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**Conversing with the nation:
Consultations and referendums in
Scotland and Wales
under devolution**

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Abstract

The creation of devolved institutions in Scotland and Wales in 1999 provided nationalist parties in both the opportunity to act within an institution solely within their nation's territorial boundaries. In 2007, they entered government for the first time. In so doing, the Scottish National Party and Plaid Cymru embarked upon public engagement strategies in office which were designed to build support for their constitutional ambitions – namely, independence for Scotland and (in the short-term) full legislative powers for the National Assembly for Wales, as outlined in the Government of Wales Act 2006.

This thesis explores the public engagement strategy of both parties, focusing on the respective consultations of the parties in government – *A National Conversation* and the *All Wales Convention* – and the following campaign for (in Scotland) and at (in Wales) a referendum intended to deliver their preferred outcome. The aim of this thesis is to consider why public engagement strategies were considered the best vehicle to take forward the respective parties' constitutional goals and to evaluate the success each party achieved in relation to these objectives.

This thesis argues that, while both the SNP and Plaid Cymru have achieved some success with regard to their constitutional objectives, this success can be measured differently depending whether short-term or long-term goals are the defining standard. In Wales, Plaid Cymru's constitutional consultation found limited engagement with the wider Welsh population, and though the referendum succeeded

in securing legislative powers for the National Assembly for Wales, public engagement with the constitutional debate in Wales continues to lack enthusiasm. By contrast, the SNP's *National Conversation* saw more enthusiastic engagement, but without a referendum at the end of the process, a clear lack of a tangible short-term outcome. However, the SNP in government did succeed in moving the constitutional debate firmly onto the political agenda, and engagement in this debate is now widespread in Scottish society, particularly in the wake of an agreement to hold an independence referendum in autumn 2014.

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Introduction

The creation of devolved institutions in Scotland, Wales and Northern Ireland in 1999 was the “most radical constitutional change” in the United Kingdom since the Great Reform Act of 1832.¹ While the process of administrative devolution – that is, the ability of the respective Secretary of State to administer legislation within their competence – had been ongoing for decades, the democratisation of that process presented a distinct challenge to the UK’s “unitary and centralised” constitution.² The Scottish Parliament was re-established nearly 300 years after its abolition with wide legislative powers and a solitary tax power – the ability to vary the basic rate of income tax in Scotland by up to 3 pence. The National Assembly for Wales, with a weaker mandate, was a much weaker institution, established in the model of a “body corporate” and provided with only secondary legislative powers. The Northern Irish Assembly was also restored (as part of the 1998 Good Friday Agreement) 25 years after its suspension and subsequent abolition. In 2000, a devolved institution followed in London, which had supported the concept of a Greater London Authority in a referendum. Labour’s plans for devolution did not end there – but the legislation did. An elected assembly was offered to voters in the North-East of England but rejected with only 22% voting in favour thereby ending government attempts to further decentralise.³ The result was a model of asymmetrical devolution, similar to that of Spain – though in this case this was an outcome which was unplanned. Scotland,

¹ Bogdanor, V. *Devolution in the United Kingdom*, Oxford, Oxford University Press, 1999, p.1.

² Lijphart, A. *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, London, Yale, 1999, p.17.

³ Tickell, A. et. al. ‘The Referendum Campaign: Issues and Turning Points in the North East’ in *Devolution Briefing No. 20*, ESRC Devolution and Constitutional Change Research Programme, 2005.

Wales and Northern Ireland – with their devolved institutions – can provide distinctive legislation within their devolved competencies for their populations while England, the largest component nation of the UK by far, cannot, and remains governed by the UK government at Westminster. However, for some – in particular, the nationalist parties in Scotland and Wales – this changed constitutional arrangement did not go far enough. And with their election to govern these devolved institutions in 2007, the constitutional question was once again on the political agenda.

This thesis considers the constitutional question through the dual prism of devolved politics and deliberative democracy. While Northern Ireland's Assembly requires the presence of nationalist parties in government through its power-sharing agreement, 2007 marked the first instance that nationalist parties in Scotland (the Scottish National Party) and Wales (Plaid Cymru) entered government in their respective devolved institutions. With Labour dominating both the Scottish Parliament and the National Assembly for Wales, and leading the executives of both institutions for the prior eight years of their existence, the 2007 devolved elections provided a considerable shock to the established order. In Scotland, a plurality of one (47 seats to Labour's 46) let the SNP establish a minority administration at Holyrood while Labour's failure to win a majority of seats in the National Assembly for Wales led to Plaid Cymru joining them in government as the junior coalition partner. In both Scotland and Wales the office success of nationalist parties had far-reaching constitutional consequences, some of which are beyond the scope of this thesis.

Contemporary Debates

The nature of devolution is, in Ron Davies oft-quoted phraseology, a “process, not an event”.⁴ And as Davies explained further, devolution is not a “journey with a fixed end point”, nor an “end in itself but a means to an end”.⁵ That description of devolution is as apt for nationalists as it is for unionists. For nationalists, devolution is the means to the end of the Union, the means to self-determination – in whatever form that determination takes. For Unionists, devolved governance is the means of preserving the Union against the threat of separation. Indeed, for some Unionists, extending the devolution settlement further – even as far as federalism – is a logical step in order to preserve the Union. For both, devolution represents an opportunity to deliver for the populations of the devolved nations policy commitments which are frequently different to those which central government can offer the whole UK populace.

It is that flexible understanding of devolution which has informed the constitutional debates in the UK in the years since the devolved institutions were established in 1999.⁶ The asymmetrical nature of devolution – the fact Scotland was granted a legislative “parliament” (with a solitary tax power) to Wales’ “Assembly” meant that questions about the extension of Welsh devolution to mimic the Scottish model were never far away.⁷ The experience of devolution taught both institutions the limitations of their powers, and pressed upon members – even those without nationalist leanings – the desire to extend their remit beyond that which had originally been granted.

⁴ Davies, R. ‘Devolution: A Process not an Event’ in *The Gregynog Papers*, Vol. 2, No. 2, Cardiff, Institute of Welsh Affairs, 1999, p.15.

⁵ *ibid.*

⁶ Bodganor, V. 1999, *op cit.*

⁷ Wyn Jones, I. ‘From Assembly to Parliament’, *Institute of Welsh Politics Annual Lecture*, 2001.

Nationalist parties have played a pivotal role in shaping the devolution debates in both Scotland and Wales. In 1999, Plaid Cymru produced a “quiet earthquake”⁸ establishing themselves as the second largest party in the newly-constituted National Assembly for Wales, balancing their desire to see devolution succeed with frustration at the lack of legislative powers the Assembly had.⁹ Plaid Cymru’s Lord Elis-Thomas, as Presiding Officer of the National Assembly for Wales, had a key position in reforming the Procedures of the Assembly in the early 2000s and subsequent pressure – not just from Plaid Cymru, but from all political parties represented in the Assembly – led to a thriving elite-level discussion as to how to improve the devolution structure in Wales.¹⁰ Even now, post-Government of Wales Act 2006, post-Welsh powers referendum 2011, and with a National Assembly for Wales which now has primary legislative powers, debate continues as to how further powers – most particularly, fiscal powers – might be added to the Assembly’s remit.¹¹ The Holtham Commission Report – delivered in the latter stages of the *All Wales Convention* and prior to the fixing of the referendum date – only strengthened the hand of those who consider a change to the fiscal arrangements the logical next step for the National Assembly for Wales. Indeed, in the wake of the 2011 elections to the Assembly, a new “Commission

⁸ Elias, A. ‘Plaid Cymru and the Challenges of Adapting to Post Devolution Wales’ in *Contemporary Wales*, Vol. 22, No. 1, November, 2009, p.114.

⁹ McAllister, L. ‘The New Politics in Wales: Rhetoric or Reality?’ in *Parliamentary Affairs*, Vol. 53, No. 3, 2000, p.599.

¹⁰ Stirbu, D. S. ‘Instituting Constitutions: Welsh Constitutional Dynamics and the Development of the National Assembly for Wales 2005-2007’ in *Contemporary Wales*, Vol. 22, No. 1. November, 2009. p.99.

¹¹ Holtham Commission, ‘Fairness and accountability: a new funding settlement for Wales’ *Final Report of the Independent Commission on Funding and Finance for Wales*, Cardiff, July, 2010. Also at: <http://wales.gov.uk/docs/icffw/report/100705fundingsettlementfullen.pdf>

on Devolution in Wales” (informally, The Silk Commission)¹² was established – with cross-party membership – to examine options to devolve more powers (including some fiscal powers) to Wales. This debate, however, has largely by-passed the wider Welsh population and has, for the most part, engaged only elite actors.

In Scotland, the SNP’s consistent calls for independence – and their elevation to minority government for the first time in 2007 – put the constitutional debate firmly on the Scottish political agenda. The establishment of *A National Conversation* as a government consultation saw the opposition Unionist parties respond with the Commission on Scottish Devolution (which became known as the Calman Commission, after its chairman, Sir Kenneth Calman), leading to two parallel but separate discussions. It was, as Alan Trench argued, a decidedly “disjointed constitutional debate”.¹³ Nevertheless, it was proof of one considerable fact – that the constitutional settlement as it stood was no longer the “settled will of the Scottish people” (as had been famously proclaimed by former Labour leader John Smith).¹⁴ The constitutional debate had moved from whether change was required to the shape and form that change should take.¹⁵ At the time of writing, that sentiment still appears to be true, and the discussion has moved beyond political actors to Scottish civic society and beyond. The result of the Calman Commission, the UK Government’s Scotland Bill, extended the powers of the Scottish Parliament in several areas,

¹² See <http://commissionondevolutioninwales.independent.gov.uk/> for the Commissions terms and remit.

¹³ Trench, A. ‘Introduction: The Second Phase of Devolution’ in Trench, A. (ed) *The State of the Nations 2008*, Exeter, Imprint Academic, 2008, p.14.

¹⁴ Jones, P. ‘A Start to a New Song: The 1997 Devolution Referendum Campaign’ in *Scottish Affairs*, No. 21, autumn, 1997.

¹⁵ Crawford, B. ‘Ten Years of Devolution’ in *Parliamentary Affairs*, Vol.63, No. 1, 2010, p.95.

including bestowing on Holyrood borrowing powers for the first time. However, the SNP remained unconvinced that the Bill went far enough and, with their hand strengthened by a stunning election victory in 2011 which delivered them a majority in the Scottish Parliament, the party in government were in a stronger position to make that case.¹⁶ Indeed, their plans to hold an independence referendum towards the latter part of the 2011-16 Scottish Parliamentary term look ever more likely to come to fruition, though they will have work to do if they are to convince a sceptical Scottish public that their constitutional preference is desirable.

Research Questions

The research here is situated in a juncture between two distinct fields. The primary consideration is that of deliberative democracy. This consideration draws upon the theoretical work of key deliberative thinkers such as Fishkin¹⁷ and Dryzek¹⁸ to explore the merits of utilising such methods, and to place in such a context the constitutional debate in Scotland and Wales. This theoretical framework is supplemented by Hogwood and Gunn's work on policy analysis,¹⁹ and Hogwood's contention that "if consultation is everything then maybe it's nothing".²⁰ This framework for analysis allows the thesis the opportunity to consider the methods employed by the two governments examined in the case studies in greater detail – to place the respective consultations and referendums in the context of deliberative theory, and to consider

¹⁶ Keating, M. *Scotland and Independence*, Quebec, The Federal Idea, October, 2011, p.4.

¹⁷ Fishkin, J. S. *When the People Speak: Deliberative Democracy and Public Consultation*, Oxford, Oxford University Press, 2009.

¹⁸ Dryzek, J. S. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*, Oxford, Oxford University Press, 2000.

¹⁹ Hogwood, B. W. and Gunn, L. A. *Policy Analysis for the Real World*, Oxford, Oxford University Press, 1984, p.4.

²⁰ Hogwood, B. W. 'If Consultation is Everything then maybe it's Nothing' in *Strathclyde Papers on Government and Politics*, No. 44, 1984, p.14.

each as the key constitutional policy of the respective governments. The key question this thesis asks in relation to the constitutional debate is why public engagement was considered the best means by which to deliver upon the constitutional goals of the respective nationalist parties. To answer necessitates consideration of a second field – that of party strategy. Here, the work of Müller and Strøm on the motivations of political parties is utilised. Their work identifies three clear motivation types for political parties: policy success, office success and vote (electoral) success.²¹ It is clear that these areas overlap somewhat – the ability to achieve office in most cases rests upon some measure of electoral success for example – but for Müller and Strøm, parties fall into one of the three categories. Identifying which of these goals motivates parties gives an insight into how they develop their strategy, and it is by utilising this theory that the use of consultations and referendums by these parties in government can be best understood. This approach combines analysis of quantitative data (opinion polls, election and referendum results) which provides evidence of public support for the parties and their constitutional positions, as well as qualitative indicators, such as considering in what ways these parties have affected the constitutional debate in the UK.

By utilising both deliberative democracy theory and that of party strategies, this thesis considers why the nationalist parties in Scotland and Wales undertook consultations and referendums to pursue their constitutional goals. It argues that the answer is threefold. Firstly, it was done out of necessity. In Wales this was a legal and political necessity – as will be discussed in due course, the Government of Wales Act 2006

²¹ Müller, W. C. and Strøm, K. *Policy, Office or Votes? How Political Parties in Western Europe make hard decisions*, Cambridge, Cambridge University Press, 1999, pg.1.

decreed that a referendum was legally required to devolve the desired powers; and public consultation became a key component of the One Wales coalition agreement – while in Scotland that necessity was borne out of public expectation. Thus in both cases, the parties were partly playing the hand dealt to them. Secondly, the thesis argues that by utilising the combined consultation and referendum strategy, the two parties were concerned with public engagement in the process. Public attitudes on the respective issues at stake – independence for Scotland, further devolution for Wales – were not in tune with the desires of the SNP and Plaid Cymru, despite their electoral and office success. Thus the parties themselves had to find ways of ensuring that their own constitutional policies achieved a measure of public legitimacy – and this was best achieved in each case through public engagement – with consultation recognised as being a popular government activity.²² By engaging the public in discourse, the parties sought to tie the popularity of that activity to their constitutional objectives (with limited success here). Consultation also allowed the parties in office to appear transparent and responsive – both favoured qualities in governments – which resonated with their aim to provide “competent government”.²³ Finally, opting for a consultation and referendum strategy was also a tactical decision. It was utilised as a means of delivering a desired outcome, but also to provide clear accountability to the process, and to provide a normalisation of the debates. This was characterised in two ways: engaging the civil service in work on the subject (and thus preparing the machinery of government for any constitutional eventuality) while at the same time

²² Jones, R. and Gammell, E. *The Art of Consultation: Public Dialogues in a Noisy World* London, Biteback Publishing Ltd., 2009

²³ Interview with Scottish Government Official (May 2010). The interviewee wished to remain anonymous.

also engaging other political parties on the issue.²⁴ The latter was particularly important in Scotland, where the SNP's opposition were much more reluctant to countenance constitutional change (in contrast, the National Assembly for Wales saw unanimous support for a move to Part 4 of the Government of Wales Act 2006, and by extension, considerable constitutional change). In considering the case studies following, these arguments will be developed more fully.

Of equal importance to this thesis is to consider the success of the parties in utilising these methods. In some senses, measuring success in politics is relatively simple: the parties have a desired outcome, if that is achieved then they have succeeded, while if it has not been achieved, then they have failed. However, as with much political discussion, the success of a particular political strategy is not quite as simple. There are a range of measures of success in terms of policy analysis,²⁵ and the outcome is just one of many. Thus, while in the case of Plaid Cymru, the measure of success in terms of outcome is quite clear (the party succeeded in achieving its short-term goal of winning the referendum on further powers for the National Assembly for Wales in 2011), for the SNP, by this measure, the party has not yet achieved its goal. Nevertheless, alternative measures indicate that the party did achieve several successes through their consultation process – and seem poised to hold a referendum in 2014 on their constitutional goal (though whether the result will deliver their intended outcome remains to be seen). Thus, with regard to the central research question, this thesis will argue that the parties in each case study have seen relative success through their consultation and referendum strategies, but that that success

²⁴ Interview with Kevin Pringle (Scottish Government Special Advisor) (May 2010).

²⁵ Hogwood, B. W. and Gunn, L. A. *op. cit.*

can be divided between short-term and long-term success. It will do so by utilising a comparative analysis of the cases of Scotland and Wales, dedicating two chapters to each, examining both consultation and referendum strategies in detail, exploring the construction and campaigning in both to determine the merits of the strategies and the relative success of each. There is also a normative dimension to the use of deliberative strategies, and the desirability of public engagement as a “democratic good” will also be considered in the relative success of the processes.

Thesis Structure

The thesis begins with a theoretical chapter which has a three-fold purpose. Firstly, it establishes the methodology employed within the thesis. This section sets out the reasons such a comparative study has been undertaken, establishing the similarities within and differences between the two cases, as well as the use of primary and secondary sources in the research. Secondly it sets the thesis within the field of research by providing an overview of the literature informing the research. This section focuses on three separate areas which are utilised within the thesis: literature on the motivations of political parties, on governments and government formation, and finally on the actions of parties in government. The latter section examines particularly the concept of deliberative democracy and considers why parties utilise means of mass public participation in more detail – a key aspect of the following research. Finally, it considers what we might expect of nationalist parties in government, establishing a hypothesis for the subsequent chapters.

Chapter two details the devolution processes in Scotland and Wales, analysing the differences in political terrain between the two countries and emphasising how we arrived in 1999 with two distinctly different models of devolution enacted. This chapter sets up the considerations of the public engagement strategies of the parties in office as they attempted to advance their constitutional objectives through consultation and referendum.

Chapter three provides a history of the two parties which the thesis focuses on, utilising the Pedersen and Deschouwer lifespan models in order to analyse the similarities and differences in how the SNP and Plaid Cymru have developed. These similarities and differences are reflected in the histories of their respective nations as well as the institutional setting in which the parties operate. Of particular interest here is the most recent history – namely, the decisions of both the SNP and Plaid Cymru to enter into government for the first time in 2007, and how that government was formed. These factors – the progression of the parties from political outsiders into government, and the type of government each entered into – are argued to have played a key role in how the parties’ respective constitutional policies developed.

Chapter four examines *A National Conversation* in depth, beginning with consideration of the origins and design of the consultation and its evolution from small-scale web-based consultation to the larger, event-and-publication-oriented discussion with the Scottish electorate it became. It considers *A National Conversation* through a dual prism, both as a consultation and as part of wider attempts at deliberative democracy, as a means (deliberative discussion) to an end (an affirmative vote in a referendum on

Scottish independence). It then moves to evaluation of the success of the process, arguing that while it set the agenda firmly on the constitutional debate for the duration of its existence – and provoked a substantive reaction from the SNP's opposition in the shape of the Calman Commission and, subsequently, the Scotland Bill – its impact upon the views of the Scottish electorate *vis-à-vis* independence was negligible. It was, however, the precursor to a much larger constitutional debate which, at the time of writing, is still ongoing, and comprises actors ranging from the UK and Scottish Governments, political parties and trades unions to wider civic society and the Scottish and UK media. This, arguably, has been the greatest success of the SNP's public engagement strategy.

Chapter five moves the consideration of public consultation to Wales, with an examination of the *All Wales Convention*. It begins with a consideration of the background to the consultation – with a different institutional setting and governing set-up, it is not surprising to note that the ambitions of this consultation differed markedly from the ambitions of *A National Conversation*. Nevertheless, the consultation in Wales covered similar ground to that in Scotland with its base intention – the preparation of the population for a referendum on a constitutional issue in which the governing parties desired an affirmative response. The chapter moves on to examine the engagement of the Welsh public with the *All Wales Convention*, arguing that while informing the public about the devolution settlement was a key aspect of its remit, and though it had some success in engaging the Welsh public in debates about devolution, the *All Wales Convention* did not find a willing audience for the discussion. However, it recognises that the *All Wales Convention* had a key role to play in laying

the groundwork for the Welsh Powers Referendum, held in 2011, the move towards which was recommended by the final report of its executive committee, without which it is likely that progress towards the referendum itself would have been halted. While a further Welsh commission on devolution emerged in the period after the referendum was won, public engagement with the constitutional debate remained at a low level.

Chapter six considers the Welsh Powers Referendum of 2011 and the failure of the SNP's bid to hold an independence referendum in Scotland during the 2007-11 parliamentary term. It places the 2011 campaign in the context of the two previous devolution referendums in Wales: the heavy defeat of 1979 and the narrow mandate achieved in 1997. It considers at its heart a clear question: why was a referendum considered as the best means to deliver on constitutional change in each of the cases? The question is answered in relation to Wales by placing the move to a legislative National Assembly for Wales in historical context, arguing that referendums had been previously utilised to ascertain public views on the devolution of powers to Wales and that, on the back of this precedent, such a referendum was desired in this case to provide a mandate for further devolution. It is also noted that, in this instance, the referendum was considered as a conservative device, as a means of delaying the move towards further devolution by putting a barrier – the need for a clear show of public support – in the way. That this succeeded for only a short while is testament to the unanimous support in the National Assembly for Wales for the proposals contained in Part 4 of the Government of Wales Act 2006, the lack of enthusiasm for the system of Legislative Competence Orders established through the same Act and the support of

the public, which was apparent in the wake of the *All Wales Convention* findings. This second point, it is argued, was a political solution, with divisions between pro-devolutionists and those more sceptical of further powers for the National Assembly for Wales in the Welsh Labour Party (and, in particular, among the Welsh Labour MPs) requiring such this outcome. Thus, the answer to the question is not one for the nationalist party in Wales – who would have preferred to have seen the powers delivered without recourse to a referendum – but one for the Labour party, and speaks to the tensions at the heart of the Welsh Assembly Government. In the Scottish case, the evolving referendum strategy of the SNP is evaluated – both by considering the short and long term implications of public engagement on the constitutional question. The argument is made that, while deliberative democracy informed the decision to pursue such a strategy of public engagement, delaying the referendum – in both cases – until the government was more convinced that it could deliver an affirmative outcome is somewhat at odds with the principles espoused by deliberative theorists.

The thesis concludes by considering the two consultations and two referendums in the context of public participation and democratic structures. It argues that, though the use of mass participation methods by the SNP and Plaid Cymru in government was very much a means to an end – constitutional change – the parties recognised that such an end could not be achieved without the explicit consent of the population they represented. Thus, their use of participative methods of democracy was a key aspect of their respective nation-building and governing strategies, allowing both parties to advance their core political and constitutional goals while appearing as open and

accountable governments. Their strategies were developed out of necessity yes, but also out of tactical thinking as a means of normalising the debates, providing accountability, and taking forward a popular method – consultation – and associating their respective administrations with the transparency and opportunity for public engagement afforded by these methods. The two cases, befitting the differences in political histories and institutional settings, saw strikingly different outcomes. The process in Scotland began as a top-down, government-led consultation, but by the SNP's second term in office it had widened to engage more of civic society and beyond, and led in the longer term to the SNP's desired referendum. In Wales, despite the short-term success of the referendum result, the debate – for the most part – failed to move beyond the elite actors; the 'usual suspects' of political debate. That the two populations reacted very differently to two similar consultative processes may have clear repercussions for future constitutional debates.

Conclusion

In the following pages, this thesis considers the current constitutional arrangements in the UK, in the context of nationalist parties in government. Focusing specifically on the 2007-11 terms of office in the Scottish Parliament and the National Assembly for Wales, it seeks to demonstrate the attempts made by the SNP and Plaid Cymru to build public support for their constitutional preferences. It considers the success achieved by Plaid Cymru, firstly in establishing a national consultation to discuss the devolution arrangements in Wales, then in campaigning for – and ultimately winning – a referendum to enhance the powers of the National Assembly for Wales. However, Plaid Cymru's constitutional success was tempered slightly by their performance in the

2011 Assembly election where the party fell to third in the Assembly and out of government office. This situation contrasts sharply with that in Scotland, where reaction to the SNP's *National Conversation* was lukewarm – especially among supporters of other parties – and attempts to hold a referendum during the previous Scottish Parliamentary term were thwarted by minority governance. Nevertheless, the party was returned to government, winning an unexpected majority of seats in the Scottish Parliament and the opportunity to deliver a referendum on their constitutional preference during the following term in office. The success of the Welsh Powers Referendum means that, for a short while at least, the constitutional debate in Wales is likely to be static, with further change to the devolution settlement unlikely over the coming term (although a further commission has been established to consider the Assembly's fiscal arrangements, legislation is not expected in this area for the foreseeable future). The same cannot be said of Scotland, where constitutional change – whether through a reformed devolution settlement or independence – remains firmly on the political agenda. This thesis fits within that constitutional debate by considering the developments in devolution over the last four years and examining how those developments were shaped by the nationalist parties involved in the respective processes.

Chapter 1: Nationalist parties and public engagement

Introduction

This thesis considers the process of public engagement employed by nationalist parties in government in pursuit of their constitutional goals. To this end, two cases studies – those of Scotland and Wales – are compared. The key aspects which have underpinned the respective nationalist parties' objectives in office – namely the pursuit of a national consultation on constitutional change followed by a referendum on the issue – form the backbone of this thesis, providing evidence for its central hypothesis: that public engagement is a strategy utilised to drive successful constitutional change. This opening chapter will serve three functions.

