

The constitutional implications of the rise of the SNP

By Democratic Audit UK

The [UK Constitutional Law Association](#) blog has asked constitutional lawyers to review the main party manifestos ahead of the May elections, drawing out key constitutional proposals. Below **Aileen McHarg** discussed the constitutional implications of the rise of the SNP.

The phenomenal rise of the Scottish National Party (SNP) in the wake of last year's independence referendum has been *the* story of what has been an otherwise lacklustre general election campaign. Having secured just six MPs and a 20% share of the vote in Scotland at the 2010 Westminster election (as against 41 MPs and 42% of the vote for Labour), [opinion polls consistently predict](#) that the party will gain the support of close to (and on some polls more than) 50% of the Scottish electorate. On these figures, it has been suggested that the SNP could win over 50 of the 59 seats in Scotland, taking some major political scalps in the process. Of course, the swing to the SNP is unlikely to be uniform (although it does not need to be), and incumbency effects and [anti-SNP tactical voting](#) could reduce the party's total gains. Nevertheless, unless something dramatic happens before 7 May, the SNP seems certain to replace Labour as the largest party, and to consolidate its position as the new dominant force in Scottish politics.



Much of the explanation for this seismic political shift seems to lie in the ongoing effects of the independence referendum, which shook up Scottish political life in ways and to a degree that few if anyone would have predicted. For one thing, such is the continuing dominance of the national question that it seems that the vast majority of those who voted Yes in the referendum are intending to vote for the SNP. Although the Yes campaign was an alliance of parties, including the Scottish Greens and the Scottish Socialists, in a First-Past-the-Post (FPTP) election, the SNP is the only pro-independence party with a realistic chance of winning seats.

However, anecdotal evidence suggests – and the opinion polls seem to back this up – that some No voters will vote SNP as well. The reasons here are more complex. Some may be scunnered with the Unionist parties' response to the referendum result and regretting their No vote. Others may be disillusioned with the policies on offer by the Unionist parties and attracted by the progressive, anti-austerity stance adopted by the SNP. Others still may simply have the sense that a strong vote for the SNP is the best way to secure a good deal for Scotland.

Unsurprisingly, therefore, amongst the key priorities laid down in the SNP manifesto is a promise to deliver what it refers to as "Home Rule" for Scotland. This will involve, as a first step, demanding that the Smith Commission's proposals are delivered quickly and in full. However, the party believes that these do not go far enough to honour the promises made during the referendum. It therefore undertakes to seek agreement that the Scottish Parliament should move to what it calls "full financial responsibility" (more commonly referred to as "full fiscal autonomy") and in the meantime – since that is likely to take a number of years – to prioritise devolution of powers over employment policy, including the minimum wage, welfare, business taxes, national insurance and equality policy.

These, the party claims are the key powers needed to create jobs, increase revenues and lift people out of poverty.

Elsewhere in the document, the party also argues for Scotland to have full responsibility for regulation of gambling, powers to regulate payday lenders, control over broadcasting and full responsibility over all food levies. While the SNP has, post-devolution, struggled to establish its relevance in Westminster elections, the prospect of post-election legislation for further devolution to Scotland in fulfilment of promises made to keep Scotland in the Union ironically gives the party a clearer *raison d'être*. Although a majority of voters in Scotland may have rejected independence, it is nevertheless apparent that there is [strong support for substantial autonomy](#) going beyond what the Unionist parties were prepared to agree to in the [Smith Commission](#). David Cameron may believe that the Smith Commission proposals and the [draft legislative clauses](#) published in January to give effect to them constitute “an enduring settlement”, but no informed observer of the territorial constitution believes that they will be. Nor indeed do they deserve to be: a hastily cobbled together, incoherent and unprincipled set of compromises, reached behind closed doors through a process of party political horse-trading, with no meaningful opportunity for public involvement is just about the least legitimate method of reaching a constitutional settlement that anyone could have devised.

It remains to be seen what, if any, further concessions the SNP manages to secure in post-election negotiations. Some further movement seems probable, if only because some aspects of the current proposals are highly problematic as they stand. The Labour party has also pledged to go further than Smith, although it has not specified in what way exactly. However, it does not seem likely that there will be major concessions, and it seems very unlikely indeed that any Unionist party will contemplate full fiscal autonomy. Depending on the electoral arithmetic, of course, the SNP may yet find itself with very little bargaining power at all.

