a scheme that had been developed exclusively in Whitehall. Secondly, the nature of devolution proposed – with specific powers only devolved – had been viewed by some as too limited. In addition, the decision to opt for endorsement through a referendum after legislation had passed proved costly. The process was seen in Scotland as too top down, Westminster and Whitehall driven, and therefore to be lacking legitimacy. Three ministers were responsible at different times, which compounded the political problem, and it was seen as highly party political which contributed to the referendum failure. More generally, devolution was the act of a government that had lost its majority and was coming to the end of its term. In the words of George Robertson: “*The referendum campaign was a miserable campaign: the Scottish [Labour] Party wasn’t united... key people were opposed to it and campaigning against it... People were voting against the Government as well as against devolution.*”³⁵

In contrast, the positioning of devolution in the 1990s as a Scottish project, developed by Scottish civil society through the Constitutional Convention on a cross-party basis, was a key step. As George Robertson noted: “*The actual achievement of getting agreement in the Scottish Constitutional Convention cannot be underestimated... People felt they were part of the process, and when it was signed, it was owned by people. That was a great lesson for me. It was hugely difficult, time consuming and laborious, but ultimately it was a guarantee of success.*”³⁶ Nonetheless, outside expertise also played an important role. The Constitution Unit worked with both politicians and the civil service to come up with options to make devolution more palatable north and south of the border. Tony Blair’s judgment to resist the Scottish Labour Party and insist on a referendum, and the decision to go for a pre-legislative referendum which gave political momentum to the eventual Bill, were both astute strategic moves that paid dividends in the long-term. Meanwhile, detailed preparations in opposition, including the Cook-McLennan talks, enabled the new Labour administration to move into action immediately after it was elected.

While the new constitutional settlement has been generally accepted, it is noticeable that some difficult issues were left unresolved. In part, this stemmed from a willingness to seek consensus and ignore potential discord. Moreover, in Pat McFadden words, “*some dogs didn’t bark*” at the time. In particular, the chance to resolve concerns over perceived Scottish overprovision and put funding on a more sustainable basis were not taken. With the benefit of hindsight, this now appears a missed

³⁴ Murray Ritchie and Robbie Dinwoodie, ‘There Shall be a Scottish Parliament Consensus’, *The Herald* (19 December 1997), available at: <http://www.heraldscotland.com/sport/spl/aberdeen/there-shall-be-a-scottish-parliament-consensus-1.363999>

³⁵ Interview with the author (March 2011).

³⁶ *Ibid.*

opportunity to tackle the financial settlement in relatively benign economic circumstances. In the current era of declining expenditure, this thorny issue may well introduce new tensions between London and Edinburgh, and is undoubtedly a “doorstep issue” with voters in England. The question of tax raising powers, which was controversial at the time, remains controversial despite the fact that this provision still has not been used. Furthermore, it was pointed out at our policy reunion that devolution was not been accompanied by an improvement in economic performance in Scotland and some have suggested that this is a consequence of the nature of the devolution settlement.³⁷ The Scottish government receives no benefits from policies to boost growth or to reduce welfare as these revenues flow back to London. Indeed, judging by the nature of its successes, devolution has been essentially a political not an economic project.

Nevertheless, Scottish devolution has proved to be an innovative and effective policy. Looking back, the relatively smooth legislative process was achieved through a combination of years of planning and the fact that devolution was a priority project for a newly elected government with a huge popular mandate; the ideal conditions for any policy. As such, there was clear commitment by the Cabinet Office and the Scottish Office to devote the resources required to enable ministers to make decisions on a rapid timetable and deliver one of the government’s flagship policies. There were hugely detailed preparations that underpinned the effective working of the Cabinet Committee process and the excellent working relations between civil servants in London and Scotland and their ministers. In Derry Irvine’s assessment, “the whole enterprise was superbly staffed”, represented “an amazing speed of delivery” and “should be a blueprint for future policy developments”.³⁸ During the legislative phase, the personal commitment and integrity of Donald Dewar was always to the fore. In particular, he had to withstand very hostile press reaction in Scotland during the early months of the new government since many expected to see even faster progress and thought he was selling out. Yet, he stayed true to his convictions and saw his vision prevail.

Our policy reunion took place before the May 2011 elections which produced a majority SNP government for the first time. This has put the nature of the devolution settlement back onto the political agenda – with the prospect of a referendum on independence or further devolution during the current term of the Scottish Parliament.

List of Participants at Policy Reunion

Name	Role during this 'Policymaking Process'
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³⁷ IfG Policy Reunion.

³⁸ IfG Policy Reunion.

Rt. Hon. Lord Irvine of Lairg	Lord Chancellor and Chair of Cabinet Committee on devolution 1997-2003
Rt. Hon. Lord Butler of Brockwell	Secretary of the Cabinet and Head of the Home Civil Service (1988-98)
Sir Muir Russell	Permanent Under-Secretary of State, Scottish Office (1998-99) and Permanent Secretary to the Scottish Executive (1999-2003)
Rt. Hon. Pat McFadden MP	Policy Adviser to Rt. Hon. Tony Blair MP on constitutional matters and devolution (1994-2001)
Wendy Alexander MSP	Special Adviser to Rt. Hon. Donald Dewar MP (1997-98)
Kenneth Mackenzie	Head of Cabinet Office Constitution Secretariat (1997-98)
Ken Thomson	Principal Private Secretary to Rt. Hon. Donald Dewar MP Secretary of State for Scotland (1997-99) and First Minister of Scotland (1999)
Jim Gallagher	Head of Local Government and Europe Group, Scottish Office (1996-99)
Professor Robert Hazell	Director, Constitution Unit, University College London (1995-)