Firstly, it sets out the methodology employed, exploring the selection of case studies to be examined and discussing the fieldwork undertaken in researching the thesis. This is an important discussion in any thesis, and this one is no different. Secondly, it will also place this thesis in the context of the literature which surrounds and informs it. To fulfil this function, this aspect of the chapter is split into three sections. The first of these sections looks at the distinct motivations of political parties – in particular, the motivations of autonomist parties – and why they have chosen to enter office in order to pursue their goals. Here, the work of Kaare Strøm and Wolfgang C. Müller is considered as a model of analysis, and the question of what drives nationalist parties is examined. The second section focuses on governments; on how they are formed, and on the two specific types of government (coalition and minority) which are relevant to

the two case studies. This section also considers the motivations of parties in entering office but considers why parties choose to govern in the manner they do. This entails a brief examination of coalition theory versus motivations to govern as a minority, providing further context for the examination of the two case studies, and argues that government type inevitably has an impact upon the actions a party can undertake in office – again, a clear factor in how the nationalist parties in both cases operated. The third section considers the bulk of work undertaken in this thesis – the strategies pursued and the action undertaken by the parties when they enter government in pursuit of constitutional change. The focus here, naturally, is upon consultation and referendum. Here, the chapter sets out reasons why parties focus their efforts upon mass participation by drawing on theorists from the field of deliberative democracy, as well as proponents of referendums and more effective consultations. Finally, the chapter considers each of these aspects together – the actions of autonomist parties in government – and hypothesises about what we might expect from a government in these circumstances. These hypotheses are explored in the following chapters which consider in greater depth the development of the parties from political outsiders into government, and their respective constitutional consultations and referendum strategies employed by each of the parties in government. The thesis itself subsequently follows the same structure: the early chapters provide the institutional background to the devolution settlement and chart the development of the parties and their decision to enter devolved government; the subsequent chapters examine their actions in government in terms of public engagement on the constitution.

Methodology: Cases for analysis

This thesis is constructed as a comparative analysis of two similar but distinctively different case studies – those of the SNP, who between 2007 and 2011 formed a minority administration to run the Scottish Government (previously the Scottish Executive), and Plaid Cymru, who were junior partners to Labour in the Welsh Assembly Government during the same period. The cases are of interest for students of devolved politics and minority nationalist parties, as well as those with an interest in public engagement strategies. Labour peer Lord Robertson, when he was Secretary of State for Scotland in the late 1990s, argued that devolution would “kill nationalism stone dead”.¹ The logic employed by Robertson, amongst others, was that devolution would defuse demands for independence among nationalists, and that the SNP would see their support fall.² However, just eight years after the establishment of devolved institutions in Edinburgh and Cardiff, nationalist parties entered office there for the first time, testing this theory to a greater extent than when the parties had been in opposition. That those responsible for establishing the very institutions which nationalist parties now governed believed that the institutions would kill off nationalism rather than allow the parties into government makes consideration of these two cases of interest – this was an unexpected phenomenon in UK politics. There are, however, good reasons to consider the cases of just Scotland and Wales (and not, for example, Northern Ireland) here.

¹ McEwen, N. ‘From Devolution to Independence? Scots elect their first nationalist government’ in *Policy Options*, June, 2007, p.57.

² Lynch, P. and Elias, A. ‘Devolution in the UK and the Inexorable Rise of Scottish and Welsh Nationalism? World Congress of Political Science Conference Paper, July, 2009, p.1.

Firstly, and perhaps most obviously, there are a number of similarities in the cases which helps to build a positive case for analysis. The historical development of the devolution debates in Scotland and Wales have followed a similar course, with the nationalist parties in each also developing along concurrent lines through the various stages of Pedersen's party lifespan model to achieving governmental office success in 2007.³ That each party has also experienced rejuvenation in electoral fortunes under devolution and become key actors within the respective institutions is also important in analysis. Equally, though the nationalism espoused in each case is slightly different – more civic in Scotland, cultural in Wales – the methods which each has utilised in order to promote their constitutional goals has been similar. The differences in the cases too – in particular, the relative importance of the autonomist-centrist dichotomy in Scotland (between the SNP and their opposition, Unionist parties) and in Wales, where that tension is played out more fully within the confines of the Welsh Labour party, rather than between Plaid Cymru and other parties – is also of note, and will be considered in the concluding chapters as part of the explanation for the differing processes and differing outcomes in the two cases.

Secondly, the political system which each party finds itself competing in is broadly similar. The three main state-wide parties (Labour, Conservatives and Liberal Democrats) contest elections across the country (with the exception of in Northern Ireland) while the SNP and Plaid Cymru contest elections solely in Scotland and Wales respectively. And while the nationalist parties in the UK have seen their electoral

³ Lynch, P. 'The Scottish National Party and the Challenge of Political Representation' Conference Paper, *From Protest to Power: Minority Nationalist Parties and the Challenges of Representation*, University of Wales, Aberystwyth, 27-29 October 2006; Elias, A. 'Plaid Cymru and the Challenges of Adapting to Post Devolution Wales' in *Contemporary Wales*, Vol. 22, No. 1, November, 2009.

fortunes improve dramatically with the devolution of power to regional legislatures, they continue to fare less well in elections to the UK Parliament, where they remain on the periphery. Two distinct party systems exist at the different levels (regional and statewide) of election in the UK.⁴ While the state-wide systems could be described as two-and-a-half party systems,⁵ regional elections in Scotland and Wales exhibit elements of a fragmented party system,⁶ with support spread between four or more parties.⁷

The electorate in both Scotland and Wales is predominantly centre-left, with only the Conservatives gaining any real level of support on the centre-right. Labour, the Liberal Democrats, the SNP and Plaid Cymru each have policies (including support for free NHS prescriptions, a lack of tuition fees for university students and free personal care for the elderly) which mark them out as social democratic, thereby making the party competition centre around the politics of the centre-left.⁸ In Scotland, most prominently in the second session of the Scottish Parliament from 2003-2007, that fragmentation was further augmented with the appearance of the Greens, the Scottish Socialist Party (SSP) and the Scottish Senior Citizens' Unity Party (SSCUP), as well as the election of three independents. With the exception of the SSCUP's sole MSP and the Conservatives, the remainder of the parties and independents were broadly situated

⁴ Bennie, L. and Clark, A. 'Towards Moderate Pluralism: Scotland's Post-Devolution Party System 1999-2002' in *British Elections and Parties Review*, Vol. 13, 2003.

⁵ Blondel, J. 'Types of Party System' in Mair, P. (ed) *The West European Party System*, Oxford: Oxford University Press, 1990, p.304.

⁶ Sartori, G. *Parties and Party Systems: A Framework for Analysis (Volume 1)*, Cambridge: Cambridge University Press, 1976.

⁷ For further discussion of sociological and institutional factors influencing why party systems differ, see Ware, A. *Political Parties and Party Systems*, Oxford, Oxford University Press, 1996, p.184-99.

⁸ Keating, M. *The Government of Scotland: Public Policy Making After Devolution (Second Edition)*, Edinburgh, Edinburgh University Press, 2010, p.53.

on the centre-left.⁹ In Wales, while further fragmentation of the party system has not taken place (a result, predominantly, of an Additional Member System weighted heavily towards First-Past-the-Post winning constituency members) the competition is broadly similar, with a tendency towards the centre-left.¹⁰

Thirdly, the fact that both parties have experienced a full term in office in their respective institutions – and at the same time, thereby experiencing the same difficult global economic conditions – provides an opportunity to compare what they have been able to achieve with regard to their fundamental objective: constitutional change. However, there are some key differences between the cases, which should be considered during the following analysis. The nature of devolution in each case is different. In 1997, the Scottish electorate was offered a legislative parliament with a solitary tax-varying power in a referendum, both of which were accepted and the institution established. The Scottish Parliament was given powers to legislate in the areas of health, education, justice, culture, transport, agriculture and rural affairs.¹¹ It was also – uniquely of the devolved institutions – given a tax power, the ability to vary the rate of income tax in Scotland by a maximum of 3p. But in Wales, the assembly offered had a very different model, based on the executive devolution model of the Welsh Office in Whitehall with no tax powers and limited – that is to say, secondary – legislative authority.¹² It was narrowly accepted in a referendum, and the subsequently-established National Assembly for Wales had no legislative powers but

⁹ Mitchell, J. 'Scotland: Expectations, Policy Types and Devolution' in Trench, A. (ed) *Has Devolution Made a Difference? The State of the Nations 2004*, Exeter, Imprint Academic, 2004, p.19-21.

¹⁰ Scully, R. and Elias, A. 'The 2007 Welsh Assembly Election' in *Regional and Federal Studies*, Vol. 18, No. 1, February, 2008, p.107.

¹¹ HM Government, *Scotland Act 1998*, Schedule 5, London, Her Majesty's Stationery Office, 1998(a).

¹² Trench, A. 'Wales and the Westminster Model' in *Parliamentary Affairs*, Vol. 63, No. 1, 2010, p.119.

was given the opportunity to implement legislation passed at UK level that affected Wales.¹³

Thus, while the historical debates surrounding devolution in both cases, the devolved party systems and the global economic conditions under which the SNP and Plaid Cymru have functioned in government have been similar, the institutional setting, and the dynamic of inter-party and intra-party competition, in Scotland and Wales is distinctly different. So too, is the type of government in which each party participated in during the 2007-11 terms. The SNP, after exploring potential coalitions, chose to form a minority administration, while Plaid Cymru entered into coalition with Labour after efforts to form a “rainbow coalition” with the Conservatives and Liberal Democrats failed to be agreed. The decisions to enter office – and the form that such governance takes – is a key factor in how much progress parties can make with regard to their policy objectives. For autonomist parties like the SNP and Plaid Cymru, these policy objectives are clearly centred upon changing the constitutional status quo. Thus the type of government each has entered into is worth exploring, and will be considered in more detail later in this chapter and more specifically, in chapter three.

Methodology: Researching the cases

Structurally, the thesis begins by providing a conceptual framework for the case study analysis which follows. This chapter considers the three aspects – party motivations, government type and public engagement – which are crucial to the understanding of how the SNP and Plaid Cymru attempted to move forward the constitutional debate.

¹³ HM Government, *Government of Wales Act 1998*, Schedule 3, London, Her Majesty's Stationery Office, 1998(b).

The four subsequent chapters examine in more detail the devolution timeline; the parties' development (utilising the Pedersen lifespan model) and their entry into government; their respective consultation processes (*A National Conversation* in Scotland and *The All Wales Convention* in Wales) and attempts to hold constitutional referendums.

Informing this thesis is research incorporating both primary and secondary sources. Primary sources take the form of 40 semi-structured interviews, split evenly between actors in Scotland and Wales. Interviews were conducted at elite level (Members of the Scottish Parliament and the National Assembly for Wales, Scottish Government and Welsh Assembly Government officials and ministers) as well as with members of organisations (the Welsh Council for Voluntary Associations, the National Farmers Union in Wales, the Methodist Church in Scotland and several Scottish Community Councillors) who had engaged with the consultations that their respective governments had organised. That the interviews were semi-structured, and that interviewees were asked different questions depending upon their position, level of engagement with the process and the consultation with which they had been engaged, were decisions taken by the author in order to ensure that, while interviewees could be directed towards the area of research, they would also be free to provide fuller, more wide-ranging answers. This also meant that the experiences of those running the consultations and those who were engaged by the consultations could be compared, that perceptions of success or failure could be challenged. Semi-structured interviews also allowed the direction of the interview to be controlled and altered if required – taking the questioning in a different direction from that which had

been intended if the interviewee introduced an idea which had not previously been considered. The information from these sources is utilised throughout this thesis and appears in footnotes throughout the case study chapters. A list of those interviewed in conjunction with this research can be found in Appendices One and Two at the end of this thesis.

While these interviews provide a clear picture of how these processes were initiated, organised and conducted, as well as insider views on their respective successes and failures, there are inherent challenges when relying on interviewees – particularly those who have clear political alignments – for information. Ministers and MSPs or AMs involved in the consultation process, for example, would highlight the success of engagement with the public while opposition politicians sought, in some cases, to criticise the governing parties' role. This is an expected consequence of interviewing political actors, and an unavoidable difficulty in utilising these sources. Nevertheless, in order to get a deeper understanding of the processes involved and the considerations of actors when developing consultation strategies, interviews were the best means available of accessing this information.

However, some difficulties were encountered in the process of interviewee selection, particularly for the Welsh case. External restraints and funding issues required that interviews in Cardiff were conducted in one three-week block in summer 2010. This was not ideal for several reasons: the Convention had concluded with the One Wales Government considering their next move, several Assembly Members were on holiday or otherwise unavailable to be interviewed, the date for the referendum was yet to be

finalised, and the campaign itself was a long way off. The interviewee list was originally more extensive, but with finite resources (both monetary and time constraints) the decision was taken to proceed with those interviewees who were available. Undoubtedly, further interviews with key actors within the All Wales Convention – particularly those who negotiated the One Wales Agreement, and more of the All Wales Convention – would have strengthened the thesis, however given the aforementioned constraints, this was not possible.

Alongside these interviews, a wide range of official and government documents, speeches, parliamentary debates and publications related to these processes provided key information as to the conduct of both consultations and referendums, and were also used to support the evidence provided in interviews. The list of secondary sources extends to the plentiful supply of academic books and journals on the subject of devolution, as well as political parties, party systems, deliberative democracy, government formation and referendums. These sources were utilised in particular to give a theoretical framework to this thesis, establishing the parameters of public engagement which the respective consultations and Welsh referendum engaged with (and the engagement strategy behind the postponed Scottish referendum). This framework for analysis begins with a consideration of the parties themselves (their development and motivations), their movement into government (and how the type of government formed affected their ability to pursue their constitutional goals) and their public engagement strategy when they got into government (the use of consultations and referendums).

Parties: The Party Lifespan Model

Mogens Pedersen established a typology of the lifespan of political parties, utilising four “threshold concepts” to identify distinct phases in this lifespan, encouraging an understanding of parties as organic objects and tracing their development from birth through infancy and maturation to death (when the party no longer exists).¹⁴ The first of these thresholds is that of declaration – deciding as a party to participate in electoral politics. This is not as simple a concept as it appears, as the emergence and early development of parties at this stage is often not straightforward.¹⁵ And, indeed, even though a party declares its intention to seek office, this does not mean that they are ready or prepared for the process. It is only when they pass through Pedersen’s second threshold – that of authorisation – they can be seen as ready to fully participate in the process. This threshold takes into account legal requirements (the provision of deposits for candidates for example) to field candidates in elections but it also refers to the ability of the party organisation to comply with these requirements. Pedersen’s third threshold, that of representation, refers to the point at which the party breaks through and wins parliamentary representation at the national level of politics. Pedersen’s fourth and final threshold relates to the ability of the party to make a difference in politics and policy within the state – namely, when they have relevance in the political system.¹⁶

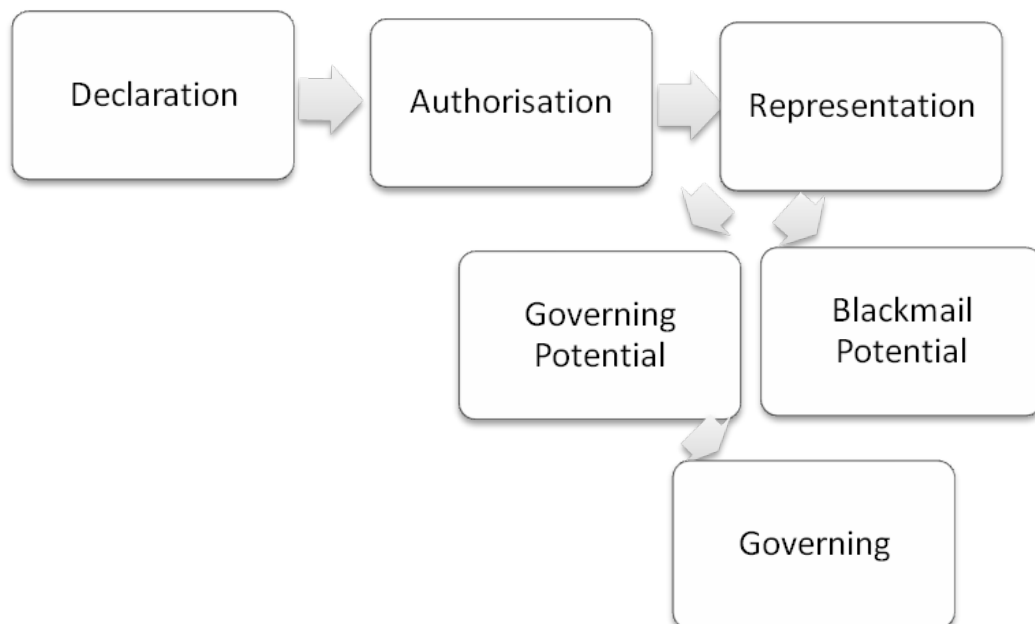
¹⁴ Pedersen, M. ‘Towards a New Typology of Party Lifespans and Minor Parties’ in *Scandinavian Political Studies*, 1982, Vol. 5, Issue 1, pp1-16

¹⁵ Lynch, P. 2006, *op cit.* p.2.

¹⁶ Pedersen, M. *op cit.*

Kris Deschouwer expanded upon this typology by amending the threshold of relevance and the addition of a further threshold.¹⁷ Firstly, by referring to Sartori's definitions of relevance he split the relevance phase into two distinctly different but equally important phases.¹⁸ Sartori's first definition of relevance relates to the blackmail potential of a party – that is, the ability of a party to influence the political agenda regardless of the size of its parliamentary representation. This is most relevant to pressing an issue onto the political agenda by competing for the same electorate as another party and pressuring them to address that issue. Thus a party can pass the threshold of relevance with regard to blackmail potential with little electoral success. Sartori's second definition of relevance refers to coalition (or, as Deschouwer refers to it, governing) potential.¹⁹

Figure 1.1: The Pedersen/ Deschouwer Party Lifespan Model²⁰



¹⁷ Deschouwer, K. *New Parties in Government: In power for the first time*, London, Routledge, 2008.

¹⁸ Sartori, G. *op cit.*

¹⁹ *ibid.*

²⁰ *ibid.*

This threshold relates to the party's growth from having representation to having enough representatives to make governing a possibility. Finally, Deschouwer adds a further threshold to Pedersen's typology, the threshold of governance which, as one would expect, describes the phase of a party's development tracing its movement from opposition into government for the first time (figure 1.1).²¹

Parties: The Motivations Model

As autonomist parties, the SNP and Plaid Cymru have, as their primary characteristic, a concern with constitutional change – the reorganisation of the political structures of the state to align them with their nation. This is their “core business”.²² Autonomist parties base these goals on ethnic differentiation and territorial claims within the states in which they operate, acting on behalf of the geographically concentrated peripheral minorities whose historic, cultural or linguistic identity they aim to protect.²³ These claims can come in the form of protection through affirmative action policies, autonomy solely for their region, a federalist solution to regional differences within the state, secession as an independent state or secession and annexation to another state.²⁴ The desire for congruence of nation and state is the principle which defines nationalist parties – however, for Müller and Strøm, the motivation behind their actions is more complicated than simply seeking to implement their chosen

²¹ Deschouwer, K. *op cit.* p.3-6.

²² De Winter, L. 'Towards a Comparative Analysis' in De Winter, L. and Türsan, H. (eds) *Regionalist Parties in Western Europe*, London, Routledge, 1998, p.205-7.

²³ Türsan, H. 'Ethnoregionalist parties as ethnic entrepreneurs' in De Winter, L. and Türsan, H. (eds) *Regionalist Parties in Western Europe*, London, Routledge, 1998, p.5-6; Müller-Rommel, F.

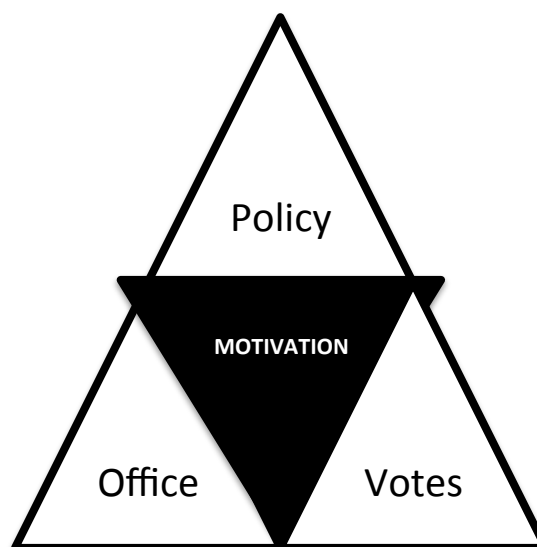
'Ethnoregionalist parties in Western Europe: theoretical considerations and framework of analysis in De Winter, L. and Türsan, H. (eds) *Regionalist Parties in Western Europe*, London, Routledge, 1998, p.19.

²⁴ De Winter, L. *op cit.* p.205-7.

policy goal – and these considerations are examined in greater depth in the following chapter.

The decision to cross the threshold from opposition into government is one which will not be taken lightly by any party, not least because there are a number of important factors which may influence their decision. The institution itself, the desire to take on the responsibility of governing, the ability to govern effectively – either as a majority or minority administration, or as part of a governing coalition – and the risks (electoral defeat) and rewards (policy success) of accepting the responsibility make such a decision a hard one.²⁵ This decision, in many cases, will be based upon what particular motivations a particular party has and what constitutes realisation of their goals. For Müller and Strøm these goals can be understood with reference to three concepts: policy, office and votes (figure 1.2).²⁶

Figure 1.2: Party Motivations Model²⁷



²⁵ Müller, W. C. and Strøm, K. *Policy, Office or Votes? How Political Parties in Western Europe make hard decisions*, Cambridge, Cambridge University Press, 1999, p.1.

²⁶ *ibid.* p.5.

²⁷ *ibid.*

Office-seeking parties seek to maximise their control over the benefits of political office – in other words, they want to control the executive and are motivated by this goal above all else. This is influenced by Riker’s work relating coalition-building with game theory, which will be discussed in the section on government below.²⁸ An office-seeking party’s decision-making process is thus influenced by their desire to win office, which makes the decision to enter office for these types of parties slightly easier.

Rather than simply seeking office for its benefits, policy-seeking parties will attempt to maximise their influence on public policy. To this end, office is an instrumental goal, since being part of the executive means more opportunities to pursue preferred policy paths. There is thus recognition of the value of government office as a means to an end – namely their preferred policy – but also recognition that the “parliamentary game is about determination of major government policy”²⁹ and as such, if the party can influence government policy from opposition then the decision to move from opposition to government will be more difficult, but will be based on whether taking on the responsibilities of office will have a positive impact on their ability to deliver policy. There is a clear trade-off inherent in any decision made here. When entering government, the chances of losing seats at the subsequent election increases.³⁰ What this means is that, if a party cannot deliver its objectives in its first term in office then it is unlikely to get another opportunity to do so after the next election. There is thus

²⁸ Riker, W. *The Theory of Political Coalitions*, New Haven, CT, Yale University Press, 1962.

²⁹ De Swaan, A. *Coalition theories and cabinet formation*, Amsterdam, Elsevier, 1973, cited Müller, W. C. and Strøm, K. *op cit.* p.7.

³⁰ Rose, R. and Mackie, T. T. ‘Incumbency in government: asset or liability?’ in Daalder, H. and Mair, P. (eds) *Western European Party Systems: Continuity and Change*, London, Sage, 1983.

a considerable downside to entering office, and the potential for electoral defeat weighs heavily upon the decision to enter office for policy-seeking parties.

Vote-seeking parties aim, at the outset at least, to maximise their electoral support in order to control government, and it is this focus which determines their behaviour in deciding whether to enter office, carefully weighing the short- and long-term risks and rewards of occupying office. The distinction here, between short- and long-term goals is also an important one, since some political decisions are clearly taken with short-term rewards in mind while others are based upon a longer-term strategy (a distinction which is borne out in the conclusion of this thesis).

The priority given to each of these motivations will shape how parties approach the decision to cross the threshold into government. The policy-office-votes triangle is particularly relevant to this thesis in that it can be directly applied to the motivations of nationalist parties. The SNP and Plaid Cymru both have “core business” which relates to a policy concern – that is, the re-organisation of the state to become independent, sovereign states. Their focus is thus predominantly on policy considerations, and their actions can be considered in light of these motivations. For both, however, electoral success (votes) and entrance into government (office) are important secondary considerations, most especially since both necessitate engagement with the public which will provide a platform to build support for their constitutional goals. This is a key consideration when examining the government strategies of the SNP and Plaid Cymru in promoting their respective constitutional consultations. Both required the votes of the electorate to put themselves in a

position where they could directly influence policy, with that policy depending once more on public engagement for its success. Clearly then, the motivations of these political parties are a complex combination of the Müller and Strøm models.

Government: Formation

Considerations as to whether to enter into government may be informed by the motivations of a particular party with regard to the Müller and Strøm model outlined above. However, the type of government which can be formed can also have a substantial influence on whether a party chooses to involve itself in the executive. This is particularly true when there are multiple levels of governance in the system which, according to Ştefuriuc, makes “coalition formation one of the main challenges that political parties face in decentralised systems” as parties must consider the impact of their agreement not only on the governance of the level of the agreement, but also at higher and lower levels of government.³¹ Parties who enter government at one level whilst remaining in opposition at others face the difficulty of pursuing policies in government which may be in conflict with their position in opposition at another.

But the risks and rewards of governance are not confined to potential conflicts of interest between levels. The potential rewards of implementing key party policies at the level the party takes the opportunity to govern are tempered with the risks of being blamed by the electorate and defeated at the next election.³² For any party, this

³¹ Ştefuriuc, I. ‘Government formation in multi-level settings: Spanish regional coalitions and the quest for vertical congruence’ in *Party Politics*, Vol. 15, No. 1, 2009, p.93.

³² Deschouwer, K. *op cit.* p.4.

is a significant negative when it comes to governing – effectively, they may only get one shot at implementing their key policies, and if they cannot do so in their first term in office, they may lose the opportunity to try again if they are defeated at the polls. On the other hand, the opportunity to govern does not arrive after every election, and with that office success comes the opportunity to implement the policies which the party sees as key to its existence.

For the parties in this study – nationalist parties whose *raison d'être* is to implement a constitutional policy resulting in a substantial change to the status quo – this risk is even more pronounced, for unlike other parties whose reason for existence is based upon a fundamental political ideology, they exist purely to achieve their stated constitutional goals. The difficulties in putting constitutional change on the political agenda, far less implementing it, are extensive – thus, even if nationalist parties are electorally successful and enter into government office, their opportunities to change the constitution are limited, and the potential of success small. This raises a more fundamental question: why do nationalist parties seek office in the first place, especially if that office success is no guarantee of policy success?