What this in fact suggests is that the greater constitutional significance of the rise of the SNP is to be found *in that fact itself* – and in the cack-handed Unionist response to it – rather than in anything the party may promise in its manifesto. Indeed, the manifesto is noticeably policy-heavy: the commitments to Home Rule for Scotland as well as to democratic reform at Westminster come at the end of a long list of key priorities which are otherwise entirely concerned with substantive policy issues. This may be aimed at reassuring voters elsewhere in the UK that the SNP is a serious party of government which, if it does turn out to hold the balance of power, can be trusted to exercise it responsibly. But it also fits with a theme emphasised very strongly during the referendum debate, particularly by Nicola Sturgeon, that independence was not an end in itself, but the means to a more progressive politics ([however problematic that claim may have been in reality](#)).

What is also missing from the manifesto is any commitment to seek another independence referendum. This will be the first time that SNP representatives have been elected at a general election without a mandate for independence. There is deep irony here. Until 2000, the party would have regarded winning a majority of seats in a parliamentary election as a sufficient mandate to seek immediately to negotiate terms for independence, without the need for a prior referendum. The policy was changed precisely to break the link that a vote for the SNP necessarily meant a vote for independence, and at one level that strategy has been spectacularly successful.

It was the breaking of the link that enabled the party to gain power in Holyrood and therefore to hold a referendum on independence. And it was the referendum which has fuelled the further increase in the party's support. Nevertheless, having held and lost the referendum, it has become effectively impossible for the party to commit to hold another one without a decent interval between them. While the SNP's pledge (or was it merely a prediction?) that the referendum would be a once in a generation event should not – like any other election pledge – be regarded as binding, the party cannot credibly call for another referendum any time soon without some material change in circumstances. Moreover, [James Mitchell has argued](#), it will not want to do so unless it can be sure of victory.

In the absence of any commitment to break up the UK, then, the major constitutional significance of the rise of the SNP lies into its potential to disrupt current constitutional expectations. While Mitchell points out that the [risk of actual, Parnell-style disruption to parliamentary business is minimal](#), there are at least three ways in which strong SNP representation challenges assumptions about the operation of the constitutional order.

First, it points to an increasing divergence between Scottish and English (or English and Welsh) politics. As with

Northern Ireland, it suggests that Scotland is increasingly becoming a place apart, with its own political parties and its own political dynamics, in which Scotland rather than the UK is the primary unit of reference. We see this, for instance, in the fact that many Scottish voters seem to be unconcerned about their implications of their vote for the choice of who becomes Prime Minister. This is not irrational: the more decision-making power is concentrated at Holyrood rather than Westminster, the less significant (albeit clearly not wholly insignificant) that decision becomes. We also see a turn towards Scotland in the failure to distinguish clearly, both in the SNP manifesto and in the election debate in Scotland more generally, between issues that are reserved to Westminster – and which are therefore actually at stake in this election – and issues devolved to Holyrood – and which are therefore strictly speaking irrelevant. The parties, it seems, are battling not merely for seats at Westminster, but are also positioning themselves for next year's Holyrood general election. This feels significant. Just as the dominance of national issues during local elections sends a powerful signal about the low political salience of local democracy, so too does the focus on domestic Scottish issues send a signal about the weakening relevance of Westminster.

Secondly, increased political divergence produces a greater need to take seriously the territorial dimension of UK-level governance. Here the outraged (and outrageous) reaction of all three main Unionist parties to the prospect of SNP holding the balance of power has been precisely the opposite of what is needed. The attempt to delegitimise the party by ruling out any possibility of entering into coalition, or even some lesser support arrangement, effectively locks out the majority of Scottish MPs from any prospect of participation in government, and is likely to be met with a mixture of disbelief and anger by most Scottish voters, whether SNP supporters or not. If meant seriously, it will lead to the Ulsterisation of Scottish politics, which in turn will only hasten independence.

[As others have pointed out](#), this is a profoundly un-Unionist response. Instead, what is required at the very minimum is for the legitimacy of Scottish voters' democratic choices to be respected, and for the presence of regional parties to be accommodated with UK-wide political structures. More fundamentally, there is need to superimpose mechanisms of territorial consent onto a system in which the major cleavages have hitherto been presumed to be ideological rather than geographic. Dealing with the problem of English Votes for English Laws (EVEL) is likely to be the most pressing problem if Labour fails to win most seats in England but is sustained in office with SNP support. On the other hand, *any* government which is formed *without* SNP support is likely to have little or no representation in Scotland and will therefore have major legitimacy problems.