With reference to the Müller and Strøm model set out above, it is clear that the answer to this lies in viewing the nationalist parties examined in this thesis as policy-seeking parties. Office-seeking, in this context, can be considered an extrinsic goal, a means (opportunity) to an end (progress towards a goal) rather than a goal in itself. The value of office for nationalist parties is to provide a platform from which to popularise their constitutional goals – an opportunity to set the political agenda and to

move forward the constitutional debate on their terms. It is the methods used in office to promote these goals which provide the case studies for this thesis.

Government: Coalition Theory

Thus, deciding to enter government is a difficult decision for parties to take for reasons relating to the risks and rewards of such a position.³³ Equally, however, the type of government – and the potential partners in office which a party may have to co-operate with – may also cause pause for parties to consider their position. Indeed, as Bogdanor points out, in systems where coalition is the likeliest outcome, “the strategies of political parties are likely to be affected by the knowledge that they will be unlikely to win power on their own”.³⁴

Traditional coalition theory (especially Riker’s work) is primarily policy blind,³⁵ preferring to focus fully on the numbers required to maintain the support of the legislature: a minimum-winning coalition, delivering the smallest number of parties and sharing the spoils of office with only enough parties to pass legislation.³⁶ Some theorists have taken this concept further with discussion of “minimal connected winning coalitions”, taking into account both the size of potential coalition partners (enough to maintain a majority in the legislature) and the distance between the parties in ideological terms.³⁷ Budge and Keman recognise the ‘zero sum’ (one winner,

³³ Müller, W. C. and Strøm, K. *op cit.* p.1.

³⁴ Bogdanor, V. (ed) *Coalition Government in Western Europe*, London, Heinemann Educational, 1983, p.1.

³⁵ Riker, W. *op cit.*

³⁶ Leiserson, M. ‘Factions and coalitions in one-party Japan: An interpretation based on the theory of games’ in *American Political Science Review*, Issue 62, 1968.

³⁷ Notably Axelrod, R. *Conflict of interest*, Chicago, Markham, 1970, and De Swaan, A. *op cit.*

one loser) and 'constant sum' (limited, non-expandable rewards) of Riker's minimal-winning coalition theory and propose including policy considerations based on De Swaan's model.³⁸ This results in a model which remains 'zero-sum' but is also 'variable sum', that is to say the policy gains can be enjoyed by all, with less restrictions on the benefits of coalition – policy outcomes can be benefits as much as participating in office can be.³⁹

More recently, De Winter and Dumont recognised that there are a large number of factors which affect the consideration of coalition partners, including any previous experience they have of working together, electoral performances of each (including losses incurred after previous election) and any previous bitter competition within the legislature.⁴⁰ Browne and Dreijmanis move the consideration further, arguing that there are three situations in which parties are prevented from joining a coalition: the institutional structure excluding parties (Switzerland is a good example of this); exclusion by other potential governing parties (as, for example, an extremist or anti-state party); and self-exclusion (for reasons of doctrinal purity or tactical considerations).⁴¹ For Müller, Bergman and Strøm, government formation is one of the phases in the life cycle of coalition politics (see figure 1.3).

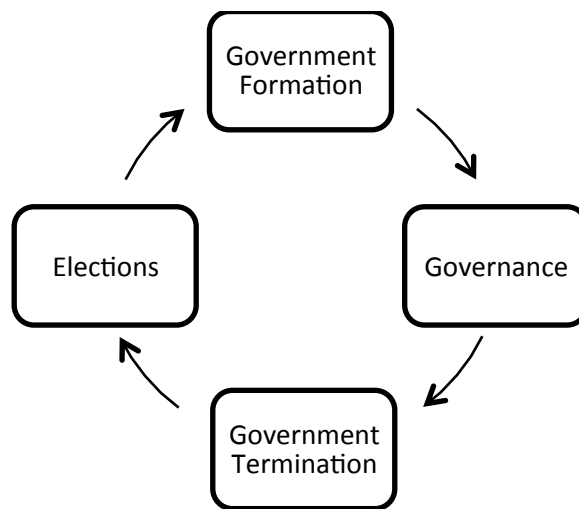
³⁸ Budge, I. and Keman, H. *Parties and Democracy: Coalition Formation and Government Functioning in 20 states*, Oxford, Oxford University Press, 1990.

³⁹ *ibid.* p.12.

⁴⁰ De Winter, L. and Dumont, P. 'Uncertainty and Complexity in Cabinet Formation' in Strøm, K. et. al. (eds) *Cabinets and Coalition Bargaining: The Democratic Life Cycle in Western Europe*, Oxford, Oxford University Press, 2008, p.125-6.

⁴¹ Browne, E. C. and Dreijmanis, J. (eds). *Government Coalitions in Western Democracy*, London, Longman, 1982, p.346-7.

Figure 1.3: The Coalition Political Life Cycle⁴²



Coalition discussions – once a potential partner has been identified – are also difficult to conclude, conducted as they are with one eye on the previous electoral results and one on future elections. Again, this is especially true in multi-level settings where performance in several elections (local, regional, state-wide and European) could potentially be affected by coalition government at any one of those levels. Decisions have to be taken on portfolio allocation, government reorganisation, how decisions are to be reached on a cross-party basis, the policy programme of the new executive, prospects for electoral co-operation at subsequent elections and whether the end of the agreement results in a new election.⁴³ With so many issues to resolve, some negotiations take weeks to conclude while others fall at the first hurdle, leaving the larger party to consider other potential partners or the option of minority government. At regional level, discussions are further clouded by the autonomist-centralist axis, which provides a second cleavage for parties to compete along. For

⁴² Müller, W.C. et. al. 'Coalition Theory and Cabinet Governance: An Introduction' in Strøm, K. et. al. *op cit.* 2008.

⁴³ *ibid.* p.16-17.

nationalist parties, the opportunity to govern does not come along often – in particular at state level, when the party tend to compete in only one region of the state, thereby making governance at that level improbable. Thus, when the parties do achieve power within their regional legislatures, their performance in office – and specifically, how they promote their constitutional goals – is worthy of study.

Government: Coalition versus minority government

The electoral system in use in both cases examined in this thesis – namely, the Additional Member System (AMS) form of proportional representation – makes the possibility of single-party government possible in Wales (give the 2:1 ratio of constituency to regional seats in the National Assembly for Wales) and improbable in Scotland (though not impossible, as the SNP's majority post-2011 proved). This, as discussed above, has an impact on the strategies of parties competing in these systems.⁴⁴ If no majority exists after an election, one of three outcomes occurs: a coalition agreement between two or more parties in order to form a stable government; a minority administration which is less stable as it cannot guarantee the support of parliament not to vote it out of office; or a further election to allow the electorate another opportunity to increase its support for one of the potential governing parties. The third option, given the 28-day deadline to elect a First Minister outlined in the Scotland Act 1998, is a possibility though tactical political considerations make it an unlikely scenario (in Scotland at least – the electoral rules in Wales were less clear on this issue prior to the Government of Wales Act 2006). Thus, potential governing parties must decide between going it alone as a minority

⁴⁴ Bogdanor, V. 1983, *op cit.*

administration, or seeking assistance from another party – who may have distinctly different priorities from them – in order to form a coalition government which has the backing of a majority within the legislature. And, to provide an incentive to speed along the resolution, the parties only have 28 days to decide what they will do or face a further election.⁴⁵

Depending on the relative sizes of parties represented within an institution, coalition may be the first consideration the potential governing party may make. The primary advantage of such an agreement is that it provides some stability for the government to function *vis-à-vis* parliament. In most (though not all) cases, coalition provides a parliamentary majority for the government allowing implementation of government policy without fear that it will be defeated by opposition parties in the parliament. However, coalition also involves compromise with another party in order to secure that parliamentary stability. This compromise usually involves a combination of policy concessions and the distribution of government office, usually in proportion to the number of seats each party is contributing to the government.⁴⁶ Thus, a party has to prioritise the policies in its manifesto to decide which are core to the party and must be delivered in government and which are less so, and thus can be negotiated away in coalition discussions. As considered above, the decision to find a coalition partner can be complicated by a number of factors including the desire to carry a majority in parliament, the ideological distance between the parties and previous experience of

⁴⁵ HM Government, 1998(a), *op cit*.

⁴⁶ Gamson, W. A. 'A Theory of Coalition Formation' in *American Sociological Review*, Vol. 26, No. 3, June, 1961, cited Warwick, P. V. and Drunkman, J. N. 'The Portfolio Allocation Paradox: An investigation into the nature of a very strong but puzzling relationship' in *European Journal of Political Research*, Vol. 45, Issue 4, June, 2006.

coalitions. Additional considerations are the relative popularity of the party considered for coalition (how much will inviting their input into government help or hinder the party), individual personalities within the parties themselves (the potential for conflict between individuals could be a major hurdle in coalition negotiations) and the reaction of party activists and supporters to any potential agreement with a rival party. If each of these considerations can be resolved positively, the likelihood of coalition government is higher. However, if a party considers that it cannot overcome any or all of these difficulties in order to work with a coalition partner then perhaps minority government is its preferable route. Labour and the Liberal Democrats had found enough common ground to form coalitions for the both of the first two terms of the Scottish Parliament, while also – after Labour had attempted to run a minority administration – for much of the life of the National Assembly for Wales.

While minority government sounds “counterintuitive” in the world of parliamentary democracy, this form of governance is quite popular and numbers about one-third of all post-war governments.⁴⁷ The advantage of minority government is that it allows the party in government to retain their doctrinal purity (that is, remain “untainted” by collusion with another party) and control over ministerial offices. However, these advantages are tempered by the need to build legislative majorities on an issue-by-issue basis – which, although allowing the government the maximum amount of flexibility (in deciding which parties to offer compromises to) it also leaves them much

⁴⁷ Strøm, K. *Minority Government and Majority Rule*, Cambridge, Cambridge University Press, 1990, p.8; Bergman, T. ‘Formation Rules and Minority Government’ in *European Journal of Political Research*, Vol. 23, Issue 1, January, 1993, p.55.

more susceptible to defeat on any number of issues.⁴⁸ Here, the concept of ‘ad-hoc coalitions’ or ‘shifting majorities’ is important. A governing party is thus reliant on its ability to negotiate compromises on a case-by-case basis, potentially diluting its own policy preferences in order to retain office but also gain a measure of policy success.

This theory of minority government is also dependent upon parties represented in the legislature being motivated predominantly by policy considerations – and by their ability to influence policy without achieving the ministerial office success which normally precedes this ability. This attitude is much more common in European systems which utilise proportional representation than in the more conflict-driven Westminster models. Opposition in the latter case tends to be much more focused upon critiquing the government of the day and emphasising the potential alternative it provides rather than seeking to influence government policy by compromise and negotiation.⁴⁹ A final, important, distinction is made by Bergman, who identifies two types of scenario which allow minority governments to survive. The first of those is a positive form of acceptance (where 50% plus one of the representatives must actively support the government – that is to say, vote to accept its entering office). The second is a negative form (where opposition parties tolerate but do not actively support the party in power) in which it is only through an active vote against the government – a vote of confidence or a rejection of its budget – that the government is threatened.⁵⁰ The distinction is important as, in the first instance, the government actually derives its legitimacy from opposition support – and it must maintain that

⁴⁸ Strøm, K. *op cit.* p.97

⁴⁹ *ibid.* p.40-2.

⁵⁰ Bergman, T. *op cit.* p.55-7.

support to continue to function – while in the latter case, it is up to the opposition to show (in a vote of confidence) that the government is no longer tolerated by the legislature.

The development of the SNP and Plaid Cymru as political parties through the Pedersen lifespan model from ‘anti-political establishment parties’⁵¹ to taking the decision to enter government office is a crucial step in the life of these parties and has wide implications for the constitutional future of the United Kingdom. As policy-seeking parties, the opportunity to progress their constitutional goals meant that office was only ever seen as a secondary objective, a means to an end. Nevertheless, the decision to enter office – to accept the challenges of governing alongside the opportunities presented – was a watershed moment for both. That the SNP chose to enter minority government after preliminary coalition talks suggested that an agreement with other parties would not be forthcoming meant that their first experience of government would be alone. This was in contrast to the agreement in Wales which saw Plaid Cymru enter government as a junior coalition partner, but with a strong enough hand that their position on the Government of Wales Act was accepted as part of the deal. Their entry into government – and the form that government has taken – has shaped how each could approach their immediate and long-term constitutional goals. Both embarked upon a programme of public engagement aimed at building support for their objectives. The following section

⁵¹ Some argue that these parties have retained their identities as ‘anti-establishment parties’ even after entering office. See Abedi, A. and Lundberg, T. C. ‘The SNP and Plaid as Anti-Political Establishment Parties’, *Paper presented to the Political Studies Association Specialist Group: Territorial Politics Biennial Conference*, Brussels, 13-14 September, 2012.

locates these attempts in the context of contemporary debates about direct and deliberative democracy, and considers the perceived effectiveness of these methods.

Action: Deliberative Democracy

Deliberative democracy has its origins in the direct democracy of ancient city-states like Athens, where, rather than electing or appointing representatives to determine laws, eligible citizens attended in vast numbers, discussed and voted upon the laws and economic policies of the city-state themselves.⁵² Modern forms of direct democracy include citizen initiatives (utilised in many US states and Switzerland in particular) and referendums, which are finding an ever-increasing use around the world.⁵³ Deliberative democracy, however, takes further the idea of citizen participation in the democratic process by placing the emphasis on the deliberative aspect of decision-making, arguing that the legitimacy of a law derives more from the deliberations themselves than any vote upon them, since the debate itself will prove self-improving and educating.⁵⁴ Indeed, the factor which unites deliberative theorists most is that decisions are made better when they are “open and reflective”, and that participants “listen as well as speak, and in doing so are amenable to changing their positions”.⁵⁵ For proponents of deliberative democracy, representative and pluralist structures of democracy struggle to realise authentic conceptualisations of democracy.⁵⁶ Habermas,⁵⁷ Pateman,⁵⁸ Barber,⁵⁹ and more recently, Elster,⁶⁰ Dryzek,⁶¹

⁵² Budge, I. *The Challenge of Direct Democracy*, Cambridge, Polity Press, p.35.

⁵³ Setälä, M. ‘Referendums in Western Europe: A Wave of Direct Democracy?’ in *Scandinavian Political Studies*, Vol. 22, Issue 4, December, 1999.

⁵⁴ Budge, I. *op cit.* p.38.

⁵⁵ Tierney, S. *Constitutional Referendums: The Theory and Practice of Republican Deliberation*, Oxford, Oxford University Press, 2012, p.6.

⁵⁶ Fischer, F. ‘Citizen Participation and the democratisation of policy expertise: from theoretical inquiry to practical cases’ in *Policy Sciences*, Vol. 26, No. 3, 1993, p.166.

and Fishkin⁶² offer considerations on the limits of representative democracy and, in some cases, innovative methods of incorporating elements of citizen participation into contemporary representative democratic structures. James S. Fishkin in particular has been at the forefront of experimental democratic methods in the United States, implementing what he calls ‘deliberative polls’ in an attempt to determine the impact of information and the opportunity for discussion on public opinion.⁶³ Having taken part in several of these deliberative experiments, Fishkin argues that deliberation helps to shape public opinion – which leads to better informed decision-making. He argues that, in order that the public can be better informed prior to voting upon issues, states should institute a national “deliberation day” to allow the public to discuss the issues in large groups.⁶⁴

It is important to note that the methods of deliberative democracy considered by these scholars are intended as complimentary to – and not a replacement for – representative democracy. Indeed, in the case of referendums and deliberative polling, both have been trialled successfully and incorporated into existing democratic institutional structures. While the consultations examined in this thesis do not quite fit Fishkin’s model of deliberative polling, the intention of consultations at base level –

⁵⁷ Habermas, J. *Theory and Practise*, Boston, Beacon, 1973.

⁵⁸ Pateman, C. *Participation and Democratic Theory*, Cambridge, Cambridge University Press, 1970.

⁵⁹ Barber, B. R. *Strong Democracy: Participatory Democracy for a New Age*, Berkeley, University of California Press, 1984.

⁶⁰ Elster, J. (ed) *Deliberative Democracy*, Cambridge, Cambridge University Press, 1998.

⁶¹ Dryzek, J. S. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*, Oxford, Oxford University Press, 2000.

⁶² Fishkin, J. S. *When the People Speak: Deliberative Democracy and Public Consultation*, Oxford, Oxford University Press, 2009.

⁶³ Fishkin, J. S. *Democracy and Deliberation: New Directions for Democratic Reform*, New Haven, Yale University Press, 1991.

⁶⁴ Fishkin, J. S. and Ackerman, B. *Deliberation Day*, New Haven, Yale University Press, 2004.

to inform the public of intended action, to provide information on the subject and to ascertain public opinion on the issue itself, thus informing the outcome – is in-keeping with aspects of the direct, participatory and deliberative democracy theories outlined above. It is also clear that, in the context that the SNP and Plaid Cymru developed their public engagement strategies, the respective consultations were consistent with these intentions.

This thesis focuses specifically on two consultations and two (intended) referendums, and will place the decision to use these measures in the context of theories of deliberative democracy. It is important to establish, however, that this is neither an over-arching framework of analysis for the thesis nor a consideration of the merits of deliberative democracy as a means of improving democracy. The theories outlined above are used simply as a tool to contextualise decisions made in Scotland and Wales to pursue these methods as a means of furthering constitutional goals.

Action: Consultations

In the same way that referendums have become vogue in recent years, particularly in the UK, so too have consultations become the medium of choice for governments to involve their citizens in the decision-making process.⁶⁵ The key consideration for governments is that involving their citizenship in such a manner leads to better decisions and better government – or, at the very least, decisions which are more

⁶⁵ Baxter, G. 'The Best Laid Schemes? The Provision and Accessibility of Government Consultation Information in the UK' in *LIBRI – International Journal of Libraries and Information Services*, Vol. 6, No. 3, 2010, p.253.

widely accepted and recognised as legitimate.⁶⁶ Indeed, governments are not only keen to consult, but keen to prove that the results of their consultations have been utilised and influenced outcomes in some way.⁶⁷ And while consultation appears a well-intentioned attempt to bridge the gap between representative democracy on the one hand and an ever disengaged general public on the other, for some it is an “uncomfortable half-way house” between the direct models of democracy outlined above and traditional, representative models.⁶⁸

The UK National Consumer Council (NCC) published its own consultation document on the subject of consultations in 1997, outlining its concerns with some of the ways in which consultations were being organised, as well as providing examples of good practice in consultations and “what not to do”.⁶⁹ Arguing that consultations were a means of allowing the government to be “properly accountable for its policy-making” they provided five reasons why consultations should be undertaken:

- To seek expert knowledge;
- To seek ideas;
- To identify potential implementation problems;
- To improve the initial proposals; and
- To seek to fashion a consensus.⁷⁰

⁶⁶ Cornwall, A. ‘Locating Citizen Participation’ in *IDS: Institute of Development Studies Bulletin*, Vol. 33, No. 2, April, 2002, p.49.

⁶⁷ Cook, D. ‘Consultation for a change? Engaging users and communities in the consultation process’ in *Social Policy and Administration*, Vol. 36, No. 5, 2002, p.516.

⁶⁸ Jones, R. and Gammell, E. *The Art of Consultation: Public Dialogues in a Noisy World*, London, Biteback Publishing Ltd, 2009, p.3.

⁶⁹ National Consumer Council, *Government Consultations: Not Just a Paper Exercise – A Consultation document*, London, NCC, 1997.

⁷⁰ *ibid.* p.2.

It is clear from this that consultations can be undertaken for a variety of reasons, and that they can fulfil several distinct objectives for practitioners. The desire for expert opinions and evidence can be a key aspect of the policy process, helping to shape, provide different options or judge the success of a policy.⁷¹ For the Welsh Assembly Government comprising Labour and Plaid Cymru, the *All Wales Convention* could be understood as a means of achieving each of the NCC's objectives for consultations. For the SNP, the desire for expert opinions was less important than engaging the public on their own proposals in order to build support and fashion a consensus for independence.

However, the ever-increasing use of consultations in public life – on issues of varying levels of importance and interest to the public – has led to some suggestions that politicians should stop passing the buck, stop trying to engage citizens to make difficult decisions for them and do what they were elected to do: lead.⁷² This criticism is worth considering in light of the perceived democratic deficit (falling turnout in elections in the UK and across Europe) and the notion of evidence-based policy-making. Time and space restraints make it difficult to consider the many and varied reasons for the increasing democratic deficit, but that consultation is an attempt to mitigate or overcome this disconnect between politicians and the public is clear. Contemporary politicians, fearing that decreasing turnouts mean a corresponding lack of mandate, are keen to defer making difficult decisions and instead look for evidence in the form of public opinion in order to give their decision more legitimacy. However, how

⁷¹ Hogwood, B. W. and Gunn, L. A. *Policy Analysis for the Real World*, Oxford, Oxford University Press, 1984, p.4.

⁷² Parris, M 'Don't ask my opinion, don't consult, don't engage or include; just lead: We should not tip bucket-loads of participation over every group and question' in *The Times*, 26 February, 2005, cited Jones, R. and Gammell, E. *op cit.* p.7.

evidence is collected – and from whom – means that it is rare that such evidence is not influenced by previously-held beliefs about the issue in question.⁷³ Indeed, that is one of many issues which make consultation a “crucial, yet deeply problematic process”.⁷⁴

One of the problems faced by practitioners of consultations (in this case, governments) is that they themselves often have a preferred outcome prior to undertaking the consultation. Hogwood and Gunn identify nine stages through which a policy may pass, from deciding on which issue to pursue through implementation to the continuation or termination of the policy itself.⁷⁵ At several stages of their analysis (and in combination with the NCC’s reasons for consultation) a consultation could be considered – at the beginning (to seek ideas), at the forecasting stage (to identify implementation problems) and during the evaluation stage (to improve the initial proposals) to name three. One of the issues here is that the process of selecting and establishing a policy can close off the potential for other policy considerations. In the context of consultation, this can limit the range of policy possibilities and outcomes; essentially closing the consultation to views falling outwith the government’s preferred policy course.⁷⁶ If this is the case, it raises legitimate questions about why the government is deigning to consult in the first instance. Of course, in some cases, governments or local authorities are legally obliged to consult – and while this ensures that a consultation will take place, it does not ensure that it is an effective

⁷³ Jones, R. and Gammell, E. *op cit.* p.10-12.

⁷⁴ Cook, D. *op cit.* p.517.

⁷⁵ Hogwood, B. W. and Gunn, L. A. *op cit.* p.4.

⁷⁶ Cook, D. *op cit.* p.529.

consultation, nor that any of the respondents concerns will be factored into the policy outcomes.⁷⁷

The consultations examined in two chapters of this thesis – the Scottish Government’s *National Conversation* and the Welsh Assembly Government’s *All Wales Convention* – were constructed with their respective governments’ policy preferences in mind. However, neither were “closed shops”. The Scottish Government presented their view – along with several other options – on the constitutional future of Scotland which explicitly declared their own preference for independence but pressed how keen they were to hear the public’s views. This was a unique type of consultation (based, as it was, on the SNP’s *raison d’etre* and not, as is most often the case, on a specific policy area) and as such, falls slightly outwith the parameters of the general consultation literature. The Welsh Assembly Government’s consultation was the result of a coalition agreement between Labour and Plaid Cymru, the latter naming the *All Wales Convention* as the price of their participation. However, it was constituted and progressed in a scrupulously neutral manner, with the executive committee favouring neither side of the debate, either in the national events or in their final report. Both will be considered in detail in the respective chapters in relation to the principles of consultation outlined above.

Action: Referendums

Referendums are the clearest examples of direct democracy in use in contemporary representative democracies, and their use has become widespread.⁷⁸ For some, this

⁷⁷ Jones, R. and Gammell, E. *op cit.* p.192.

increase in use can be explained with reference to the negative role of the people in representative democracies – that is, the power of the people is limited to selecting and de-selecting their preferred representatives in elections.⁷⁹ For others, it is a question of increasing the legitimacy of a particular course of action – if the people vote for it, it appears to have more legitimacy.⁸⁰ For Qvortrup, referendums are “a supplement to indirect democracy”, giving the public the deciding vote and an opportunity to take democracy closer to the “ideal of government by discussion” than whipped votes along party lines in contemporary representative democracies.⁸¹ However, Chambers argues that the polarisation of debate in referendums and the inevitability of majoritarian outcomes actually “derails deliberation and, in so doing, undermines the legitimacy of outcomes”.⁸² Indeed, this goes as far as seeing voting in a referendum as “final” and citing referendums as a “zero-sum game”.⁸³ LeDuc’s criticism goes further, noting that referendums are often susceptible to “insufficient information, confusing question wording, or contradictory lines of argument regarding the possible consequences of a referendum vote”.⁸⁴ Tierney points out that referendums in the context of representative democracies are problematic, potentially

⁷⁸ Butler, D. and Ranney, A. *Referendums around the world: the growing use of direct democracy*, Basingstoke, MacMillan Press Ltd, 1994.

⁷⁹ Bogdanor, V. ‘Western Europe’ in Butler, D. and Ranney, A. *op cit.* 2004, p.24; Qvortrup, M. *A Comparative Study of Referendums: Government by the People*, Manchester, Manchester University Press, 2005, p.1.

⁸⁰ Papadopoulous, Y. ‘How does direct democracy matter? The impact of referendum votes on politics and policy making’ in *West European Politics*, Vol. 24, Part 2, April, 2001, p.37.

⁸¹ Qvortrup, M. *op cit.* p.11-14.

⁸² Chambers, S. ‘Constitutional Referendums and Democratic Deliberation’ in Mendelsohn, M. and Parkin, A. (eds) *Referendum Democracy: Citizens, Elites and Deliberation in Referendum Campaigns*, Basingstoke, Palgrave, 2001, p.240.

⁸³ *ibid.* p.245-7.

⁸⁴ LeDuc, L. *The Politics of Direct Democracy: Referendums in Global Perspective*, Peterborough ONT, Broadview Press, 2003, p.43.

anti-democratic, and may not be the most appropriate means of directly engaging the public in political (and especially, constitutional) discussions.⁸⁵

The most famous proponent of referendum democracy in the UK, A.V Dicey, considered the referendum the answer to what he saw as the problem that a small majority in the House of Commons could change the constitution without the public having any influence on the decision.⁸⁶ In his view, the referendum was a “conservative device” given his proposal to use referendums to limit the ability of parliament to radically alter the constitution without necessarily having the support of the public.⁸⁷ Bogdanor argues that Dicey is both right and wrong: right that on constitutional issues the opinion of the public should count for more than that of parliament, but wrong that the referendum could be employed only for a small number of constitutional questions.⁸⁸ In the UK, referendums remain ad hoc and consultative in nature; ad hoc because there is no constitutional requirement for some issues to be decided by referendum thus governments can decide on a referendum strategy for a number of reasons; and consultative because the principle of parliamentary sovereignty means that, whatever the outcome of a referendum, the UK Parliament retains the authority to not be bound by it, and to take action in a manner which it deems appropriate. And because referendums in the UK are not stipulated by any formal legislation – and the constitutional rationale for holding referendums differs on a case by case basis, making precedent difficult to determine –

⁸⁵ Tierney, S. *op. cit.* p.18

⁸⁶ Qvortrup, M. *op cit.* p.47.

⁸⁷ The Constitution Unit *Report of the Commission on the Conduct of Referendums*, London, Constitution Unit, 1996, p.19.

⁸⁸ Bogdanor, V. *Politics and the Constitution: Essays on British Government*, Aldershot, Dartmouth Publishing Company Limited, 1996, p.xv-xix.

political expediency becomes a distinct motivating factor in the decision to hold one.⁸⁹ This gives governments in the UK control over referendums in several ways. They can decide upon which issues referendums will be held, when these referendums will be held and what the question will be. In short, they control the agenda of the referendum and its initiation.⁹⁰ Generally, a governing party would only choose to pursue a referendum strategy when it considers that it will win.⁹¹ However, oftentimes the referendum will not be held in isolation in the electorate's mind and the vote may become a judgement on the government's performance rather than a question on a particular issue. This will also influence a government's decision to hold a referendum.

The UK House of Lords appointed its Select Committee on the Constitution to investigate "the role of referendums in the UK's constitutional experience".⁹² The report examined a range of evidence in favour of continuing, expanding or formalising the use of referendums in the UK. Reasons to do so included: settling an issue; enhancing citizen engagement; promoting voter education; safeguarding the parliament or government from controversial decisions; the fact that when the public make their position known in a referendum that position is difficult to reverse; and that the referendum is a compliment to representative democracy as practised in the

⁸⁹ Balsom, D. 'The United Kingdom: constitutional pragmatism and the adoption of the referendum' in Gallacher, M. and Uleri, P. V. (eds) *The Referendum Experience in Europe*, Basingstoke, MacMillan Press Limited, 1996, p.221.

⁹⁰ Setälä, M. 'On the Problems of Responsibility and Accountability in Referendums' in *European Journal of Political Research*, Vol. 45, Issue 4. December, 2006, p.709.

⁹¹ Le Duc, L. 'Referendums and Elections: How do campaigns differ?' in Farrell, D. M. and Schmitt-Beck, R. (eds) *Do Political Campaigns Matter? Campaign Effects in Elections and Referendums*, London, Routledge, 2002, p.149; Lijphart, A. *Democracies: Patterns of majoritarian and consensus governments in twenty-one countries*, New Haven: Yale University Press, 1984, p.203.

⁹² House of Lords Select Committee on the Constitution, 'Referendums in the United Kingdom' 12th Report of Session 2009-10, HL Paper 99, 2010, p.7.

UK.⁹³ Against that, they heard evidence that referendums were simply tactical devices; that the campaigns were dominated by elite groups; had a damaging impact on minority groups; are a block on progress; do not settle an issue; tend not to be about the issue in question; are costly; and, in fact, undermine representative democracy.⁹⁴ They concluded that while they held particular criticism for the ad hoc nature of referendums – specifically, their use as tactical devices – there was a place for referendums in the UK, and that place was most appropriately in dealing with “fundamental constitutional issues” such as changing the electoral system for the House of Commons or matters of national secession from the Union.⁹⁵

Thus there is an understanding from the upper house of the UK Parliament that referendums do fit with the model of representative democracy practised in the UK. While the UK Government is not bound by a committee report, the fact that a component part of the UK Parliament – the House of Lords – recognises the utility of a referendum, and in particular, points to secession as an issue for which a referendum would be appropriately used, suggests that the SNP’s intention to decide Scotland’s constitutional future through a referendum would be acceptable to the UK Parliament. That is, of course, simply recognition of the principle of a referendum – the rules, franchise, regulators and question itself in any referendum on the subject would still be the subject of negotiation between the two governments.

⁹³ *ibid.* p.13-16.

⁹⁴ *ibid.* p.16-20.

⁹⁵ *ibid.* p.20-7.

Of the intended referendums examined in this thesis, both fall into the category of “fundamental constitutional issues” envisioned by the House of Lords Select Committee. The referendum in Wales on extending the powers of the National Assembly for Wales was, in fact, an example of a referendum in the UK which was required by law, set out as it was in the Government of Wales Act 2006. The intended referendum in Scotland (which never transpired during the 2007-11 parliamentary term) would also have fallen into the category of “fundamental constitutional issue”, dealing as it did with the issue of Scottish independence – meaning secession from the Union. Both examples will be considered in detail in their respective chapters.

In the context of the United Kingdom as a constitutional monarchy, there is no requirement for the government to provide the opportunity to vote on specific issues – the system of representative democracy entitles the electorate to vote for a constituency MP who will vote on issues arising in the House of Commons on their behalf. So much a part of the British democratic tradition is this sentiment that referendums have rarely been utilised – and when they have it has always been in a non-binding, advisory capacity only, thus maintaining the sovereignty of the UK Parliament.⁹⁶ Nevertheless, a precedent has been set in the UK that, when legislating on constitutional issues, the government will consult with the public in the form of a referendum – and though notionally advisory exercises, the government has ceded to public opinion in each of the eleven cases a referendum has occurred to date (see table 1.1).

⁹⁶ Bogdanor, V. 1996, *op cit.* p.223.

Table 1.1: Referendums in the United Kingdom (1973-2011)			
Year	Issue	Area of UK	Outcome
1973	Northern Ireland Border Poll	Northern Ireland	N.I. remains part of UK
1975	EEC Membership	UK-wide	UK remains member of EEC
1979	Scottish devolution	Scotland	No Assembly (40% rule)
1979	Welsh devolution	Wales	No Assembly
1997	Scottish devolution	Scotland	Scottish Parliament accepted
1997	Welsh devolution	Wales	Assembly for Wales accepted
1998	London devolution	London	GLA and Mayor for London
1998	Good Friday Agreement	Northern Ireland	Agreement accepted
2004	North-East Devolution	North-East England	No Assembly
2011	Welsh devolution powers	Wales	Extended powers for NAW
2011	Alternative Vote	UK-wide	No change to electoral system

Nationalist parties in government

Nationalist parties, distinctively of political parties, have a clear objective focused upon a constitutional goal, a *raison d'être* which is separate from their political ideology. This *raison d'être* manifests itself as some form of autonomy goal – be it simply regional autonomy to protect a distinct linguistic identity or, at the other end of the scale, secession from a state to create a new, independent nation.⁹⁷ When a party takes control of a government, their ideology shapes how they govern. For example, if a conservative party were elected to govern, the expectation would be of a government that focuses on protecting business interests or cutting taxes, while a social democratic party might focus on providing public services and a welfare system. For a nationalist party, it is their autonomy goal – whatever form it takes – that guides the party in electoral competition, in policy formation and, importantly for this thesis, in how the party acts as a party of government.⁹⁸ As outlined above, how a party – any party – acts in government will also depend on structural factors: the level of government, the type of government (majority, minority, coalition, issue-based

⁹⁷ De Winter, L. *op cit.* p.205-7.

⁹⁸ *ibid.*

agreement) and the electoral competition which has produced this form of government. What is particularly important in the case of nationalist parties governing at the regional level is the complex relationship it has with central government and the state-wide parties there. This relationship can be characterised by periods of both co-operation and conflict, depending upon the respective positions of the governing parties on a left-right and autonomist-centrist spectrum.⁹⁹

Government at the regional level carries its own complexities as well. In the case of coalition building, some policies are agreed by both parties, some are thrown out altogether and some are altered to become acceptable to both, a hybrid of policies from each party manifesto.¹⁰⁰ When a party chooses the option of minority government, the link between party and government policy is muddied further. Here, a party pursues only the policies it feels have an opportunity to gain majority agreement in the legislature. They may be the same policies that the party campaigned on or they may be slightly altered, but if the governing party can identify another party who will potentially vote for their measure and allow them to continue as a government then that policy will be implemented through the government apparatus.¹⁰¹ A further complication arises when the party that controls the central government is one of the opposition parties at the regional level. How far can they support the policies of a regionalist party in government that are fundamentally opposed to their views on the autonomist-centrist axis? And how much does their

⁹⁹ Heller, W. B. 'Regional Parties and National Parties in Europe: Spain's *estado de las autonomias* 1993 to 2000' in *Comparative Political Studies*, Vol. 35, No. 6, August, 2002, p.665.

¹⁰⁰ Ware, A. *op cit.* p.336.

¹⁰¹ Deschouwer, K. *op cit.* p.5.

position upon this axis impact upon their ability to make deals with a party which is on the opposite end of this cleavage?

Thus, the realisation of party policies at regional government level is a complicated process, and the selection of policies to pursue is important for parties not only in maintaining support for their government within the legislature but also with the electorate. For nationalist parties, this process is further complicated by their political ambitions *vis-à-vis* the constitutional future of their region. They face pressure from within the party to push forward with autonomy goals which are (often) opposed by most other parties within the legislature (including potential coalition partners) as well as from their electorate, who may have voted for them on the basis of their policies regarding autonomy. They have to work as a government to promote their policies against an opposition which is openly hostile to their core political objectives. And they must act as a “regular” government would – running departments, winning votes, passing legislation – all the while promoting their own goals for the region. A delicate balancing act is required.

Hypothesis

So what would we expect to see from nationalist parties in government? In many ways, the same things we would expect from any other parties in government: tackling issues within the competences of their legislature – infrastructure, transport, health and education policy where devolved – issues which are important for the day-to-day running of the region. But we would also expect to see a larger focus on nation-building, promotion of their goals through celebration of national days, focus on flags

and national symbols, emphasis on key aspects of culture such as language and the means to enhance this.¹⁰² Further, attempts to engage the public in these aspects of nation-building and on the issue of constitutional change would also be expected. We would also expect the nationalist parties in power to face criticism for their focus from those adverse to their goals. We might also expect to see moderation of manifesto pledges on the part of the nationalist party (whether acting as part of a governing coalition or a minority administration) in order to pass legislation which is in line with proposals presented to the electorate. Most importantly, as a nationalist party in government, we might expect to see moderation of their constitutional goals in order to gain and maintain power – power as a means to further their cause through presenting themselves as a competent government, able to function without the need for the centre.¹⁰³

The net result of this is that nationalist parties in government may pass fewer bills and create less legislation than other parties in power, but the region which they represent may enjoy a higher profile due to the focus on nation-building. If the party are successful, they may build public support for their constitutional goals (or indeed, simply for their governing style) and as such this will be reflected in further electoral success. But this electoral success may come at a price – a lack of success in converting party policy into government policy. This could be interpreted as a long-term strategy for maximising the opportunity to remain in the public eye as a government party and presenting their constitutional goals to the electorate. This

¹⁰² Llobera, J. R. 'The Role of Commemorations in (Ethno) Nation Building: The Case of Catalonia' in Mar-Molinero, C. and Smith, A. (eds) *Nationalism and the Nation in the Iberian Peninsula: Competing and Conflicting Identities*, Bridgend, WBC Book Manufacturers, 1996, p.199-201.

¹⁰³ Deschouwer, K. *op cit.* p.6.

then, would potentially transform the party from a policy-seeking party to a vote-seeking or office-seeking party – with constitutional policy relegated to a secondary consideration behind returning to office.¹⁰⁴ An alternative interpretation might be that the party considers the constitutional policy too important to risk at a time when they have not yet convinced the electorate, and a subsequent term in office is required in order to complete this process of building public support for the issue. In this respect, office can be seen as a short-term or “proximate” goal while constitutional change remains the “ultimate” goal, thereby retaining the party’s status as a policy-seeking party.¹⁰⁵ In this context, evaluating the success of the party in office cannot be judged solely on their constitutional policy. It would be equally wrong to consider the constitutional question as a zero-sum game, with success represented only by complete achievement of the party’s constitutional goals.

For the parties examined in this thesis, the focus is on how they have attempted to build public support for their constitutional goals. The methods of public participation outlined above – consultation and referendum strategies – have featured heavily in their program of government. How they have utilised consultations to open discussions with the electorate and build support for constitutional change will be the focus of two of the following chapters, while chapter six will focus on the referendum strategies employed in each case. The working hypothesis is that nationalist parties need to cultivate the public support which delivered them into office through public consultations if they are to have any success in delivering (and winning) a referendum upon their constitutional objectives. By examining in more depth, firstly how the

¹⁰⁴ Müller, W. C. and Strøm, K. *op cit.*

¹⁰⁵ *ibid*; Hogwood, B. W. and Gunn, L. A. *op cit.* p.157.

devolution debates have evolved over the past four decades and subsequently how the respective parties organised their consultations in order to engage the public more closely in the constitutional debate, this thesis aims to explore the relationship between nationalist parties in power and their electorates.

It argues that this engagement had to deliver on two fronts – both on a practical level (actively seeking out public opinion on the issue in question) and on a subconscious level, that is, providing a perception that the constitutional debate is a permanent fixture of the contemporary political debate – in order to convince the public to support the constitutional objectives of the party in question. Drawing upon the literature on the topic of deliberative democracy, consultations and referendums, this thesis considers the constitutional strategies of the SNP and Plaid Cymru, arguing that the respective public engagement strategies were part of a broader constitutional process. The consultations themselves were part of a legitimisation process; that consultations were already considered a part of governing, therefore by consulting on constitutional issues this subsequently made the constitution part of governing and legitimised the debate. It argues that the public are and need to be a key component of the constitutional debate, that a public engagement strategy is required if nationalist parties in government are to have any success in moving forward with their constitutional goals. More generally, this thesis argues that the two governments saw mixed results in outcomes. In Wales, Plaid Cymru and the Welsh Assembly Government saw their public engagement strategy succeed in delivering an affirmative outcome in a referendum on the issue, but the party were voted out of office in the 2011 National Assembly election. And while a further commission to examine Welsh

devolution was established, the public remained largely disengaged from the debate. Contrastingly, while the SNP Scottish Government failed to hold a referendum on the constitutional issue during their term of minority government, their return to government with a parliamentary majority in 2011 not only signalled that a referendum would be held in 2014, but saw the constitutional debate continue through pressure groups, civic society and social media – becoming a multi-lateral discussion in which the government was no longer the main actor. Arguably, this places the SNP in a stronger position than Plaid Cymru with regards to the constitutional debate going forward.

Conclusion

This chapter has sought to examine the existing literature on the motivations of political parties; on governing and forms of government; and on the methods of public participation pursued in government, and to provide a framework of analysis for case studies in the following chapters on Scotland and Wales. It has done so by examining the three elements in turn. It began by focusing upon the motivations of political parties, as outlined by Müller and Strøm, arguing that the SNP and Plaid Cymru, which comprise the two case studies that follow, should be considered as policy-seeking parties. It then examined the considerations of parties entering government and the decisions to enter coalition or minority government, suggesting that the type of government which the two parties found themselves in significantly impacted upon how they approached the constitutional debate while in office. The third section of this chapter dealt with the actions pursued by the parties in government – the methods of public participation – in the context of contemporary debates about

deliberative democracy. The chapter considered what expectations we might have of nationalist parties in government, arguing that we should expect all the things we would expect of other parties in government, with the additional focus upon nation-building associated with nationalist parties. Finally, the chapter established the argument of this thesis which will be developed over the following case study chapters, namely that public engagement on the constitution is central to the approach of nationalist parties in government; that this is part of a process of legitimising the constitutional debate; and that while opposition to these parties will inevitably see a lack of constitutional change as a failure of this strategy, this is a false conclusion, for the engagement of the public on the constitutional debate represents a considerable achievement for nationalist parties in power, and the continuation of that engagement is the lasting legacy of these initiatives.

Chapter 2: Devolution: a process, not an event

Introduction

Devolution, in the words of Ron Davies, is a “process, not an event”.¹ And as Davies explained further, devolution is not a “journey with a fixed end point”, nor an “end in itself but a means to an end”.² It has been a five-decade-long process in the UK thus far, and with the constitution firmly on the political agenda as a (partial) result of the electoral and policy success of nationalist parties in Scotland and Wales, it shows no signs of disappearing. This chapter tracks the parallel processes of devolution in Scotland and Wales as each rejected (at least within the terms of the legislation) devolution in the 1970s before embracing the concept (rather more enthusiastically in Scotland than in Wales) in 1997. Here, the actors involved and the public engagement that was attempted in the earlier devolution debates are examined as precursors to the public engagement strategies of the SNP and Plaid Cymru in office and, it is argued, these earlier processes had a direct impact upon how the nationalist parties in government decided to approach the constitutional question later.

The Devolution Story in Scotland

The SNP’s victory in the 1967 Hamilton by-election was the catalyst for action on devolution in the 1970s, but the referendum as a device to deliver devolution – and, for the SNP, independence – did not come until later, and even then not as a result of action by pro-devolutionists. While both Labour and the Conservatives had previously

¹ Davies, R. ‘Devolution: A Process not an Event’ in *The Gregynog Papers*, Vol. 2, No. 2, Cardiff, Institute of Welsh Affairs, 1999, p.15.

² *ibid.*

seen MPs talk about a Scottish assembly – and even go so far as making devolution party policy – it was not until Winnie Ewing’s surprising victory in Hamilton that these sentiments provoked more than political rhetoric. Then-Conservative leader Edward Heath committed his party to a pro-devolution stance in his ‘Declaration of Perth’ of 1968 (a position the party later reversed under Margaret Thatcher) and established a Scottish Constitutional Committee to examine the policy. This Committee reported in 1970 (before the Conservatives returned to government) and provided recommendations in favour of establishing an assembly which would assume the functions of the Scottish Grand Committee.³ The plans were incorporated into the party’s manifesto – and subsequently, the Queen’s Speech – but were never implemented.⁴

Labour, however, were moved into action by the rise of the SNP. Seeing the party win what had been a relatively safe Labour seat led the party to consider more fully the implications of a party competition distinct from their historic two-horse race with the Conservatives. If the SNP were winning seats in Labour heartlands by appealing to traditional Labour voters, it would be very difficult for Labour to win a majority at Westminster. Labour’s strategy then, was to outflank the SNP by appearing more nationalistic than the nationalists. While independence was not a solution Labour could countenance, devolution was. Here was a policy which would at once demonstrate that the party was in touch with what its Scottish electorate and at the same time would deal with the electoral threat posed by the fledgling SNP – for if

³ Scottish Constitutional Committee *Scotland’s Government: The Report of the Scottish Constitutional Committee*, Edinburgh, Scottish Constitutional Committee, 1970.

⁴ Bogdanor, V. *Devolution*, Oxford, Oxford University Press, 1979, p.110.

Scotland had its own assembly, and a strong Labour voice in London, why would it need independence? Labour thus decided to establish the Royal Commission on the Constitution to consider the implications of devolution for the United Kingdom and to determine the scope of powers such an assembly should obtain. Its remit was:

*to examine the present function of the central legislature and government in relation to the several countries, nations and regions of the United Kingdom, to consider... whether any changes are desirable in those functions or otherwise in present constitutional and economic relationships.*⁵

Reporting four years after its establishment – with Labour now in opposition – the Commission was divided. Three members resigned during the process while two members of the original Commission – including the chair, Lord Crowther – died.⁶ In their own evidence to the Commission, the Scottish Labour Party declared their opposition to devolution, arguing that it would “damage Scotland’s economic development”.⁷ There was limited engagement with the Commission from Scottish pressure groups, with only the Faculty of Advocates, the Law Society of Scotland, the Scottish Law Commission, the Saltire Society, the Scottish Economic Planning Council and the Scottish Plebiscite Society accepting invitations to submit evidence.⁸ While the Commission itself considered wide-ranging options, including devolution, confederalism and even independence for the UK’s constituent nations, their final report – which did not have the unanimous backing of the Commissioners –

⁵ Royal Commission on the Constitution (Kilbrandon Commission) *Report of the Royal Commission on the Constitution 1969-1973*, Volume 1, Report (Cmnd. 5460), London, Her Majesty’s Stationery Office, 1973, p.iii-iv.

⁶ Drucker, H. M. and Brown, G. *The Politics of Nationalism and Devolution*, London, Longman, 1980, p.59.

⁷ Bogdanor, V. *Devolution in the United Kingdom*, Oxford, Oxford University Press, 1999, p.141.

⁸ Drucker, H. M. and Brown, G. *op cit.* p.72-4.

recommended devolved assemblies for Scotland and Wales. Two members published a minority report – a Memorandum of Dissent – in which they outlined proposals for seven devolved regional assemblies (for Scotland, Wales and five English regions). In the end, the recommendations looked messy and, with a Conservative government in power – and the Nationalist charge seemingly halted – the proposals were quietly ignored.⁹ However, when the Conservatives went to the polls in February 1974, it was Labour who emerged from the General Election in government – albeit by a small margin – while the SNP returned 7 MPs, increasing the pressure on Labour to adopt devolution as party policy. Within months of taking office, Labour published a devolution White Paper, Command Paper 5732 entitled “Democracy and Devolution: Proposals for Scotland and Wales”. However, before any further action could be taken, a new General Election was called for October 1974 in an attempt to increase the strength of the Labour party in office. While the government was returned – with a majority of three – it was the SNP who made the headlines, increasing their representation from 7 seats to 11, taking over 30% of the Scottish vote. In addition, the party was second in another 42 seats – 35 of them held by Labour.¹⁰ There was a real concern in Labour ranks about the rise of the SNP, and their electoral support gave added impetus to the devolution debate, putting further pressure on the Labour government to move forward with the proposals. A further White Paper was published in November 1975 entitled: “Our Changing Democracy” with a supplementary paper the following August.¹¹ Finally, the government published its devolution plans in the shape of a bill – the Scotland and Wales Bill – in November

⁹ *ibid*, p.59.

¹⁰ Bogdanor, V. 1979, *op cit*. p.93.

¹¹ HM Government, *Our Changing Democracy: Devolution to Scotland and Wales* (Cmnd. 6348), London, Her Majesty’s Stationery Office, 1975.

1976. The Labour party however, like their Royal Commission previously, was split on devolution. The Scotland and Wales Bill was to prove a false dawn for devolutionists. Parliamentary procedures – Shadow Cabinet opposition to the bill and backbench rebellion – meant that the bill fell to a guillotine motion in February 1977. Crucially however, the government had conceded the principle of a post-legislative referendum to anti-devolutionists during the debates in order to try and save the bill. At the time, this was thought to have weakened the chances of devolution passing for Wales – where public support was weak – but increasing the chances of establishing a Scottish assembly, since the Scottish public appeared to back devolution.¹²

With the Lib-Lab pact signed the following month, the government secured Liberal support for its continued existence – providing devolution was reintroduced. James Callaghan appointed the pro-devolutionist John Smith to pilot the new legislation through the House of Commons – and this time, there would be a crucial difference: there would be two devolution bills, one for Scotland and one for Wales. The Scotland Bill was subsequently published in November 1977 – with the government's concession of a post-legislative referendum during the previous debates remaining intact. It was this concession which would set a precedent for future constitutional change. However, the decision to proceed with a referendum was not an especially principled one. The debate was not about whether constitutional change should require a public vote. The Labour government faced clear internal division on the issue – just as they had on the issue of continued membership of the European Economic Community (EEC) in 1975 – and as they had done on that occasion, they

¹² Drucker, H. M. and Brown, G. *op cit.* p112.

deemed it politically expedient to consult the public in a referendum.¹³ What was clear was that the right to vote for constitutional change was to be limited to those it would directly affect – thus only the electorates in Scotland and Wales would be consulted upon the devolution proposals. This was also an important precedent, as it not only affected the future devolution referendums (in 1997) but established the principle that the component nations of the United Kingdom could determine for themselves the terms of their membership.¹⁴

Date	Poll	Yes	No
8-20 January	System Three	64%	36%
29 January- 6 February	System Three	56%	44%
6-11 February	ORC	60%	40%
12-14 February	MORI	64%	36%
15-16 February	NOP	59%	41%
20-22 February	MORI	60%	40%
23-25 February	System Three	52%	48%
27-28 February	MORI	50%	50%

However, given the perceived public support for devolution in Scotland the referendum was not considered a big enough concession for anti-devolutionists in the Labour ranks. An amendment to the Scotland Bill – and also to the Wales Bill, which was now looking even less likely to win public support – was passed in January 1978 which stipulated that, for the legislation to be passed, 40% of the eligible electorate would have to give their assent to the proposals. The Cunningham Amendment, as the threshold became known, was a critical blow for pro-devolutionists. For while

¹³ Bochel, J. et. al., "Conclusions" in Bochel, J. Denver, D. and Macartney, A. (eds) *The Referendum Experience: Scotland 1979*, Aberdeen, Aberdeen University Press, 1981, p.170.