Thirdly, the rise of the SNP raises questions about the continued viability of FPTP for Westminster elections. One issue is the likely extreme disproportionality of the election outcome in Scotland. One-party dominance is nothing new in Scottish politics – after all, Labour currently holds 70% of the Westminster seats. Nevertheless, a system in which any party can potentially sweep the board on a plurality, or even a small majority, of the popular vote ought to give democrats pause for thought. The other issue is the fragmentation of the party system to which the SNP's rise contributes. In these circumstances, FPTP can no longer be relied upon to deliver what has hitherto be regarded as its primary virtue, namely strong, single party government. Moreover, if hung Parliaments are likely to become the norm, there is an urgent need to clarify the principles of government formation. Whilst this is, of course, an intensely political matter which can never be wholly reduced to rules, voters deserve to have a better idea of the parameters within which choices are to be made, so as to be better informed when deciding how to cast their ballot. Otherwise, politicians will continue to be able to invent such “rules” and “principles” as best advance their short-term goals.

The SNP manifesto does have some interesting things to say on these broader constitutional questions. On the issue of territorial consent, for instance, it reiterates the claim already made by Nicola Sturgeon that any future referendum on EU withdrawal should be subject to a double majority requirement – *i.e.*, there would have to be a majority in each of the four nations of the UK. In European decision-making more generally, the party seeks a greater role for the devolved administrations within the Council of Ministers, and more direct engagement in devolved policy areas across the full range of EU institutions. It would seek a Cooperation Agreement between the UK government and the devolved administrations, including formal agreement on speaking rights for Scottish ministers and direct Scottish input into the development of UK policy on key EU issues. The manifesto also argues that the Scottish Parliament should have the ability to directly represent its interests on devolved matters in the EU and internationally, though it does not explain how that would be achieved.

EVEL is not addressed explicitly. However, the manifesto does state that SNP MPs will vote against any measure

at Westminster that affects Scotland's interests or has the effect of reducing Scotland's funding (since the party also seeks to retain the Barnett formula pending the transition to full fiscal autonomy). This is in fact a continuation of existing SNP policy, which is *not* to vote on England-only matters *unless* Scottish interests are affected. But with 40 or 50 MPs rather than six, it potentially becomes more significant. The party might be accused of hypocrisy in complaining of a democratic deficit when English votes determine matters affecting Scotland, yet being willing to countenance the possibility of Scottish votes overriding English wishes on matters affecting England. In reality, though, it simply underlines the difficulty of resolving the EVEL problem in a system of asymmetric devolution.

The manifesto also has a good deal to say on what it describes as the UK's broken political system – another prominent theme during the independence referendum. Despite being a likely beneficiary of FPTP, the SNP promises to replace it with the Single Transferable Vote for Westminster elections. In addition, the manifesto reiterates the party's long-standing commitment to a fully elected second chamber, as well as containing pledges to support an effective power of recall for MPs, votes at 16 for UK and European elections, the removal of charities from lobbying controls, proper oversight and approval of future military action, and 50% female representation on public boards, and to oppose repeal of the Human Rights Act or withdrawal from the European Convention on Human Rights. In an intriguing proposal, the manifesto also argues that Scotland should have the opportunity to establish its own constitutional framework, including human rights, equalities and the place of local government.

As a set of individual reform proposals there is some constitutional radicalism here, and the commitments are no doubt sincerely held. Nevertheless, as a programme for constitutional reform, the suggestions are piecemeal and underdeveloped. There is no vision for the development of the constitution as a whole, nor even a commitment to establish a constitutional convention, as proposed by the Labour party and others. This is in stark contrast to the SNP's constitutional vision for an independent Scotland, where [a written constitution developed through a participatory process](#) was a central part of the pitch for independence.

This is, of course, hardly surprising. The SNP has not abandoned its commitment to independence; its ultimate goal is still to leave the UK rather than to reform it. To achieve that goal, it needs to pursue a twin track. On the one hand, it needs to generate confidence amongst the people of Scotland that they are able to handle their own affairs; the more powers that are (competently) exercised in Scotland, the less scary that further step towards independence is likely to seem. On the other hand, the party needs to maintain the perception that the UK cannot accommodate Scottish interests and aspirations; that it is essentially incapable of sufficient reform. The SNP's current electoral success therefore poses something of a dilemma. The more power it is able to exercise at Westminster, the less compelling becomes the argument for complete separation. Happily then for the SNP, by treating it like a pariah, the Unionist parties seem determined to make its case for it.

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