¹⁴ Bogdanor, V. 1979, *op cit.* p.156.

¹⁵ Bochel, J. and Denver, D. "The Outcome" in Bochel, J. Denver, D. and Macartney, A. 1981, *op cit.* p.142-3.

majority support remained in favour of devolution for the duration of the referendum campaign (see table 2.1) obtaining a winning margin which surpassed the 40% of the electorate did not appear likely.

When the referendum itself arrived – 1 March 1979 – the amendment proved the difference between victory and defeat for pro-devolutionists. Support for the devolution proposal polled 51.6% of those voting, with 48.9% against (see table 5.2). On a turnout of 63.8%, this meant that only 32.9% of the eligible electorate had voted for devolution – well short of the 40% required by the Cunningham Amendment. Thus while Scotland had voted – marginally – in favour of the principle of devolution, the technical requirements of the process mean that devolution would be defeated.

Table 2.2: Scotland Devolution Referendum Result (1979)¹⁶				
Question: "Parliament has decided to consult the electorate in Scotland on the question whether the Scotland Act 1978 should be put into effect. Do you want the provisions of the Scotland Act 1978 to be put into effect?"				
Yes	No	Yes (of electorate)	No (of electorate)	Did not vote
51.6%	48.4%	32.85%	30.78%	37.1%

In the House of Commons, Labour moved to repeal the Scotland Act, citing the referendum result as proof that devolution lacked a mandate in Scotland. The SNP moved a motion of confidence in the Labour government, a motion which was superseded by a Conservative motion. Given that Labour had begun to rely upon the Nationalists in Scotland and Wales to maintain their position, the motion – supported by the SNP – carried a majority in the House of Commons, bringing an end to the Labour government, and the election of the Margaret Thatcher-led Conservatives. The

¹⁶ Bogdanor, V. 1999, *op cit.* p.190.

SNP suffered for their inability to win the devolution referendum, as well as their part in the fall of the Labour government, losing all but two of their seats. Devolution's prominent place on the British political agenda – in the wake of the SNP's electoral charge – disappeared.¹⁷ For the foreseeable future, with the now anti-devolutionist Conservatives in government, devolution was dead.

The Scottish Constitutional Convention

However, attempts to resurrect the principle of devolution began almost immediately. The Campaign for a Scottish Assembly (CSA) was formed, ostensibly a non-party group though individuals with clear partisan ties were involved. Its guiding principle was that, by any fair measure, the Scottish people supported the principle of a Scottish Assembly – and, they had done so in the 1979 referendum only to be denied devolution by a technicality. Thus, the campaign determined that they would exist to pressure the UK government to deliver an Assembly. By 1985 – and after the re-election of the Conservative government in 1983 – the CSA decided upon a new strategy. While it was clear that there was public support for the principle of devolution, articulating that support was the key to its success. They believed that the best way to do this was to establish a Scottish Constitutional Convention, thereby attempting to engage the wider public in the constitutional debate.

After a further Conservative electoral victory in 1987 – with an ever-diminishing return of Scottish MPs – the CSA published “A Claim of Right for Scotland” in the summer of 1988, articulating the need for a constitutional convention and detailing how it might

¹⁷ Bogdanor, V. 1979, *op cit.* p.89.

be organised. The Claim of Right provided three tasks for the Convention: design a scheme for a Scottish Assembly; mobilise Scottish opinion to support it; and lobby the UK Government to deliver it.¹⁸ It was an optimistic Convention which met for the first time in the Church of Scotland Assembly Hall in March 1989. Chairman Canon Kenyon Wright, giving his address, famously appealed to the historical claims that Scottish sovereignty lies with the people when he commented:

What if that other voice we all know so well responds by saying, 'We say no, and we are the state'? Well we say yes - and we are the people.¹⁹

Wright's own view was that the first meeting of the Convention was largely a symbolic meeting, gathering together those who would play a clear role in the future debate and planting their standard.²⁰ The Convention process took the form of two stages over the following years. Firstly, the leadership wrote to over 150 organisations within Scotland to invite views upon the constitutional settlement and thoughts on the design of devolution. This was an extension of the attempts to engage more widely with the public and with organisations outwith the "usual subjects" of public bodies (something the SNP tried to replicate through *A National Conversation*). However, these attempts were largely seen as having failed in popularising the issue and left the body continuing to lack public support.²¹ The second stage of the Convention's operation was more inward looking, and saw the membership establish six working

¹⁸ Campaign for a Scottish Assembly, *A Claim of Right for Scotland: Report of the Constitutional Steering Group Presented to the Campaign for a Scottish Assembly*, Edinburgh, The Campaign for a Scottish Assembly, July 1988, p.18.

¹⁹ Wright, K. *The People Say Yes: The Making of Scotland's Parliament*, Argyll, Argyll Publishing, 1997, p.52.

²⁰ *ibid*, p.52.

²¹ Mitchell, J. *Strategies for Self-Government: The Campaigns for a Scottish Parliament*, Edinburgh, Polygon, 1996, p.287.

groups to consider specific elements of the design for a Scottish Assembly, how it would be elected and how to ensure the equal representation of women in the new institution.²² The Convention produced a report entitled “Towards Scotland’s Parliament” in 1990 which outlined the principles of devolution.²³ However, key questions, such as the type of electoral system to be utilised, were left unanswered at this stage.²⁴ This was readied as the precursor to an expected change of government after the 1992 general election. However, though the Conservatives were comprehensively outperformed by pro-devolutionist parties in Scotland, their electoral performance in England ensured a fourth consecutive Conservative government.

Defeat – and renewal

The initial reaction of pro-devolutionists – in the Convention, in political parties and beyond – was one of shock. However, as Mitchell argues, the inability of historic movements for self-government to translate support for that principle into meaningful political change meant that it should not have come as a surprise.²⁵ Indeed, Harvie and Jones argue that this was the “enigma at the heart of the constitutional debate in Scotland,” namely, that while there continued to exist broad support for the principle of devolution, constitutional change remained a low priority for voters.²⁶ Indeed, they went further, arguing that the election result indicated that devolution was “a media and chattering classes’ obsession”, further evidence of Mitchell’s claims that the

²² Wright, K. *op cit.* p124.

²³ Scottish Constitutional Convention *Towards Scotland’s Parliament*, Edinburgh, Scottish Constitutional Convention, 1990.

²⁴ Lynch, P. ‘The Scottish Constitutional Convention 1992-5’ in *Scottish Affairs*, No. 15, Spring, 1996.

²⁵ Mitchell, J. *Constitutional Conventions and the Scottish National Movement: Origins, Agendas and Outcomes*, Strathclyde Papers on Government and Politics, No. 78, Glasgow, University of Strathclyde, 1999, p.39.

²⁶ Harvie, C. and Jones, P. *The Road to Home Rule: Images of Scotland’s Cause*, Edinburgh, Polygon, 2000, p.157.

Convention was not representative of all of Scotland.²⁷ Nevertheless, shock quickly turned to resolve, and several pro-devolution organisations – more public-based than the Scottish Constitutional Convention – were formed in the days and weeks which followed. “Common Cause” brought together key thinkers and writers in Scotland to build upon their own vision for a Scottish parliament. “Scotland United” drew politicians from Labour and the Liberal Democrats, together with Scottish musicians like Deacon Blue’s Ricky Ross and Hue and Cry’s Pat Kane, to a rally in Glasgow’s George Square. “Democracy for Scotland” began a vigil on Calton Hill, outside the old Royal High School – the building earmarked for the Scottish Assembly of the 1970s – which would last until the 1997 general election.²⁸ The organisation within these bodies, and their operation – demonstrations, vigils and petitions – was a clear difference from the work of the Convention. Here was an attempt to engage the public, rather than the elites, in the process of working towards a devolution settlement. Indeed, these organisations rather ignored the Convention in order to “develop grassroots networks”, culminating in a demonstration attracting 300,000 participants during the European Council summit in Edinburgh in December 1992.²⁹ While the Convention was in danger of disintegrating and disbanding in the wake of the electoral defeat and the emergence of these new organisations, it finally re-emerged in 1993 to take on the big issues surrounding the organisation of a Scottish parliament which it had not been able to agree upon previously – and to hold together

²⁷ *ibid* p.160.

²⁸ *ibid*, p.160; Wright, K. *op cit.* p 164-5.

²⁹ Lynch, P. 1996 *op cit.*

the elites it had gathered in support of devolution, without whom the whole project could not hope to proceed.³⁰

By the time the Scottish Constitutional Convention re-emerged there were clear partisan tensions at its heart. The three distinct large groupings – Labour, the Liberal Democrats and the STUC – found it difficult to agree on details and structure. Of particular difficulty were the proposed proportional electoral system the parliament should utilise and how to ensure the representation of women in the new institution. It needed a new strategy to deal with these increasing tensions. This duly arrived in the form of the Scottish Constitutional Commission, which the Convention's Executive established as independent of the Convention to resolve some of the issues it had been unable to resolve itself. It did so by providing recommendations on the electoral system, women's representation and the role of the Scottish parliament in the UK and European context, not to mention the thorny issue of revenues.³¹ While the Commission did not adequately resolve each of the issues, it provided a forum for discussion and an agenda for future negotiations between Convention parties.³² The Convention itself produced two documents in 1995. First "Key Proposals for Scotland's Parliament" was published by the Executive Committee in October which updated the 1990 "Towards Scotland's Parliament" document with further principles which had been recently agreed (including the adoption of an additional member

³⁰ Wright, K. *op cit.* p.162.

³¹ Scottish Constitutional Commission, *Further Steps towards a Scheme for Scotland's Parliament*, Edinburgh, Scottish Constitutional Commission, 1994.

³² Lynch, P. 1996 *op cit.*

electoral system to elect 129 members).³³ Secondly, these proposals were presented to the Scottish public on 30 November (St Andrew's Day) in the Convention's final report, "Scotland's Parliament, Scotland's Right".³⁴ Crucially, it had done so by maintaining the support of both the Liberal Democrats and, in Labour, the likely next party of government. In obtaining the support of both at party conferences the following year, the Convention made devolution a key pledge of their election manifestos for the coming general election. However, in mid-1996, a year prior to the election, Labour's leader Tony Blair announced that, should Labour win power, the devolution legislation would once again be the subject of referendums. Referendums plural, for the proposal to allow the Scottish Parliament a tax varying power was also to be the subject of a referendum. A test of public opinion was back on the agenda for devolution.

Plans for a referendum

Naturally, this took the Scottish Constitutional Convention by surprise and many involved in the process were sceptical that Blair's announcement was anything more than an attempt to derail the devolution plans. It was also perceived as a London slight on the process. George Robertson, the Shadow Secretary of State for Scotland had been briefing as late as the week before Blair's announcement that there would be no referendum, while his deputy John McAllion resigned his post in protest at his

³³ Scottish Constitutional Convention, *Key Proposals for Scotland's Parliament*, Edinburgh, Scottish Constitutional Convention, 1995(a).

³⁴ Scottish Constitutional Convention, *Scotland's Parliament, Scotland's Right* Edinburgh, Scottish Constitutional Convention, 1995(b).

lack of foreknowledge of the move.³⁵ Meetings between Tony Blair and Kenyon Wright, still in his role as the Chair of the Convention's Executive Committee were hastily arranged, with the former arguing that the referendum be used as a tactical device aimed at easing the passage of a Scotland Bill through the UK Parliament – and, more specifically, to entrench the parliament as part of the political scenery.³⁶ Though not recognised by those opposed to a referendum, Blair's proposed referendum was actually a continuation of his predecessor's strategy with regard to devolution. John Smith, in an interview given in 1981 in the aftermath of the first devolution referendum argued that a further devolution referendum would be "inevitable" which would subsequently "give the government solid grounds for pressing ahead".³⁷ Smith's view had not only been that a referendum was a positive good for devolution – that it would, as Tony Blair intended, entrench the subsequent devolved institution – but that the precedent of asking the public in 1979 meant that any further move towards devolution would necessitate a similar strategy.³⁸ These considerations, alongside the desire to consult the public and the precedent set by the prior devolution referendum, helped to shape the SNP's referendum strategy for independence.

The nature of the announcement though, caused some consternation among the Scottish political parties as well as the Scottish Constitutional Convention. Scottish

³⁵ McCrone, D. and Lewis, B. 'The Scottish and Welsh Referendum Campaigns' in Taylor, B. and Thomson, K. (eds) *Scotland and Wales: Nations Again?* Cardiff, University of Wales Press, 1999, p.19.

³⁶ *ibid*, p. 18, 22.

³⁷ Smith, J. (1998 [1981]) "Interview: Portrait of a Devolutionist" in Paterson, L. *A Diverse Assembly: The Debate on a Scottish Parliament*, Edinburgh, Edinburgh University Press, 1998, p.136. The original interview with John Smith was conducted by Neal Ascherson and Tom Nairn and featured in the *Bulletin of Scottish Politics*, Issue 2, Spring, 1981.

³⁸ *ibid*.

Labour's National Executive Committee had to be coaxed into supporting the proposals – and only then at the second time of asking. The Convention's co-chairs were unimpressed by the nature of the announcement which came without any consultation, and the Liberal Democrats were equally furious.³⁹ The concern among the Convention was that the task of informing, educating and awareness building among the Scottish public – a task which the Convention had agreed – had not yet been embarked upon, and provided further evidence of a lack of engagement with the public during the process.⁴⁰ However, bridges were built once more between the parties, and the Convention was once again united behind the devolution proposals.

The Referendum Campaign

After Labour won the 1997 general election – by a landslide margin – the referendum bill was published two weeks later, and scheduled for 11 September 1997.⁴¹ While the Convention recognised that there was a clear demand for devolution as evidenced by its strong showing in opinion polls in the period up to and beyond the general election (see table 2.3) they also recognised that this would count for nothing if the campaign was as disunited as in 1979. This meant reaching out to the SNP who had remained outside the Convention process having seen it as a means of diminishing the prospects of independence. Getting the SNP on board was a key objective, and moves to this end were made early in the summer of 1997.⁴² The SNP themselves wanted to wait

³⁹ Harvie, C. and Jones, P. *op cit.* p.173.

⁴⁰ Wright, K. *op cit.* p230.

⁴¹ McCrone, D. and Lewis, B. *op cit.* p24.

⁴² McLean, B. *Getting it Together: The History of the Campaign for a Scottish Assembly/ Parliament*, Edinburgh, Luath, 2005, p.164.

and see what the form of Labour’s White Paper⁴³ would take before committing themselves to campaign for devolution. Former SNP leader Gordon Wilson was vehemently opposed to the party joining the campaign, calling it a “devolution swamp,” but the party’s national council voted overwhelmingly to support a double yes (the two questions – to devolution and to tax-varying powers – having been combined in one referendum) in the upcoming referendum, and the SNP joined the Yes-Yes campaign.⁴⁴

Date	Poll	Question 1*			Question 2*		
		Yes	No	DK	Yes	No	DK
Jan	ICM/ The Scotsman	69	27	4	59	33	8
Mar	ICM/ The Scotsman	71	26	3	58	34	8
Apr	ICM/ The Scotsman	64	28	8	52	34	12
May	System Three/ The Herald	64	21	15	53	28	19
June	ICM/ The Scotsman	72	22	6	61	32	7
June	System Three/ The Herald	68	21	11	56	26	18
July	ICM/ The Scotsman	68	22	10	55	36	9
July	System Three/ The Herald	65	19	16	54	27	19
Aug	ICM/ The Scotsman	66	23	11	55	38	9
Aug	System Three/ The Herald	61	23	16	47	32	11
Sept	ICM/ The Scotsman	63	25	12	48	40	12
Sept	System Three/ The Herald	61	20	19	45	31	14

*Question 1 asked respondents whether there should be a Scottish Parliament.
Question 2 asked whether a Scottish Parliament should have the power to vary the basic rate of income tax by 3p.

The referendum campaign proper was a short one, beginning in early August and ending with the poll itself on 11 September. The Convention agreed that a new

⁴³ The White Paper was published in July 1997 and contained within it the proposals which would be enacted should the referendum return an affirmative vote. Scottish Office, *Scotland’s Parliament*, (Cmnd.3658), London, Her Majesty’s Stationery Office, July, 1997, at: <http://www.scotland.gov.uk/government/devolution/scpa-00.asp>

⁴⁴ McCrone, D. and Lewis, B. *op cit.* p25.

⁴⁵ *ibid*, p.25

organisation was needed to run the campaign, and “Scotland FORward” was established with Nigel Smith, a businessman and devolution enthusiast in the chair.⁴⁶ With the SNP now on board and the Conservatives having lost all of their Scottish MPs in the general election, the Yes-Yes campaign had the backing of almost all of Scotland’s MPs. Of course there were several anti-devolutionists – remnants of the No campaign in 1979 – remaining within the Labour party, but their role in this campaign was limited. With the polls projecting a large win for devolution, all the campaign had to do was make sure the voters turned out. However, with the death of Diana, Princess of Wales on 31 August, the new Secretary of State for Scotland Donald Dewar announced a temporary cessation in campaigning until the Monday following the funeral. This left just three days in which campaigners could get their message across to the electorate, and though the campaign was still well in the lead, there was a concern that the outpouring of grief in the aftermath of Diana’s death might result in an increase in feelings of “Britishness”, putting a double yes vote in doubt.

In the event, the result was emphatic. On both questions – to the establishment of a Scottish Parliament, and to that Parliament having a tax-varying power – the positive response carried a sizeable majority (see table 6.4). The long campaign for a Scottish Parliament was finally over. The Scottish people hadn’t just agreed to have a parliament, “they thumped the table and demanded it, unequivocally”.⁴⁷

⁴⁶ Harvie, C. and Jones, P. *op cit.* p178.

⁴⁷ Jones, P. ‘A Start to a New Song: The 1997 Devolution Referendum Campaign’ in *Scottish Affairs*, No. 21, autumn, 1997.

Table 2.4: Scotland Devolution Referendum Result (1997)⁴⁸		
Question 1	<i>I agree that there should be a Scottish Parliament</i>	<i>I do not agree there should be a Scottish Parliament</i>
	74.3%	25.7%
Question 2	<i>I agree that a Scottish Parliament should have tax-varying powers</i>	<i>I do not agree that a Scottish Parliament should have tax-varying powers</i>
	63.5%	36.5%

Establishing the Scottish Parliament

The constitutional settlement was largely absent from political debate in the Scottish Parliament for the first session. This was unsurprising when the extent of parliamentary business (52 Scottish Executive-introduced bills were passed in this period) and the death of the first Scottish First Minister (Donald Dewar) and the subsequent resignation of the second (Henry McLeish) are taken into account.⁴⁹ The focus of the Scottish Executive under its third First Minister, Jack McConnell, and the parliament itself, was to provide stability after the turbulence of its early years. Indeed, it was McConnell's intention to be seen to be "doing less, better", thereby moving the Parliament into the background whilst still delivering the services the public expected.⁵⁰ The SNP largely focused on internal reorganisation in this early period while MSPs such as Andrew Wilson and Jim Mather worked on the party's economic policy and took opportunities to articulate their concerns that the Parliament lacked the economic levels to effectively support business.⁵¹

⁴⁸ Bogdanor, V. 1999 *op cit.* p.199.

⁴⁹ Mitchell, J. et al. 'Third Year, Third First Minister' in Hazell, R. (ed) *The State of the Nations 2003 – The Third Year of Devolution in the United Kingdom*, Exeter, Imprint Academic, 2003, p.126.

⁵⁰ Keating, M. *The Government of Scotland: Public Policy Making after Devolution (Second Edition)*, Edinburgh: Edinburgh University Press, 2010, p.111.

⁵¹ *ibid.*

In contrast to Wales, and after four years of relative instability in Scotland, Jack McConnell's strategy was to lower expectations of what devolution could achieve, attempting to limit the damage of the early problems that devolution had faced, both to his own Labour party and to the Parliament itself.⁵² And while Labour lost seats in the 2003 elections, this setback was limited by two factors: their return to office, in a further coalition with the Liberal Democrats, and the electoral performance of the SNP, who lost 8 seats (and, in the aftermath of the 2004 European Parliamentary election, saw their leader John Swinney resign). These developments allowed McConnell's strategy to continue relatively untroubled, and the coalition helped to provide stability to the Parliament's organisation – particularly in light of growing public unrest at the cost of the new Holyrood building. They also contributed to a continued lack of constitutional debate, with parliament continuing to function relatively benignly under the rules established in the Scotland Act 1998 – with two exceptions. Firstly, the Liberal Democrats, in the latter part of the second parliamentary term, established a commission under the chairmanship of the Scottish Parliament's outgoing Presiding Officer Lord Steel, which set out the case for extending the Parliament's powers to include fiscal power as a precursor to a federal UK.⁵³ Secondly, the re-election of Alex Salmond as leader of the SNP in 2005 (though not returning to the Scottish Parliament until the 2007 elections) saw the party talk more freely about the limitations of devolution, fiscal autonomy and the potential for independence.

⁵² Mitchell J. 'Scotland: Expectations, Policy Types and Devolution' in Trench, A. (ed) 2004, *op cit.* p.23.

⁵³ The Steel Commission, *Moving to Federalism: A New Settlement for Scotland* Edinburgh, Scottish Liberal Democrats, 2006, p110-120.

The result of the first two terms of devolution was a more sophisticated electorate by the time the 2007 devolved elections came around.⁵⁴ Voters began to distinguish between parties they would vote for in UK elections and those they might support in devolved elections – with the result that in 2007 the SNP achieved something which it never had previously: government office. The SNP campaigned forcefully – with Alex Salmond presenting himself as their candidate for First Minister – as an alternative government to Labour, with a slick and professional campaign focused on image and personality. While independence was not front and centre in the campaign, their argument was clear: that the devolution settlement was not allowing Scotland to reach its potential, and that it was “time” for a change.⁵⁵

Devolution in Wales

The devolution story in Wales contains less of a broad base of support than that of Scotland, though this was not always the case. Legally, at least, Wales ceased to exist as a separate entity in the times of the Tudors, with laws pertaining to the principality contained under the legal hybrid “England and Wales”.⁵⁶ Nevertheless, administrative devolution had existed in Wales since the creation of a Minister for Welsh Affairs in 1951, and proposals for devolution first surfaced in proposals from the Welsh Council of Labour for an elected council in the 1960s – prior to the real emergence of similar demands in Scotland.⁵⁷ Indeed, support for a Welsh Parliament passed 60% in two

⁵⁴ Curtice, J. ‘Devolution, the SNP and the Electorate’ in Hassan, G. (ed) *The Modern SNP: From Protest to Power*, Edinburgh, Edinburgh University Press, 2009(c), p.61.

⁵⁵ Scottish National Party *Manifesto 2007: It’s Time*, Edinburgh, Scottish National Party, 2007.

⁵⁶ Foulkes, D. et al ‘Wales: a Separate Administrative Unit’ in Foulkes, D., Barry Jones, J. and Wilford, R. A. (eds) *The Welsh Veto: The Wales Act 1978 and the Referendum*, Cardiff, University of Wales Press, 1983, p.1.

⁵⁷ Evans, J. G. *Devolution in Wales: Claims and Responses 1937-1979*, Cardiff, University of Wales Press, 2006, p.154.

polls in the late 1960s in the immediate aftermath of the electoral success of Plaid Cymru and the SNP in by-elections (see table 4.1), though this support was always subject to wide fluctuations based upon political circumstances. However, it was the pressure put on the Labour government by the increasingly electorally relevant nationalist parties, more particularly in Scotland, that put devolution on the UK political agenda. However, whilst Plaid Cymru had influenced the Welsh Labour Party into adopting a proposal for devolution at their 1966 conference, they were to have very little impact on the form and scope of those proposals, with much of the following debate taking part within the confines of the Welsh Labour Party itself.⁵⁸

Table 2.5: Wales Devolution Opinion Polls (1967-8)⁵⁹		
Date	Poll	Support for a Welsh Parliament
Nov 1967	Opinion Research Centre	60%
May 1968	Market Information Services/ NOP	39%
Sept 1968	Market Information Services/ NOP	49%
Sept 1968	Opinion Research Centre	60%

The Labour government built on these proposals by appointing its Royal Commission on the Constitution. And though there was a distinct lack of engagement with the process on the part of Scottish pressure groups, Welsh organisations were keen to have their say. Groups as disparate as the Anglesey Council, the Association of Welsh Local Authorities, the Baptist Union of Wales, the Welsh Committee for Hospital Medical Services and the Welsh Schools Parents' Union all provided evidence to the

⁵⁸ Barry Jones, J. 'The Development of the Devolution Debate' in Foulkes, D., Barry Jones, J. and Wilford, R. A. 1983, *op cit.* p.22.

⁵⁹ Evans, J. G. *op cit.* p.123.

Commission, some enthusiastic about devolution, others less so.⁶⁰ Welsh Labour themselves provided evidence, rejecting the concepts of federalism and separatism, and also the idea of a legislative assembly.⁶¹ This was evidence of opposition within the party's ranks to an elected Welsh Assembly. When the Conservatives won the election in 1970, the devolution debate became further entrenched within the Welsh Labour Party. While the party as a whole remained supportive of the concept, its Welsh MPs were less than enthusiastic.⁶² By the time Labour were elected as a minority government in 1974, their manifesto in Wales had committed them to devolution in Wales, stating that they would:

*Establish a directly elected council for Wales with function, power and finance to enable it to be an effective force in the life of Wales.*⁶³

Thus, when the devolution legislation was brought forward in the 1970s, it was a compromise between what the party's research group on devolution had wanted (a legislative Welsh Assembly) and what Labour's Secretary of State for Wales – and some of his Welsh MP colleagues – desired: an indirectly elected body with no legislative powers. The compromise – which found its way into the 1970s legislation, as well as the Government of Wales Act 1998 – was a directly elected Assembly, with the power only to enact secondary legislation.⁶⁴ This was an idea which pleased no one. For Welsh Labour MPs, particularly Neil Kinnock, Leo Abse and the “Gang of Six”, the mere idea of devolution was to be opposed, and a referendum was demanded as

⁶⁰ Drucker, H. M. and Brown, G. *The Politics of Nationalism and Devolution*, London: Longman, 1980, p.73-4.

⁶¹ Barry Jones, J. 1983 *op cit.* p.23.

⁶² Bogdanor, V. *Devolution in the United Kingdom* Oxford: Oxford University Press, 1999, p.162.

⁶³ Labour Party, *Policies for a Brighter Future For Wales*, Cardiff, Wales Labour Party, 1974, p.2.

⁶⁴ *ibid.* p.165.

an obstacle to the proposed assembly. For those who supported devolution and wanted home rule for Wales, the proposals did not go far enough, providing, as they did, a weak assembly with no real power. Nevertheless, it was devolution, and for that reason, it was to be supported.

The parliamentary process of the 1976 Scotland and Wales Bill – and the subsequently separate Scotland Bill and Wales Bill – were akin to “for Wales see Scotland”, especially since the Welsh legislation was timetabled to follow that of the Scotland Bill.⁶⁵ The concession to Labour’s anti-devolutionists of a post-legislative referendum during the failed attempt to pilot the original Scotland and Wales Bill through the House of Commons was a more serious defeat than the failure of the legislation itself, as it meant that the principle of a referendum would have to be attached to the future attempts at devolution.⁶⁶

Date	Poll	Yes	No	DK
12 Dec 1975	R&M Wales and the West (Western Mail/ HTV Wales)	30	39	31
1 Mar 1976	R&M Wales and the West (<i>Y Cymro</i>)	30	39	31
6 Dec 1976	R&M Wales and the West (Western Mail/ HTV Wales)	27	40	33
18 Mar 1977	R&M Wales and the West (Western Mail/ HTV Wales)	27	53	21
12 May 1978	Abacus (BBC)	41	41	18
22 Sept 1978	Abacus (BBC)	38	49	14
8 Feb 1979	Abacus (BBC)	33	46	21
24 Feb 1979	R&M Wales and the West (Western Mail/ HTV Wales)	22	57	21
28 Feb 1979	Abacus (BBC)	22	65	13
28 Feb 1979	Marplan (The Sun)	22	67	11

⁶⁵ James, M. and Lindley, P. D. ‘The Parliamentary Passage of the Wales Act 1978’ in Foulkes, D., Barry Jones, J. and Wilford, R. A. 1983, *op cit.* p.45.

⁶⁶ Barry Jones, J. 1983 *op cit.* p28.

⁶⁷ Hume, I. ‘The Welsh Experience’ in Bochel, J. Denver, D. and Macartney, A. 1981, *op cit.* p.160; Balsom, D. ‘Public Opinion and Welsh Devolution’ in Foulkes, D., Barry Jones, J. and Wilford, R. A. 1983, *op cit.* p.202.

The addition of the Cunningham Amendment to the referendum (requiring 40% of the electorate to vote for the proposals) coupled with opinion polling in Wales which showed that an assembly was not popular with the electorate (see table 2.2) suggested that the devolution legislation was doomed to failure. However, this only tells part of the story. With division among the political parties on the proposals – Plaid Cymru were critical that the Welsh model of devolution lacked the legislative powers offered to Scotland; the Liberals were also unhappy with the limited model of devolution; Labour’s pro-devolutionist MPs thought that it was the best they could manage but that it would soon need amendment while their anti-devolutionist MPs simply dismissed the proposals as unnecessary and damaging to the Union – the campaign for a Yes vote was hamstrung before it even begun.⁶⁸ This, coupled with a clear lack of public engagement upon the issue, and the fact that almost all of the devolution debate had taken place within the Labour party itself, meant that the public developed neither an interest in the proposals nor a favourable opinion of them. Indeed, there was such a limited demand for devolution in Wales that the perception was that the proposals were being pressed upon the Welsh electorate rather than providing an answer to a clearly articulated demand.⁶⁹

The Yes campaign did draw support from a variety of sources though. The Welsh Labour Party Executive gave its full backing to the campaign along with the majority of their Welsh MPs, while the Welsh Liberal Party and the Wales TUC also gave political backing. After some internal debate, Plaid Cymru decided to campaign in favour of the

⁶⁸ *ibid.* p.31

⁶⁹ Wilford, R. A. ‘The Character of the Lobbies: Some Theoretical Considerations’ in Foulkes, D., Barry Jones, J. and Wilford, R. A. 1983, *op cit.* p.112.

assembly while well-known figures from Welsh sporting life (Gareth Edwards and Barry John) and entertainment (Max Boyce, Nerys Hughes and Harry Secombe) leant their support.⁷⁰ Opposition to the proposals was led by the Conservative Party in Wales, supported by 7 of the 8 County Councils in Wales, the National Federation of the Self-Employed, the Country Landowners Association, and the “Gang of Six” anti-devolutionist Welsh Labour MPs: Leo Abse, Donald Anderson, Ifor Davis, Fred Evans, Ioan Evans and Neil Kinnock.⁷¹ In the event, the latter proved too strong for supporters of the proposals, and devolution was resoundingly defeated by a margin of 4 to 1 (see table 2.7).

Table 2.7: Wales Devolution Referendum Result (1979)⁷²				
Question: “Parliament has decided to consult the electorate in Wales on the question whether the Wales Act 1978 should be put into effect. Do you want the provisions of the Wales Act 1978 to be put into effect?”				
Yes	No	Yes (of electorate)	No (of electorate)	Did not vote
20.2%	79.8%	11.9%	46.9%	41.2%

The scale of defeat for devolution in Wales took supporters by surprise. The Secretary of State for Wales John Morris put it succinctly:

*When you see an elephant on your doorstep, you know it is there.*⁷³

He, and the pro-devolution camp in Wales, recognised that devolution had suffered a massive defeat. “Defeat loud and clear” were further sentiments Morris put to the

⁷⁰ Morgan, K. O. *Wales: Rebirth of a Nation 1880-1980* Oxford, Oxford University Press, 1981, p.403.

⁷¹ Wilford, R. A. *op cit.* p.109-110.

⁷² Bogdanor, V. 1999 *op cit.* p.190.

⁷³ Balsom, D. (1983) “Public Opinion and Welsh Devolution” in Foulkes, D., Barry Jones, J. and Wilford, R. A. (eds) *The Welsh Veto: The Wales Act 1978 and the Referendum*, Cardiff: University of Wales Press, 1983, p.197. The original quotation appeared in the *Western Mail*, 3 March 1979.

press.⁷⁴ *The Western Mail* itself was somewhat more circumspect, arguing that “*this* concept of a Welsh Assembly is now dead and buried”.⁷⁵ This opened the door for a future – different – model of devolution to be considered, but recognised that, for the foreseeable future, devolution was off the political agenda in Wales, just as it was in Scotland.

Unlike in Scotland, however, no movement emerged in the aftermath of the referendum defeat. This is unsurprising, given the lack of public engagement with the debate, and the fact that devolution remained an internal Labour party policy discussion rather than a public debate – though the party itself remained split on the issue.

The Campaign for a Welsh Assembly (CWA) was established in 1987, considerably later than its Scottish counterpart. It was formed as a cross-party body, with chaired by a former Labour candidate and with Liberal Democrat, Plaid Cymru and Communist party representation, but was largely ignored by the wider Wales Labour Party in its early existence.⁷⁶ It was also largely a Cardiff-based effort, with three of the unsuccessful candidates in Cardiff Central in the 1987 General election original members (see box 2.1).

⁷⁴ Barry Jones, J. and Wilford, R. A. ‘The Referendum Campaign: 8 February – 1 March 1979’ in Foulkes, D., Barry Jones, J. and Wilford, R. A. 1983, *op cit.* p.136. Original quotation from the *Western Mail*, 3 March 1979.

⁷⁵ *ibid.* p.138. Quoted from the *Western Mail* editorial, 5 March 1979.

⁷⁶ Andrews, L. *Wales Says Yes: The Inside Story of the ‘Yes for Wales’ Campaign*, Bridgend, Seren, 1999, p.54.

Box 2.1: Campaign for a Welsh Assembly – Original Members⁷⁷

John Owen Jones (Labour candidate, Cardiff Central, 1987) [Chair]
John Osmond (journalist) [Secretary]
Frank Leavers (Liberal Democrat candidate, Vale of Glamorgan, 1987)
Siân Caiach (Plaid Cymru candidate, Cardiff Central, 1987)
Mike German (Liberal Democrat candidate, Cardiff Central, 1987)
Siân Edwards (Plaid Cymru)
Bert Pearce (Communist Party)

However, the lack of public engagement with the process – and the lack of enthusiasm of the Wales Labour Party for what the CWA was trying to achieve – meant that it did not become the Welsh equivalent of the pluralist Scottish Constitutional Convention.⁷⁸ Indeed, even after the Conservative victory in the 1992 general election, Labour in Wales were reluctant to consider another attempt at securing Welsh devolution. With John Smith, who had piloted the devolution legislation through parliament in the 1970s, now leading Labour, and the pro-devolutionist Ron Davies appointed to shadow the Welsh Office, assisted by the equally pro-devolution Peter Hain (MP for Neath), efforts were made to change that. Hain, alongside the Welsh TUC, advocated a constitutional convention along the Scottish model, which was rejected by both the Wales Labour Party Executive and the Wales Parliamentary Labour Party.⁷⁹ Cross-party discussion on devolution was not on Labour's radar. However, in 1993, Davies sent Hain to a meeting of what had been the CWA, but was now renamed as the Parliament for Wales Campaign (PWF), taking with him a commitment that a new

⁷⁷ *ibid.* p.53

⁷⁸ Andrews, L. 'Too important to be left to politicians: the 'Yes' for Wales story' in Barry Jones, J. and Balsom, D. *The Road to the National Assembly for Wales*, Cardiff, University of Wales Press, 2000, p.50.

⁷⁹ Wyn Jones, R. and Scully, R. *Wales Says Yes: Devolution and the 2011 Welsh Referendum*, Cardiff, University of Wales, 2012, p.40

Labour government would legislate for a Welsh Assembly.⁸⁰ Devolution was now firmly back on the policy agenda of the Wales Labour Party, and the debate had begun again. Addressing the 1994 Labour conference in Blackpool, Davies argued:

*Like the Scots we are a nation. We have our own country. We have our own language, our own history, traditions, ethics, values and pride... We now in Wales demand the right to decide through our own democratic institutions the procedures and the structure and the priorities of our own civic life.*⁸¹

At this stage, however, it was clear that events were once again being driven by Scotland, where the Constitutional Convention continued to move the debate. Wales was in danger of being left behind, and it was to this end that Davies pressed ahead with his proposals in draft form in autumn 1994, arguing to Labour's policy commission that Wales should have an Assembly with primary legislative and tax-raising powers which would be elected in a proportional manner. While this policy commission did engage with the public in a limited way, it held only six sparsely attended public meetings and "barely registered with the Welsh public".⁸² The policy commission published an interim report entitled *A Welsh Assembly: The Way Forward* in 1993, and, after objections to some of the proposals by both Shadow Secretary of State for Wales Kim Howells and long-term opponent of devolution Llew Smith, the commission published *Shaping the Vision* which suggested a more conservative package, with limited law-making powers, no tax power and dual-member

⁸⁰ Andrews, L. 1999 *op cit.* p.58.

⁸¹ Davies, R. *Speech to UK Labour Party Conference*, Blackpool, 1994, cited Osmond, J. *Welsh Europeans*, Seren, 1995, p.79-80.

⁸² McCrone, D. and Lewis, B. 'The Scottish and Welsh Referendum Campaigns' in Taylor, B. and Thomson, K. (eds) *Scotland and Wales: Nations Again?* Cardiff, University of Wales Press, 1999, p.153.

constituencies.⁸³ At this stage, however, discussion remained firmly inside the Wales Labour Party, with no cross-party debate and no public engagement. This left the public with very little information on the devolution proposals – an issue which would have very real implications for the future referendum campaign.⁸⁴

Nevertheless, while no one was considering a referendum on devolution at this stage, much less favouring the devolution proposals themselves, public involvement in the debate appeared unnecessary. When Labour's devolution plans were made public, the Liberal Democrats made clear in 1995 that their support hinged upon the assembly being elected through proportional representation (thereby providing other political parties with a voice in what would otherwise be a Labour-dominated chamber) while Plaid Cymru believed the plans were a "waste of time".⁸⁵ It was clear that changes would be required if they were to support the proposals. Internal discussions were ongoing before Labour agreed their devolution policy in January 1997 – just four months before the general election. These proposals included a commitment to a proportional element in the electoral system (a necessary concession, in Ron Davies eyes, to get both Plaid Cymru and the Liberal Democrats involved in the referendum campaign) and a further reduction in seat numbers, to 60.⁸⁶ The proposals also limited the powers of the Assembly to the minimalist, local government-style model acceptable to anti-devolutionists within the party – a compromise made by Davies in

⁸³ Andrews, L. 1999 *op cit.* p.62; McAllister, L. (1998) 'The Welsh Devolution Referendum: Definitely Maybe?' in *Parliamentary Affairs*, Vol. 51, Iss. 2. 1998, p.153.

⁸⁴ *ibid.* p.153.

⁸⁵ Andrews, L. 1999 *op cit.* p.63.

⁸⁶ *ibid.* p.65; Osmond, J. *Accelerating History: the 1979, 1997 and 2011 referendums in Wales*, Cardiff, Institute of Welsh Affairs, 2011, p.10.

order to secure the support of the more sceptical Labour MPs.⁸⁷ Prior to the Wales Labour Party finalising their devolution proposals, however, was the announcement that devolution would be put to the electorate in both Scotland and Wales in pre-legislative referendums.

Onward to 1997

While Scotland had a Constitutional Convention which both assisted in the design of the devolution proposals as well as providing a measure of consultation, devolution in Wales had had no engagement with the public and the PFW campaign was much, much smaller than the Convention. The Welsh public had been largely ignorant of the devolution debate, and now they would be asked again to give their assent to the creation of a devolved institution.⁸⁸ Just as in Scotland, the Shadow Secretary of State for Wales – by this point, Ron Davies – was not involved in the decision to hold a devolution referendum in Wales, and even on the evening prior to the announcement was denying Labour were planning on holding a referendum on the issue.⁸⁹ The decision appeared to ignore completely the sizable defeat devolution had suffered in Wales in 1979 and was instead dictated by the circumstances in Scotland.⁹⁰ Not only that, but the Welsh Labour Party itself had, as recently as 1995, declared that a referendum would be unnecessary:

⁸⁷ Osmond, J. 'Nation Building and the Assembly: The Emergence of a Welsh Civic Consciousness' in Trench, A. (ed) *Has Devolution Made a Difference? The State of the Nations 2004*, Exeter, Imprint Academic, 2004, p.47.

⁸⁸ McCrone, D. and Lewis, B. *op cit.* p.28.

⁸⁹ Osmond, J. 2011, *op cit.* p.11.

⁹⁰ *ibid.* p.10.

*The Commission feels that there is no scope for a referendum as the clearly laid out policy of the Labour Party will leave no room for doubt in the elector's minds. The choice they need to make will be clear.*⁹¹

It also meant that public support would be required for the institution to be established, and given the four to one margin against devolution in 1979, many considered this evidence that Labour's commitment to devolution in Wales was less than complete.⁹²

Pro-devolutionists, however, accepted the challenge and were keen to develop the campaign for devolution beyond the internal Labour party discussion it had been to that point. *Yes for Wales*, the official campaign for a Yes vote in the referendum, was established in February 1997 – three months before the general election and, indeed, before any referendum was guaranteed. Ron Davies and Peter Hain were key actors in getting the campaign off the ground, but they subsequently departed the scene, allowing *Yes for Wales* to be a non-party campaign, albeit with activists from Labour, the Liberal Democrats and Plaid Cymru in key roles.

When the general election resulted in a landslide Labour win, the referendum became a reality, and was scheduled for 18 September 1997 – one week later than the Scottish vote in an effort to build on the momentum of the expected Scottish Yes vote. The campaign itself is examined extensively in subsequently in this chapter, but there are several points which require articulation at this stage. Firstly, while *Yes for Wales* was

⁹¹ Labour Party Wales *Shaping the Vision: an Outline of Labour Party Wales Proposals*, Cardiff, Wales Labour Party, 1995, p.6.

⁹² McCrone, D. and Lewis, B. *op cit.* p.31

the primary actor in support of a Yes vote this was not a centralised or co-ordinated national campaign.⁹³ Instead, it was characterised by localised campaigns coupled with periodic announcements that distinct groups were supporting a Yes vote: Students Say Yes, Actors Say Yes, Women Say Yes, and several more.⁹⁴ Secondly, while *Yes for Wales* was credited as the official Yes campaign, the Wales Labour Party and the new Labour government were also involved in the campaign. While by most accounts there was some co-ordination between the campaigns, there were also the same kinds of tensions involved in cross-party campaigning that the Scottish Constitutional Convention had experienced in Scotland. This was especially clear in relations between the central Labour party in London and the Wales Labour Party on how to run the campaign.⁹⁵ Finally, there was evidence that Labour activists lacked enthusiasm for the campaign in the wake of their efforts in the general election, with the result that grass-roots Labour involvement in the campaign was limited. This led to Plaid Cymru activists – who were by no means sold on the merits of the devolution scheme, but who were known for their ability to put their “well-honed campaigning machine” into action – delivering Labour Yes leaflets in Cardiff and parts of the north-east of Wales.⁹⁶

These were necessary cross-party efforts. Opinion polls from the announcement of a referendum in 1996 until the week before the polls indicated that the result would be

⁹³ Barry Jones, J. ‘The Referendum: A flawed instrument’ in Barry Jones, J. and Balsom, D. (eds) *The Road to the National Assembly for Wales*, Cardiff, University of Wales Press, 2000, p.139.

⁹⁴ McCrone, D. and Lewis, B. *op cit.* p.31.

⁹⁵ *ibid.* p.30-31.

⁹⁶ *ibid.* p.34.

close, with most suggesting that those responding “don’t know” numbered just as many as those who had made up their mind to vote either Yes or No (see table 2.8).

Date	Yes	No	Don't Know
October 1996	39	32	28
March 1997	41	33	27
April 1997	34	37	30
July 1997	39	27	34
July 1997	43	29	28
August 1997	42	22	36
September 1997	37	36	26
September 1997	37	29	34

As in Scotland, the campaign was just beginning to gather momentum before the death of the Princess of Wales meant the suspension of the campaign for a week. The impact of this interruption was more keenly felt in Wales: a combination of the closeness of the polls and the fact Diana’s association with the Wales meant that the expected upsurge in British sentiment was more pronounced than in Scotland. On the day of the referendum itself, the mood among pro-devolutionists was low. When polls closed, Peter Hain told reporters he thought that it would be difficult for devolution to win. As the first few results were announced, Hain’s pessimism looked justified. The BBC’s referendum night programme actually announced a victory for the No campaign at around 3pm, only to retract their assertion when the final result was announced in Carmarthenshire. That region voted Yes in substantial enough numbers that what had looked like an inevitable defeat turned into a slim majority in favour of an Assembly (see table 2.9).

⁹⁷ *ibid.* p.36.

Table 2.9: Wales Devolution Referendum Result (1997)⁹⁸		
I agree that there should be a Welsh Assembly	I do not agree there should be a Welsh Assembly	Turnout
50.3%	49.7%	50.1%

On a turnout of just 50%, a margin of 6,721 votes separated those in favour from those against. By the terms of this referendum, this was a win for devolution, but with only 25% of the eligible electorate voting in favour, it was an inauspicious beginning for the National Assembly of Wales. Despite this perceived lack of public appetite for devolution, the result represented a decisive change in the mood of the public with regards to self-government, changing what had been a 4-to-1 defeat for devolution in 1979 into a narrow vote in favour of the new assembly.⁹⁹ Eventually, devolution – an issue which had been on and off the political agenda since the 1960s – was finally delivered to both Scotland and Wales.

And while this was the end of the story in terms of delivering an Assembly for Wales, the nature of the process that delivered it was to have significant repercussions for future attempts to deepen the devolution settlement. Two clear issues were apparent from the attempts to deliver devolution to Wales in the 1970s and the 1990s. The first was that public engagement on the issue had been lacking in any significant form, with the majority of the devolution debate having taken place internally within the Labour Party in Wales. The second, rather paradoxically, was that a precedent had been set

⁹⁸ Bogdanor, V. 1999 *op cit.* p.199.

⁹⁹ McAllister, L. 1998 *op cit.* p.149.

with regards to the use of referendums – that the Welsh public had to be consulted on the issue of constitutional change.

The Devolution Era

With the respective institutions established in Scotland and Wales in 1999, discussion within political circles turned to how to utilise the powers devolved. The first devolved elections in both institutions resulted in Labour returning the most seats but having no clear majority in either, formalising a coalition with the Liberal Democrats (quickly in Scotland, after an extended period of minority governance in Wales) in order to provide a stable government in each nation. Plaid Cymru, who had continually pointed out the perceived inadequacies of the Welsh devolution settlement prior to the referendum itself, adopted a much more conciliatory tone when the Assembly convened for the first time, preferring to do their best to make the system work – especially in the absence of a profound mandate from the Welsh public for devolution.

If the constitutional debate failed to spark in Scotland during the early years of the new devolved institution, the same cannot be said for Wales. Osmond recognises three distinct periods in the first term of the Assembly: an unsteady and unstable first 18 months of minority governance (followed by the resignation of First Secretary Alun Michael); the second, with stability provided by coalition governance and firm leadership from Rhodri Morgan, was marked by reflection on the practice of devolution and a review of the Assembly's procedures; and a third period, focused on

the upcoming election in 2003.¹⁰⁰ The middle period, constitutionally speaking, was particularly significant, for it represented an “emphatic rejection” of the corporate body model of devolution which had been established for Wales in the Wales Act 1998. This was embodied in the idea that the Welsh Assembly Government and the National Assembly for Wales were a single entity, with the same set of civil servants supporting the Assembly's procedures and delivering the administration's political objectives.¹⁰¹ In its place was a separation – inasmuch as the Assembly itself could change its own procedures – of the coalition and the remainder of the Assembly. This period also saw the establishment, as part of the coalition agreement between Labour and the Liberal Democrats, of the Richard Commission, to investigate the organisation and the powers of the Assembly and to report its recommendations for improvements in the following Assembly term.

The second term of the National Assembly of Wales continued where the first had left off on the constitution. The split between the coalition and the office of the Presiding Officer continued to lack formality, given that the separation could not be confirmed without further UK level legislation.¹⁰² Nevertheless, the distinct identities, characters and logos of the respective parts were enhanced during the second term. Further, the Richard Commission reported in 2004, recommending the formalisation of this separation (further putting the Assembly on the road towards becoming a parliamentary-type institution). The UK Government responded, issuing a White Paper *Better Governance for Wales* which accepted the confusion the corporate body

¹⁰⁰ Osmond, J. ‘From Corporate Body to Virtual Parliament: The Metamorphosis of the National Assembly for Wales’ in Hazell, R. 2003, *op cit.* p.18.

¹⁰¹ *ibid.* p.90.

¹⁰² Osmond, J. 2004 *op cit.* p 49.

model had caused and recognised the need to formalise the changes which had already come into existence.¹⁰³ *Better Governance for Wales* proposed a new Wales Act providing for some legislative powers to the Assembly, with the option to move to full legislative powers in twenty clearly articulated policy areas if the public indicated a desire to do so.¹⁰⁴ In the meantime – that is, prior to asking the public if such powers should be transferred to the Assembly – the National Assembly for Wales could apply for powers on an individual basis through Legislative Competence Orders (the process is examined in more detail in subsequent chapters).

The second Wales Act was passed in 2006 and scheduled to come into effect after the third elections to the Assembly in May 2007. Plaid Cymru focused upon the new Wales Act, arguing that, for the National Assembly for Wales to reach the status of a parliament granted to Scotland in 1999, it required the powers which would be devolved to it in full. Thus, in the 2007 devolved elections, the constitution played a central role in delivering a nationalist party into government – and in turn led to a renewal of the constitutional debate.

Conclusion

This chapter has emphasised the different ways in which the devolution debate developed in Scotland and Wales since it first breached the political agenda in the 1970s. The Cunningham Amendment proved the barrier to Scotland voting for devolution in 1979 (though with Wales voting 4 to 1 against, it was hardly a factor in the Welsh case) and as such, grievance at the outcome of the referendum played a

¹⁰³ Wales Office, *Better Governance for Wales*, Norwich, Her Majesty's Stationery Office, 2005, p.6.

¹⁰⁴ *ibid.* p.21.

role in re-invigorating civil society in Scotland during the 1980s. As a result, the Scottish Constitutional Convention did a great deal of work in setting in place the foundations for the substantial majority which was delivered in the devolution referendum in 1997. With the absence of such an organisation in Wales, devolution was delivered only by a wafer-thin margin, and as a result, the National Assembly for Wales has appeared a much more fragile institution with regards to public acceptance of its role. It is in part due to the outcomes of the devolution debates during the 1970s that the contemporary strategies of public engagement were developed in order to further constitutional objectives, as the following chapters demonstrate.

Chapter 3: The SNP and Plaid Cymru: Nationalist Parties in Regional Government

Introduction

No general theory of nationalism exists in the same way conservatism, socialism or liberalism exists¹ and there is no Burke, Marx or de Tocqueville as eloquent or elegant proponents of nationalism.² The 1700s are cited as the 'birth' of modern nationalism³ but it is only as recently as the 1960s that nationalism has become a 'global phenomenon of widespread academic interest'.⁴ This is particularly true in the case of Scotland, where the 1960s saw the breakthrough of the Scottish National Party (SNP) onto UK political stage, and of Wales, where *Plaid Cymru* saw their electoral breakthrough during the same period. This chapter seeks to chart the development of these parties using Kris Deschouwer's (2008) analysis of the lifespan of political parties. Beginning each section with a brief overview of the history of Scotland and Wales, this chapter seeks to place the development of nationalism in the context of historical claims to nationhood and establish the SNP and *Plaid Cymru* as the main vehicles through which those claims have been expressed. In doing so, this will provide the historical and political background to the subsequent chapters in which the parties' efforts in government to move forward with their constitutional aims are examined in detail.

¹ Özkirimli, U. *Theories of Nationalism: A Critical Introduction*, Basingstoke, Palgrave, 2000, p.100.

² Anderson, B. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London, Verso, 1983, p.5.

³ Hobsbawm, E. J., *Nations and Nationalism since 1970 (second edition)* Cambridge, Cambridge University Press, 1990, p.20; Smith, A. D (2001) *Nationalism: Theory, Ideology, History*, Cambridge, Polity Press, 2001, p.87.

⁴ Lynch, P. *SNP: A History of the Scottish National Party* Cardiff: Welsh Academic Press, 2002, p.3.

The Scottish National Party

While the SNP had existed in various forms (as a party, movement, splinter group) since the 1920s, it was only with their electoral breakthrough – Winnie Ewing’s stunning by-election victory in Hamilton in 1967 – that nationalism started to gain political importance in Scotland.⁵ Ernest Gellner’s conceptualisation of nationalism as a ‘principle which holds that the political and national units should be congruent’⁶ is one which is mirrored in the nationalism employed by the SNP. As a geographic entity, Scotland has had consistent national boundaries since the 1400s, an independent political culture until the 1707 Act of Union and distinctive religious, educational and legal institutions throughout its history.⁷ As James Kellas⁸ argues, nationalism in Scotland has taken advantage of these pre-existing distinctive cultural features and derived its membership and activists predominantly from these institutions. Peter Lynch notes that SNP membership derives mainly from these – educated – professions and focuses not upon aspects of cultural distinctiveness but on a civic conceptualisation of nationalism, a brand of nationalism which is more inclusive than the historical European experience.⁹ Ethnic conceptualisations (birthplace of ‘Scots’, anti-Englishness and even to an extent the promotion of Scots’ and Gaelic languages) have been largely absent from the SNP’s policy platform. Rather, the party has focused on constructing a narrative of inclusion, promoting self-government (and subsequently, independence) for Scotland and appealing to a notion of independence as a natural and proper state of affairs. It is the development of Scottish nationalism

⁵ *ibid.* p.115-6.

⁶ Gellner, E. (1983) *Nationalism*, London, Orion Books Ltd, 1983, p.1.

⁷ Lynch, P. 2002, *op. cit.* p.3.

⁸ Kellas, J.G. *The Scottish Political System – Fourth Edition* Cambridge, Cambridge University Press, 1989.

⁹ Lynch, P. 2002, *op. cit.* p.4

along these lines – from the establishment of the National Party of Scotland in 1928 to the present day SNP Scottish Government at Holyrood – that will be the focus of this section.

Emergence of Political Nationalism in Scotland

Utilising the work of Deschouwer and Pedersen in analysing the lifespan of political parties (and discussed in the previous chapter), it is a straightforward process to chart the development of the SNP. In the context of Scottish nationalism, the beginnings of the movement and the subsequent declaration of the SNP as a political party took place in a period of enormous upheaval in UK politics. Scotland in particular saw key changes to how it was represented. The extension of the franchise to women as well as the working class, and a political party (Labour) representing the latter which had firmly established itself in Scotland led to a change in the party system which had hitherto been dominated by the Conservatives and the Liberals.¹⁰ The electorate moved leftward for a variety of reasons – higher levels of unemployment, uncertainty over rent levels and the lack of government-initiated social reforms – all of which benefited Labour and put them in the ascendancy.¹¹ This was the beginning of a distinctly Scottish party system and one which the SNP were born into, albeit one which they struggled to make an impact on in their early days. Devolution was on the agenda as early as 1880, though it was in the context of Irish Home rule, which was subsequently passed by the UK Parliament in 1920.¹² The Scottish National Party was formed in 1934, merging two parties who supported constitutional change: the

¹⁰ Hutchison, I. G.C. *A Political History of Scotland 1832-1924* Edinburgh, John Donald Publishers, 1986, p.285.

¹¹ Hutchison, I. G.C. *Scottish Politics in the 21st Century* Basingstoke, Palgrave, 2001, p.54.

¹² Bogdanor, V. *Devolution in the United Kingdom* Oxford, Oxford University Press, 1999, p.68.

Scottish Party and the National Party of Scotland. While one (the Scottish Party) supported home rule, the National Party of Scotland supported independence, which quickly became the constitutional goal of the new party.

Table 3.1: SNP General Election Results (1929-1964)			
Election	Candidates	Votes	Vote (%)
1929*	2	3,313	
1931*	5	20,954	1.0
1935	8	29,517	1.1
1945	8	26,707	1.2
1950	3	9,708	0.4
1951	2	7,299	0.3
1955	2	12,112	0.5
1959	5	21,738	0.8
1964	15	64,044	2.4
*1929 and 1931 candidates for the National Party of Scotland			

Support grew for the SNP from protest voting at by-elections to tactical voting from supporters of other parties in areas where the SNP moved into a position where they could challenge for the seat. The party targeted the growing sense of Scottish identity and a desire for home rule which the Irish had successfully negotiated previously. Authorisation of the SNP as a political party arguably came in claiming their first MP in the Motherwell and Wishaw by-election in 1945. While the seat was held for fewer than three months – and did not prove the catalyst for an increased membership or levels of support – it did provide the party with an indication that they could attract some electoral support. However, the party continued to field small numbers of candidates in General Elections until the 1960s, and it was not until the Hamilton by-election in 1967 that the party really announced its arrival on the political scene in

Scotland.¹³ In the wake of the 1966 General Election, Labour had established themselves as the dominant party in Scotland, winning 49.9% of the vote and 46 seats compared to the Conservatives' 37.7% and 20 seats. The SNP had only contested the Hamilton seat once before and seemed unlikely to mount much of a challenge to Labour. In the event, Labour's vote in Hamilton collapsed and the SNP's candidate, Winnie Ewing, went on to win 46% of the vote and comfortably take the seat. While the result was a protest vote, predominantly against Labour's economic record in government (the pound was devalued by the Chancellor under three weeks later) unusually the electorate's support did not swing to the main opposition – the Conservatives – who polled only 12.5% of the vote.¹⁴ The SNP, buoyed by strong performances in the previous years' local elections and a swelling membership, were able to contest each of the four by-elections between 1966 and 1970 and make a strong showing in each. The result in Hamilton was just reward for the party who had gradually contested more seats across Scotland since its creation in the 1920s.¹⁵

From Authorisation to Representation: The 1970s

The cause and effect relationship between nationalism and its sociological and institutional surroundings are difficult to establish.¹⁶ Nationalist parties, as a blend of autonomist demands (as a primary political goal) with secondary characteristics of the established political families, have a birth and development that is difficult to determine, and that is no less the case in Scotland than elsewhere. The by-election

¹³ Lynch, P. 2002, *op. cit.* p.116.

¹⁴ *ibid.*

¹⁵ Bogdanor, V. 1999, *op. cit.* p.121.

¹⁶ Coakley, J. 'The Social Origins of Nationalist Movements and Explanations of Nationalism: A Review' in Coakley, J. (ed) *The Social Origins of Nationalist Movements*, London, Sage Publications Ltd, 1992, p.214.

victory in Hamilton provided a staging point politically and, crucially, provided the party with some media exposure which aided considerably in attracting new members and activists.¹⁷ It allowed the party to deliver its autonomist message to a wider audience and, despite losing the seat in the general election of 1970, gave the party credibility – and potential voters the confidence that the party could not only win seats, but hold its own in political debate.

Table 3.2: SNP General Election Results (1966-1974)				
Election	Candidates	Votes	Vote (%)	Seats Won
1966	23	128,474	5.0	0
1970	65	306,812	11.4	1
1974 (Feb)	70	633,180	21.9	7
1974 (Oct)	71	839,617	30.4	11

Taking the Hamilton by-election as a stand-alone event does not diminish from the SNP's achievement in winning the seat from Labour nor does it decrease the importance of the event as a staging point for the SNP's entrance into representative politics. It establishes that the party was able to convert local support into victory and continue its development from a protest party to having a representative. It was also a turning point for its political opponents – Labour and the Conservatives – who had previously ignored the Nationalists as a protest vote unlikely to upset the political dynamic they had established in Scotland.¹⁸ After Winnie Ewing's unlikely victory, however, they had no choice but to confront the SNP head-on – attacking their policies, delivering separate Scottish budgets (Labour) and declaring support for devolved legislation (Ted Heath's Conservatives). The SNP began to move the debate

¹⁷ Lynch, P. 2002, *op. cit.* p.116-120.

¹⁸ Bogdanor, V, 1999, *op. cit.* p.128.

on autonomy on the back of a single by-election victory. However, the party were to come back down to earth in the 1970 General Election. Despite losing the Hamilton seat (and 43 deposits across Scotland) the party won a seat in the Western Isles – their first in a general election – while taking over 300,000 votes, 11.4% of the Scottish vote. Though they did not know it at the time, the party were on the verge of moving into the next phase of Deschouwer’s party development: achieving blackmail potential.

Blackmail potential: The 1974 elections

The 1970s were to provide a strong test for the SNP and the level of their support. The discovery of oil in the North Sea provided the party with a second policy to campaign on and their slogan – ‘It’s Scotland’s Oil’ – was to prove effective in bringing the party electoral success in both February (seven seats, 22% of the Scottish vote) and October (eleven seats, 30.4% of the vote) 1974.¹⁹ Against a backdrop of rising global oil prices, the SNP’s slogan and policy resonated with the Scottish electorate, increasing the strength of the party both in terms of representation and impact. Between the two 1974 elections, the Labour government produced early legislation on devolution and the October election saw both Labour and the SNP campaign in support of devolution. There was some concern however, that, despite winning nearly one third of the vote in October 1974, the SNP’s success owed more to tactical voting from Conservative voters than actual winning over of the electorate. Later research has shown that the support actually came predominantly from core SNP voters and Labour/ Liberal defectors.²⁰ This led to debate within the SNP and no small measure of conflict over

¹⁹ *ibid.* p.125.

²⁰ Mitchell, J. *Strategies for Self-Government: The Campaigns for a Scottish Parliament*, Edinburgh, Polygon, 1996, p.209.

the strategy which the party should employ to win further seats (as well as retain the ones it had won) and, ultimately, the ideological direction the party should take. This debate ultimately focused upon two diverging attitudes. On the one hand, there were those (predominantly from the West of Scotland) who felt that the party would have won more votes and seats in Labour heartlands if the party displayed more in the way of leftist credentials – as well as being ideologically more left-wing – and urged the party to adopt a more left-leaning ideology. On the other side were the MPs elected in constituencies won from the Conservatives, who favoured a more centrist message – one which would not hurt them in a bid for re-election. The result was a party which voted both for and against the Labour government – and was attacked by both the Conservatives and Labour in the subsequent election. Prior to the 1979 election however were two events that would shape the next decade for the SNP: the failure of the devolution referendum and the vote of no confidence in the Labour government.

The SNP was in a quandary over the Scotland Bill 1978. On the one hand, self-government was finally on the government agenda, they had driven the political debate and they looked forward to having a legislative assembly in Scotland in which, they hoped to play a large part. On the other hand, devolution was not independence, it was designed to undermine the party and, crucially, its passage through Westminster and its implementation was in the hands of their political opponents. The party decided to support the legislation as a means to an end. While the bill passed its second reading in November 1977, it was the committee stage which was to prove its undoing as several amendments were added and accepted at the third reading including a controversial proposal, the Cunningham amendment, added by

opponents of devolution that a referendum – with 40% of the electorate voting in favour of the proposals – would be required for the legislation to become law.²¹ Thus the bill was passed and the referendum scheduled but it was not the referendum that the SNP or the Labour government had wanted. In spite of that, the party resolved to support the Yes campaign in March 1979.

The timing of the referendum could not have been worse for the Labour government, recovering as it was from the ‘Winter of Discontent’, low poll figures and trade union strikes across Britain. In the event, there was a narrow victory for the Yes campaign, with 51.6% of the vote. However, given that only 32.85% of the electorate had voted in favour of devolution, this was a decisive defeat for the legislation and, to all intents and purposes, for the SNP, who had forced the issue onto the political agenda. While the minority Labour government tried to bypass their own amendments to the bill, the SNP laid a motion of no confidence in the government, which was surpassed by a similar Conservative motion. The SNP MPs voted with the Conservatives to bring down the government. The subsequent election saw devolution – and the SNP – largely ignored. The party saw its share of the vote fall by 13%, and returned only 2 of the 11 MPs that had represented the party in the previous parliamentary session. The Conservatives were returned as a government, remaining so until 1997, and were largely uninterested in devolution but never forced into defending the status quo given the collapse in support for the SNP during the next decade.²² The referendum,

²¹ Bogdanor, V. 1999, *op. cit.* p.187

²² McLean, B. *Getting It Together: The History of the Campaign for a Scottish Assembly/ Parliament 1980-1999* Edinburgh, Luath Press Limited, 2005, p.44.

and the political ramifications of the vote for the SNP's constitutional policy, will be considered more fully in the closing chapter.

Back into the wilderness: losing blackmail potential in the 1980s

Internal conflict between the fundamentalists (those committed to instant independence) and gradualists (those who believed independence could be achieved through devolution, slow as it would be) continued to scar the SNP during the 1980s. Support for the party also declined both in electoral and organisational terms and the party's core principle of independence took a body blow with the defeat of the devolution referendum in 1979. However, from the late 1980s and into the 1990s, the party was able to bridge the strategic divide within while at the same time shifting further into the social democratic mould. The centre-right Conservative government grew unpopular in Scotland – particularly the decision to implement the new “Poll” Tax in Scotland a year earlier than in England²³ and the SNP were able to capitalise on this unpopularity by providing a separate – Scottish – version of the social democratic policies offered by the Labour party. While the Conservatives returned to office after general elections in 1983, 1987 and 1992, the party won an ever-decreasing share of the vote in Scotland.²⁴ General unpopularity with the Conservatives and their seeming indifference towards the political landscape in Scotland led to a revival for the devolution agenda.²⁵

²³ Kellas, J. 1989, *op. cit.* p.262.

²⁴ Bryant, C. G. A. *The Nations of Britain* Oxford, Oxford University Press, 2006, p.93.

²⁵ Lynch, P. 2002, *op. cit.* p.184.

Table 3.3: SNP General Election Results (1979-1997)				
Election	Candidates	Votes	Vote (%)	Seats Won
1979	71	504,259	17.3	2
1983	72	331,975	11.8	2
1987	72	416,473	14.0	3
1992	72	629,564	21.5	3
1997	72	621,550	22.1	6

Nationalism in Scotland continued into the 1990s where it had left the 1980s – with little electoral impact. Labour’s frustration continued after another electoral defeat in 1992 – their fourth in a row – which left them in opposition for another five years. However, Labour’s electoral weakness in England was not mirrored in Scotland where a healthy number of MPs were returned. Ideas were formulated within the Labour party suggesting that if the party could find a way to devolve some power to Scotland – with the electoral support they had north of the border – they could maintain power even if they could not win a UK General Election. The party joined with the Liberal Democrats, the Scottish Green Party, and business and church leaders (as well as, for a time, the SNP, though they later distanced themselves from the process) in establishing the Scottish Constitutional Convention.²⁶ The Scottish Constitutional Convention established a Claim of Right for Scotland, aiming to restore a measure of governance to Scotland. The claim was strengthened by the feeling that the Conservative government, with few Scottish MPs, lacked a mandate in Scotland.²⁷ While the Scottish Constitutional Convention did not force a change in government policy under the Conservatives, it did provide the blueprint for a devolved parliament in Scotland, a policy which the Labour party in Scotland was keen to adopt ahead of

²⁶ McLean, B. 2005, *op. cit.* p.118.

²⁷ *ibid.* p. 108.

the 1997 election. It also had an impact on the SNP’s consultation strategy, discussed in more detailed in the following chapter.

Governing potential: Opposition in the Scottish Parliament

When Labour won a landslide victory in the 1997 UK General Election they moved quickly to deliver their pre-election promise of referendums on devolved institutions for each of the constituent parts of the UK. A referendum was held in Scotland on 11 September 1997, posing two questions: whether respondents wanted a Scottish Parliament to be established and whether that Parliament should have tax-varying powers.²⁸ The SNP – after an extended internal debate – joined Labour and the Liberal Democrats in supporting referendum while the Conservatives, with no Scottish MPs to aid their campaign, campaigned against. The result was a resounding “yes” to both questions and after the legislation passed relatively untroubled through both Houses of Parliament, the first election to the Scottish Parliament was held on 6 May 1999.²⁹

Election	Candidates	Votes	Vote (%)	Seats Won
2001	72	464,314	20.6	5
2005	59	412,267	17.7	6
2010	59	491,386	19.9	6

Labour – expectedly – won a majority of the constituency seats but the proportional aspect of the Additional Member electoral system meant that they could not secure a majority of the 129 seats in the parliament, with a coalition agreement with the Liberal

²⁸ *Scotland’s Parliament*, Scottish Office White Paper, July 1997

²⁹ Brown, A. ‘Scottish Politics after the election: Towards a Scottish Political System?’ in Wright, A. (ed) *Scotland: The Challenge of Devolution*, Aldershot, Ashgate Publishing Ltd, 2000, p.37

Democrats the ultimate outcome. The SNP, with 35 seats, finished as the largest party outside the government, and styled themselves as the official opposition to the Labour-Lib Dem Scottish Executive, working at holding ministers to account while simultaneously pointing out the inadequacies in the devolution settlement. This “dual role” for the SNP in opposition mirrored the internal debates that the party was having at the time. On the one side were the gradualists (who had risen to prominence in the party) arguing that the party should use the Scottish Parliament as a vehicle to independence, to show the Scottish electorate that Scotland could be run from Edinburgh and that its politicians were willing and able to run the country. On the other side were the party’s fundamentalists, those who had been opposed to devolution from the start, who feared it was a means of stopping rather than aiding independence.³⁰ Outside the constitutional debate, the party established itself as the second party in Scotland – both in terms of votes and seats – for the first time, and it did so as a social democratic challenger to the Labour party. When Tony Blair took over Labour in 1994 with his ‘third way’ politics, re-branding the party as ‘New Labour,’ he did so by moving the party away from the socialist politics associated with Neil Kinnock and Michael Foot’s Labour party of the 1980s. Rather, the party moved to the centre, challenging the Conservatives on their own turf. This shift worked for the party in England where the Conservatives had continually beaten Labour in elections since 1979. And while Labour still won handsomely enough in Scotland, the SNP’s move towards social democracy meant that they could challenge Labour directly for their core – left of centre – vote.³¹

³⁰ Lynch, P. 2002, *op cit.* p.234.

³¹ Keating, M. *Nations Against the State: The New Politics of Nationalism in Quebec, Catalonia and Scotland* Basingstoke, Macmillan Press Ltd, 1996, p.179; Newell, J. L. ‘The Scottish National Party:

The 2003 Scottish Parliament election would prove a major setback for the SNP. With a new leader in John Swinney (Alex Salmond having resigned to return to his duties as an MP for Banff and Buchan at Westminster) the party aimed to close the gap to Labour but lost 8 seats. Labour's representation was also down, but the main beneficiaries of the reduction in their vote were not the established parties of the Liberal Democrats and the Conservatives. The Scottish Green Party, the Scottish Socialist Party and the Scottish Senior Citizens' Unity Party combined to win fourteen seats while three independents were also elected.³² The end result was a second Labour-Liberal Democrat coalition with a more disparate opposition than previously.

Table 3.5: Scottish Parliament Election Results (1999-2007)

	1999			2003			2007		
	Const. Seats	Reg. Seats	Total Seats	Const. Seats	Reg. Seats	Total Seats	Const. Seats	Reg. Seats	Total Seats
Labour	53	3	56	46	4	50	37	9	46
SNP	7	28	35	9	18	27	21	26	47
Conservative	0	18	18	3	15	18	4	13	17
Lib Dem	12	5	17	13	4	17	11	5	16
Green	-	1	1	-	7	7	0	2	2
SSP	0	1	1	0	6	6	0	0	0
Independent	1	0	1	2	1	3	0	1	1
Other	0	0	0	0	1	1	0	0	0

While Labour's re-elected First Minister Jack McConnell pledged to "do less, better,"³³

the SNP spent the next year working out what went wrong. Internal fighting led to a grassroots leadership challenge which, despite winning, damaged John Swinney's leadership of the party and, after a poor performance in the 2004 European election, Swinney stood down as leader. Alex Salmond returned to the leadership of the party,

development and change' in De Winter, L. & Tursan, H. (eds) *Regionalist Parties in Western Europe* London, Routledge, 1998, p.111.

³² Mitchell, J. 'Scotland: Expectations, Policy Types and Devolution' in Trench, A. (ed) *Has Devolution Made a Difference? The State of the Nations 2004* Exeter, Imprint Academic, 2004, p.21.

³³ Bradbury, J. & McGarvey, N. 'Devolution: Problems, Politics and Prospects' in *Parliamentary Affairs* April 2003, No. 56 p.221.

though he remained as a Westminster MP, leaving deputy leader Nicola Sturgeon as leader of the party in the Scottish Parliament.³⁴

The party fought the 2007 Scottish Parliament election with renewed vigour. Alex Salmond set ambitious targets for the party – aiming to win twenty constituencies, to return to Holyrood as the largest party in the parliament and to be ready to govern from day one. This ambition was reflected in their 2007 manifesto ‘It’s time to move forward’.³⁵ In it, the party set out their vision of government – a smaller, more joined-up executive than the previous administration – and for the future of an independent Scotland. Their campaign matched their manifesto for ambition and professionalism, organisation, and the positive message the party was trying to project.³⁶ In the end, the party scraped through as the largest party – by a single seat – and as the announcement was being made, Alex Salmond was arriving at Prestonfield House in Edinburgh – by helicopter – to address the media. The party had convinced the electorate that they were worth a chance and they were about to take office as the first Nationalist party to govern in any part of the UK.

Governing (2007-2011)

The parliamentary arithmetic was incredibly tight however.³⁷ With the SNP (47 seats) just a single seat ahead of Labour (46) and the Conservatives (17) and Lib Dems (16) some way back, a minimum-winning coalition (a majority of seats in the legislature – in this case 65) would require more than one partner for the SNP. Given the venom with

³⁴ Jones, P. ‘Scotland: The Nationalist Phoenix’ in Trench, A. (ed) *The State of the Nations 2008* Exeter: Imprint Academic, 2008, p.29.

³⁵ Scottish National Party, *Manifesto 2007 - It's Time to Move Forward*, Edinburgh, SNP, 2007.

³⁶ Jones, 2008, *op. cit.* p.44

³⁷ McEwen, N. ‘From Devolution to Independence? Scots elect their first nationalist government’ in *Policy Options* June 2007, p. 58.

which they had attacked each other in the election campaign, an oversize coalition with Labour was a non-starter, while the Conservatives had ruled out entering into a coalition agreement with any other party before the election. This left the Liberal Democrats, the two Green MSPs and the sole independent, Margo MacDonald for the SNP to negotiate with. Although a coalition agreement with the Liberal Democrats was explored, it quickly became apparent that no deal would be reached.³⁸ The main stumbling block appeared to be the Liberal Democrats' insistence that the SNP drop any plans for a referendum before negotiations began while the SNP pledged that 'nothing was off the table'.³⁹ Instead, the SNP planned for governing as a minority administration – the first taste of this form of government in Scottish politics. A deal – of sorts – was reached with the two Green MSPs, referred to as “confidence and supply,” which delivered the two Green votes for the election of Alex Salmond as First Minister on 16 May 2007.⁴⁰ The outcome of the process left the SNP in a position as a minority government: unable to call on the support of parliament to support government policy outright, but the lack of a coalition partner allowed them to retain doctrinal purity. This was an advantage – it allowed the SNP to remain committed to an independence referendum, as well as to abolishing university tuition fees and charges for prescription drugs without having to dilute their position in deference to a coalition agreement. Nevertheless, at times, it did make life difficult for the party – and policies such as the Local Income Tax and, eventually, the commitment to hold an independence referendum in the 2007-11 parliamentary term, had to be shelved due

³⁸ *ibid.* p.59

³⁹ Lynch, P. and Elias, A. 'Devolution in the UK and the Inexorable Rise of Scottish and Welsh Nationalism?' World Congress of Political Science Conference paper, July 2009, p.11.

⁴⁰ Scottish National Party/ Scottish Green Party, *Scottish National Party & Scottish Green Party Cooperation Agreement*, Edinburgh, SNP and SGP, 2007.

to lack of parliamentary support. However, in eight short years, the SNP had come full circle – from an internal debate questioning whether the party should support a Scottish Parliament to leading that very same institution as the first nationalist Government of Scotland.

Plaid Cymru

Nationalism in Wales derives from a similar root to that in Scotland, though the context of its existence is widely different from its Celtic cousin.⁴¹ Plaid Cymru's origins lay in two distinctly Welsh movements, whose aims were largely cultural – and not political. *Byddin Ymreolwyr Cymru* (The Welsh Home Rule Army) and *Y Mudiad Cymreig* (The Welsh Movement) aimed not at independence or even self-government but at protecting the Welsh language and establishing it as the solitary official language of Wales.⁴² While the party began contesting occasional parliamentary constituencies from the 1920s on, electoral politics were neither a concern for the movement nor a particular success. Direct action was not out of the question the movement in its early days – infamously in 1936 when three prominent members set fire to construction works at RAF Penryberth. The subsequent trial led to the establishment of more of a public profile for the party – and sympathy for their objectives, if not their actions.⁴³ However, it was not until the election of Gwynfor Evans as president of the party in the late 1940s that the organisation matured into a

⁴¹ Adamson, D. L. *Class, ideology and the nation: a theory of Welsh Nationalism*, Cardiff, University of Wales Press, 1991, p.7.

⁴² Davies, D. H. *The Welsh Nationalist Party 1925-1945: A Call to Nationhood* Cardiff, University of Wales Press, 1983, p.61; p.71.

⁴³ *ibid.* p.160.

political party – though electoral success was still some way off.⁴⁴ Indeed, it was not until Evans himself was elected in a Carmarthen by-election in 1966 that Plaid Cymru were to establish themselves as a political party with representation at Westminster. From then on – and coinciding with the SNP's by-election victory in Hamilton in 1967 – nationalism established itself as a political entity in both Scotland and Wales. It is this development of Welsh nationalism, from a movement defending and promoting the Welsh language to its position as a coalition partner in the Welsh Assembly Government in the shape of Plaid Cymru, which will be examined in this section.

While Scotland and Wales saw the development of similar party systems – culminating, in the twenty-first century, with the dominance of a social democratic (Labour) party and nationalist party ostensibly utilising the same political ground – the development of the party system in Wales is rather different from that of Scotland. For while – as a result of the 1707 Act of Union – Scotland retained its own independent legal, educational and religious systems while entering into political union with England, unique Welsh institutions were somewhat more limited in scope and reach. Indeed, given the dearth of Welsh-language education, the establishment of a non-conformist church in Wales was an important cultural and linguistic development in the history of Wales, preaching, as it was, in Welsh. At the same time, heavy industrialisation of Wales began, particularly in the valleys of the south where ironworks and coal-mining led to rapid population growth.⁴⁵ Disputes rose between those working in the mines and ironworks – predominantly Welshmen – and those who owned and ran them, who were more likely to be middle-class English migrants.

⁴⁴ McAllister, L. *Plaid Cymru: the emergence of a political party* Bridgend, Seren, 2001, p.61.

⁴⁵ Evans, D. G. *A History of Wales 1906-2000* Cardiff: University of Wales Press, 2000, p.10-11.

Conflict broke out between the two classes and bitter riots ensued, centred around conditions, pay and resentment of the class difference. Added to this fact was the large increase in population in Wales. In the hundred years from 1801 to 1901, the population of Wales rose from 587,000 to 2,012,000, with the largest rise in population concentrated predominantly in the industrial areas of south Wales. A considerable number were migrants from England in search of jobs. Subsequently, the left found its political home in the valleys of Wales, and by the 1940s Labour had replaced the Liberals as the dominant party in Wales.⁴⁶

Emergence of political nationalism in Wales

Turning to Deschouwer's party lifespan model, it is easy to identify distinct phases in the development of Plaid Cymru in Welsh politics. The emergence of Plaid Cymru – and indeed political nationalism in Wales – falls between the first two categories identified in Deschouwer's analysis: declaration and authorisation. Consistent with nations across Europe, nationalism in Wales had its beginnings in the late 1800s. The Liberal Party – at the time the dominant party of politics in Wales – led the call for autonomy in Wales with the establishment of *Cymru Fydd*.⁴⁷ This was an organisation predominantly of political elites which had as its sole aim self-government for Wales. While the timing of the venture could not have been better, seeking as it did to take advantage of non-political nationalism in Wales that had produced the National Eisteddfod in 1861, the University of Wales in 1893 and would subsequently see the National Library of Wales established in 1907, *Cymru Fydd* had little support outwith

⁴⁶ *ibid.* p.78.

⁴⁷ Davies, D. 1983, *op. cit.* p.7.

its membership, and the organisation fell away.⁴⁸ After the First World War and the independence of several European countries were secured, support for home rule in Scotland and Wales was strong.⁴⁹ Two small-scale nationalist organisations, the Welsh Home Rulers and the Welsh Movement met in 1925, agreeing to form a political party by the name *Plaid Genedlaethol Cymru* (National Party of Wales) whose principle aim was to re-establish Welsh as the language of Wales.⁵⁰ While the group declared itself a political party, it railed against the Welsh nationalism of the past and Westminster politics, believing the Parliament there to work against the interests of Wales and Welsh speakers and did not intend on contesting elections.⁵¹ However, having established *Plaid Genedlaethol Cymru* as a political party, competing in the electoral arena was a natural progression. It duly occurred at the UK General Election of 1929 when Lewis Valentine, one of the founder members of the party and President in 1925 and 1926, stood in the Caernarfon constituency, polling 609 votes.

Election	Candidates	Votes	Seats Won
1929	1	609	0
1931	2	2,050	0
1935	1	2,534	0
1945	7	16,017	0

The lack of electoral success led some commentators to conclude that the party – at this stage of its development – was much more successful as a pressure group for the Welsh language rather than as a political party. However, when Saunders Lewis took over the party’s presidency from Valentine in 1926 he brought with him an identifiable

⁴⁸ Adamson, D. 1991, *op. cit.* p.123-4.

⁴⁹ Davies, J. *A History of Wales*, London, Penguin, 1994, p.523.

⁵⁰ Davies, D. 1983, *op. cit.* p.61.

⁵¹ Evans, D. 2000, *op. cit.* p.105.

principle: to establish Wales on a par with England.⁵² Focusing principally upon the Welsh language under Lewis' leadership, the party launched a campaign to promote the language through broadcasting, withholding the payment of TV licence monies until such a concession was granted. Lewis moved the party towards policies of self-government and representation at the newly-formed League of Nations – policies which were represented an unsuccessful attempt at broadening the appeal of the party beyond its traditional support.

That was to change in 1936. The UK Government's decision to build a bombing school at Penyberth, for generations the home of Welsh poets, brought substantial opposition. A deputation to the Prime Minister representing the dissent of over 500,000 Welsh protesters was ignored. Construction began upon the bombing school, but before it could be completed, the building works were set on fire, Saunders Lewis, Lewis Valentine and D.J. Williams, a third member of *Plaid Genedlaethol Cymru* claiming responsibility for the act. At their trial in Caernarfon the jury failed to reach a verdict with the judge sending the case on to the Old Bailey in London. Saunders Lewis had been sacked from his position at the University College in Swansea even before the Old Bailey handed down nine month prison sentences, a decision which angered many of their supporters, as had the treatment of the Welsh language in the duration of the trial.⁵³ The event provided the authorisation of *Plaid Genedlaethol Cymru* as a political party among more than just their traditional support. The next challenge lay in achieving representation at parliamentary level.

⁵² McAllister, L. 2001, *op. cit.* p.24.

⁵³ Morgan, K. O. *Rebirth of a nation: a history of modern Wales* Oxford, Oxford University Press/ University of Wales Press, 1998, p.255.

The Long Road from Authorisation to Representation

An internal debate on how to harness this support followed. Lewis resigned the presidency in 1939 and the party moved towards embracing a new, more inclusive nationalism while the political direction moved from right to left. Gwynfor Evans was elected president of *Plaid Genedlaethol Cymru* in 1945, and it was under his leadership that the party was to find its first electoral success, albeit more than twenty years after his stewardship of the party began. The 1945 election saw the party record a creditable 25% of the vote in Caernarfon where their support had remained strong, but still could not make an electoral breakthrough. Evans produced a pamphlet entitled *Welsh Nationalist Aims* arguing that ‘although it insists upon the necessity of national freedom, Plaid Cymru has never demanded independence for Wales’.⁵⁴ Instead, Plaid argued for self-government, challenging other parties to support the principle. The Conservative UK Government partly conceded, granting the principality a Minister for Welsh Affairs in 1951 and recognition of Cardiff as the capital of Wales in 1955. The party advanced further by engaging with non-Welsh speakers, marketing themselves as a party for all of Wales and not simply Welsh-speakers, a necessary move in helping make the party electable.⁵⁵

However, it was an event outwith the party’s doing which was to provide them with an electoral opportunity. In 1956, Liverpool City Council proposed to make a reservoir by flooding the Tryweryn Valley, an area which included the Welsh-speaking village of Capel Celyn. Protests were widespread across Wales, and cross-party in nature. Thirty-five of the Welsh MPs opposed the bill with the other abstaining. Nevertheless,

⁵⁴ Evans, G. *Welsh Nationalist Aims* Cardiff, Plaid Cymru/ J. E. Jones, 1950, p.7.

⁵⁵ Davies, J. 1994, *op. cit.* p.623.

the bill passed in 1957 and the valley flooded in 1965. Plaid Cymru’s argument for home rule appeared to be borne out: Wales had no influence over its own affairs under the present constitutional set up. Unanimously, Wales had rejected this development and yet it went ahead: home rule was the only means of avoiding a repeat of this situation.⁵⁶ While devolution was not on the government agenda, the Council of Wales did, in the wake of the Tryweryn decision, recommend the creation of a Welsh Office, as well as a Secretary of State for Wales as a permanent representative for the nation in the UK Government. The recommendations were approved and effected in 1964 – one year before the flooding of Capel Celyn.⁵⁷

At the 1959 General Election – the first after the bill was passed – Plaid Cymru put forward 20 candidates across Wales and polled 77,571 votes, increasing their vote share to 5.2% but failing to see any MPs returned. And, despite passionate radio address from former leader Saunders Lewis in 1961 entitled “The Fate of the Language” leading to the creation of *Cymdeithas yr Iaith Gymraeg* (Welsh Language Society) which would provide a more militant defence of the language, progress was slow.

Election	Candidates	Votes	Vote (%)	Seats Won
1950	7	17,580	1.2	0
1951	4	10,920	0.7	0
1955	11	45,119	3.2	0
1959	20	77,571	5.2	0
1964	23	69,507	4.8	0
1966	20	61,071	4.3	0

⁵⁶ McAllister, L. 2001, *op. cit.* p.101.

⁵⁷ Morgan, K. 1981, *op. cit.* p.389.

However, one year after the opening of the Tryweryn reservoir, Plaid secured their first parliamentary seat. Party president Gwynfor Evans won a by-election in Carmarthen in 1966, securing 38.9% of the vote, finally establishing Plaid as an elected political party. Subsequent by-elections in Rhondda West (1967) and Caerphilly (1968) saw huge swings to the nationalists but in neither case were they able to secure a second parliamentary seat.⁵⁸ Though the flooding of Capel Celyn did have an impact in providing Plaid with a platform, Evans' victory in Carmarthen – as well as the close second places in Rhondda West and Caerphilly – have been seen in retrospect as a protest vote against the Labour, where various local factors also played a role.⁵⁹ New members and an increased share of the vote in elections did follow for Plaid, but success was not instant in the wake of Tryweryn.

Representation, Relevance and Blackmail Potential (1970s; 1997-1999)

The party were on the up. Labour had responded to Plaid Cymru's advance by discussing devolution but backed off from the issue under pressure from their Secretary of State for Scotland, who had concerns about rising nationalist sentiments there. In 1967, Plaid did gain a measure of policy success with the passing of the Welsh Language Act, which allowed Welsh to be used in Welsh courts, repealing certain aspects of the previous Laws in Wales Acts of 1535 and 1542. However, this policy success was not to save Gwynfor Evans' seat in the 1970 General Election.

⁵⁸ Morgan, K. 1981, *op. cit.* p.387.

⁵⁹ Tanner, D. 'Facing the New Challenge: Labour and Politics 1970 – 2000' in Tanner, D., Williams, C. & Hopkin, D. (eds) *The Labour Party in Wales 1900-2000* Cardiff, University of Wales Press, 2000, p.255.

Balancing the disappointment of losing the seat, there was a marked improvement in the competitiveness of Plaid. For the first time, the party contested every seat in Wales, trebling their vote from the 1966 election. While Evans was unsuccessful in his attempt to reclaim the seat – by a margin of 3 votes – in the first of the 1974 elections, Plaid finally made their breakthrough at a General Election, winning two seats in Caernarfon and Merionethshire. The October 1974 election saw Evans returned in Carmarthen, swelling Plaid’s representation to three.⁶⁰ This, coupled with the SNP’s return of 11 MPs in Scotland, firmly put devolution on the agenda and forced the Labour government, with a majority of three and requiring support from the Liberals and Nationalists to survive, to legislate for Assemblies in Scotland and Wales.

Election	Candidates	Votes	Vote (%)	Seats Won
1970	36	175,016	11.5	0
1974 (Feb)	36	171,374	10.7	2
1974 (Oct)	36	166,321	10.8	3
1979	36	132,544	8.1	2

However, as Bogdanor notes, support for Plaid in terms of votes actually *fell* from its height in 1970 in the two elections of 1974, despite their gaining seats.⁶¹ This, he suggests, is the beginning of where the 1979 referendum went wrong. Nevertheless, Plaid Cymru, with the party now on the political map, were now in a position to influence decision-making. While Labour had, in the 1960s, committed itself to an assembly in Wales, it had done so reluctantly and without the full support of its Welsh MPs – a familiar theme in contemporary Welsh politics. The bill brought forward in

⁶⁰ McAllister, L. 2001, *op. cit.* p.115-6.

⁶¹ Bogdanor, V. 1999, *op. cit.* p.156-7.

the 1970s was a compromise between what the Labour research group on devolution had wanted (a legislative Welsh Assembly) and what Labour's Secretary of State for Wales desired – an indirectly elected body with no legislative powers. The compromise – which found its way into the 1970s legislation, as well as the Government of Wales Act 1998 – was a directly elected Assembly, with the power only to enact secondary legislation.⁶² This was an idea which pleased no one. For Welsh Labour MPs, particularly Neil Kinnock and Leo Abse, the mere idea of devolution was to be opposed, and a referendum was demanded as an obstacle to the proposed assembly. For those who supported devolution and wanted home rule for Wales, the proposals did not go far enough, providing, as they did, a weak assembly with no real power.

When the Wales Bill was presented to the Commons alongside its Scottish counterpart, the Labour government was in a weaker position. The failure of the Scotland and Wales Bill the first time round had meant concessions were required – the first of those was that a referendum would be held to canvass public support for the assemblies. Consistent with the Scotland Bill, the Cunningham amendment was added to the Welsh referendum, requiring the consent of 40% of the electorate – as well as a majority in the referendum – in order for devolution to occur. After some internal debate, Plaid led the campaign in favour of the assembly, along with home rule supporters in the Labour party, who officially supported the policy.⁶³ Rebel Labour MPs – including the future Labour leader Neil Kinnock – campaigned vehemently against the proposals. In the event, devolution in Wales was resoundingly

⁶² *ibid.*

⁶³ Morgan, K. 1981, *op. cit.* p.403.

defeated by a margin of 4 to 1. While the SNP supported the Conservative motion of no confidence in the government, Plaid Cymru maintained their support for Labour. However, the government fell and after the subsequent election the Conservatives returned to power, repealing the both devolution Acts.

By 1981, only 19% of Welsh people spoke Welsh (see table 2.9). Gwynfor Evans, who had begun campaigning for the establishment of a Welsh language television channel during the 1970s, continued that campaign under the new Conservative government. And though he lost his Carmarthen seat to Labour in 1979, Evans remained a prominent figure in Welsh politics.

Table 3.9: Welsh Speakers (1901-1991)⁶⁴			
<i>Year</i>	<i>Welsh Speakers</i>	<i>Year</i>	<i>Welsh Speakers</i>
1901	49.9%	1951	28.9%
1911	43.5%	1961	26.0%
1921	37.1%	1971	20.8%
1931	36.8%	1981	18.9%
1941	No data (WWII)	1991	18.6%

When the Conservative government reneged on its commitment to establish a Welsh language television channel – a policy which had considerable support in Wales – Evans’ campaign was spurred into action: two thousand Plaid Cymru members announced a boycott of TV licence payment while Evans himself declared he would go on hunger strike in support of the creation of the channel.⁶⁵ Several months later, the Conservative government relented, and delivered the new channel, S4C, in November 1982. Though the party lost their blackmail potential in the wake of the new

⁶⁴ Evans, D., 2000, *op. cit.* p.219.

⁶⁵ Davies, J. 1994, *op. cit.* p.667.

Conservative government, they maintained policy relevance even without the influence that the previous minority government had provided them with.

Representation and return to Relevance (1979-1997)

After Evans' successful campaign for S4C, Dafydd Wigley succeeded him as party president for what would be a frustratingly quiet and relatively unsuccessful period in Plaid's history.⁶⁶ Although the party maintained its 2 MPs in the 1983 election – and even increased their representation to three MPs in 1987, the party's share of the vote continued to fall. The party moved leftward and at their conference in 1982 adopted the new programme of 'socialist inclusion,' attempting to establish for Wales a 'decentralised socialist state'.⁶⁷ The polarisation of Welsh politics in the wake of the 1984 miners' strike and the collapse of heavy industry in Wales posed Plaid further challenges, explaining to some extent this gradual leftward shift.⁶⁸ The party too, faced a challenge from Labour and the resurgent Liberal Democrats who, along with Welsh trade unions, began campaigning again for an elected Welsh assembly in the early 1990s.⁶⁹ However, rather than squeezing out Plaid Cymru, the backing of other Welsh parties for their central aim – a democratic Welsh assembly – lent the party credibility, and in 1992 they secured a fourth MP, surpassing the SNP in MPs and increasing their vote considerably.⁷⁰

⁶⁶ McAllister, L. 2001, *op. cit.* p.107.

⁶⁷ Christiansen, T. 'Plaid Cymru: dilemmas and ambiguities of Welsh regional nationalism' in De Winter, L. & Tursan, H. (eds) *Regionalist Parties in Western Europe* London, Routledge, 1998, p.127.

⁶⁸ *ibid.*

⁶⁹ Labour Party, *Meet the Challenge, Make the Change*, London, Labour Party, 1990; Liberal Democrats, *Changing Britain for Good*, London, Liberal Democrats, 1992; Wales Trade Union Congress, *Annual Report 1992-1993* Cardiff, WTUC, 1993.

⁷⁰ Christiansen, T. 1998, *op. cit.* p.128.

Election	Candidates	Votes	Vote (%)	Seats Won
1983	38	125,309	7.8	2
1987	38	123,599	7.3	3
1992	38	156,796	9.0	4
1997	40	161,030	9.9	4

And while the party saw an increase in representation so too did they see the impact of their campaigning. Welsh language use in the 1990s was, for the first time in several decades, was rising.⁷¹ The Welsh Language Act 1993 went further than any previous legislation in establishing the Welsh Language Board, which was tasked with the promotion of the language and policing the Act, formalising the use of Welsh in courts and putting the Welsh language on a par with English in public life. Plaid Cymru’s twin policy goals – self-government and promotion of Welsh language and culture – were in tune with the mood of the Welsh nation. The party maintained their level of support throughout the 1990s, widening their policy agenda to issues like nuclear disarmament, (as part of their historic commitment to pacifism) and environmentalism (their fourth MP in 1992, Cynog Dafis, was elected with Green party support).⁷² When devolution returned to the political agenda in the Wales in the 1990s, there was a wider support base for the policy. With Labour’s 1997 General Election victory – and pledge to hold pre-legislative referendums on devolution delivered within six months - there was a marked shift in the political setting in Wales.

⁷¹ *ibid.*

⁷² *ibid.*

Plaid Cymru were not as hesitant as they had been in 1979 despite the devolution settlement on offer being largely similar. They joined the “Yes for Wales” cross-party group which was established in February 1997 – three months before Labour’s victory – in order to campaign for a yes vote. While Labour and the Liberal Democrats both supported the campaign, there were several Labour MPs who campaigned on the opposite side. The campaign was disrupted when the Princess of Wales was killed in a car accident in August 1997, and there was concern that the media attention surrounding the death of a member of the British royal family might have a detrimental effect on the outcome of the referendum. Nevertheless, the referendum was held on 18 September 1997 – one week after a positive outcome in the Scottish referendum – in the hope that Scotland’s result would influence the Welsh vote. In the event a narrow majority – just 6,712 from a total of 1,112,117 votes cast – signalled a wafer-thin approval for a Welsh Assembly. It was hardly the resounding endorsement that the “Yes for Wales” campaign had been hoping for, but it was a victory nonetheless, achieved, as it was, on a turnout of just 50.1%. The two devolution referendums of 1979 and 1997, as well as their impact upon public engagement in Wales, are considered in more detail in chapter five.

Governing Potential (1997-2007)

The margin of victory – unlike in 1979 – did not matter, and the Government of Wales Act 1998 duly passed the UK Parliament, establishing the National Assembly for Wales. Plaid – with only 4 MPs – had achieved their aim of establishing self-government for Wales. Of course the settlement was not quite what they’d hoped for – an assembly with no primary legislative powers, with no separation between its executive and

legislative functions and limited support from the Welsh public – but it was a democratically elected Welsh Assembly. And it provided Plaid Cymru with an opportunity to gain more representatives – and more influence.⁷³ More than that though, the proportional electoral system for the new Assembly provided the party with the potential to govern – not as a majority but more likely as part of a governing coalition. The first election to the National Assembly for Wales in 1999 saw Plaid cause a shock by polling more than 600,000 votes across the two voting elements (the constituency vote and the regional vote) and returning 17 Assembly Members (AMs), including surprising wins in Islwyn, Llanelli and Rhondda, historically areas with large Labour support.

Election	Votes	Seats Won
1999 Welsh Assembly	290,572/ 312,048	(9+8) 17
2001 General	195,893	4
2003 Welsh Assembly	180,185/ 167,653	(5+7) 12
2005 General	174,838	3
2007 Welsh Assembly	219,121/ 204,757	(7+8) 15
2010 General	165,394	3

The success surprised even the Plaid leadership, who had expected to win thirteen seats.⁷⁴ The party were content to work in opposition, firstly to the minority Labour administration then to the Labour-Liberal Democrat Assembly Government, the party were keen to see the Assembly fulfil more of its potential. While Plaid lost the Ynys Môn seat at the 2001 UK General Election, the party did gain Carmarthen East &

⁷³ McAllister, L. 2001, *op. cit.* p.144.

⁷⁴ *ibid.*

Dinefwr as well as securing increasing their share of the vote for the third UK election in a row.

A party conference in 2002 saw new leader Ieuan Wyn Jones call for further devolution of powers and authority to the National Assembly for Wales, comparable with the powers of the Scottish Parliament. The Welsh Assembly Government established the Richard Commission to examine the powers of the Assembly, which recommended changes to the devolution settlement, both to the electoral system and the devolved powers.

However, the subsequent Welsh Assembly election saw the party lose five of the seats they had won in 1999, only just retaining their position as the largest opposition grouping in the Assembly. A further loss of a Westminster seat in 2005 followed, and Plaid recognised that changes were required if the party was to continue to challenge Labour in electoral politics in Wales. The party structure changed, switching the focus to the Assembly and giving prominence to the party leader there. Symbolic changes were made too – shortening the title of the party from ‘Plaid Cymru – The Party of Wales’ to simply ‘Plaid’ while the logo was changed for the first time since 1933, a yellow Welsh poppy replacing the three peaks, with yellow also becoming the official party colour as part of a fresh new image, ready to fight the 2007 Welsh Assembly election.

Governing (2007-2011)

Like the SNP in Scotland, Plaid contested the Welsh Assembly election in 2007 with energy and optimism surrounding the future of politics in Wales. The Government of Wales Act 2006 was due to be enacted after the election, providing the National Assembly for Wales with a minor increase in power (discussed in more detail in subsequent chapters). Not only was there hope that the Assembly could start to provide a better level of governance for Wales, the party internally, fresh from its radical overhaul, was enthusiastic. When the election came round, Plaid increased their representation to 15 AMs, regaining the Llanelli seat from Labour and the new Aberconwy seat in addition to a list seat gained. The 2007 election left Labour without a majority, and for the first month the party governed in minority while it explored coalition deals. There were three potential outcomes: A Labour-Liberal Democrat coalition (a repeat of the 1999-2003 agreement), a Labour-Plaid coalition or a rainbow coalition between Plaid, the Liberal Democrats and the Conservatives. On the face of it, as the largest of the 'rainbow' parties in the Assembly, the deal with the Liberal Democrats and the Conservatives would appear to have been the more prudent option for Plaid: it would have made Plaid leader Ieuan Wyn Jones First Minister of the Welsh Assembly, and the party would have had a clear hand in directing the policy of the Welsh Assembly Government.⁷⁵ However, that Plaid preferred instead to pursue a position as junior coalition partners to the Labour party – on the expectation that Labour were the only party which could deliver upon the referendum on further devolved powers – suggests that Plaid were motivated by the opportunity to deliver

⁷⁵ Wyn Jones, R. and Scully, R. *Wales Says Yes" Devolution and the 2011 Welsh Referendum*, Cardiff, University of Wales Press, 2012, p.77.

upon (constitutional) policy rather than office or vote success.⁷⁶ This commitment was made clear in the One Wales Agreement: a timetable to hold a referendum was established, and Labour were positioned to support an affirmative outcome. The Liberal Democrats' reluctance to enter into coalition government again left the One Wales coalition as the only real option on the table and, eventually, after protracted negotiations, an agreement was reached – based, predominantly, on the commitment to the referendum on further devolution.

Thus Plaid, a party who once opposed standing for office were now in coalition government in an elected Welsh Assembly. The decision to enter office is not an easy one⁷⁷ and the compromises brought through coalition government have an impact not only on how the party acts in the legislature but on the perception of the party both for activists and voters. Plaid's purpose in office was to move forward the agenda for change in the Welsh Assembly, seeking the devolution of more powers and the delivery of a referendum to that end. In the subsequent chapters, this thesis will examine how that process took shape, why public engagement was a crucial part of that process, and how successful the party was in delivering that message in government.

Conclusion

This chapter has charted the history of the SNP and Plaid Cymru by examining them in the context of Kris Deschouwer's analysis of party progression from declaration and

⁷⁶ Müller, W. C. and Strøm, K. *Policy, Office or Votes? How Political Parties in Western Europe make hard decisions*, Cambridge, Cambridge University Press, 1999, p.1.

⁷⁷ *ibid.*

authorisation as a party, establishing themselves with representation, becoming system relevant through blackmail and governing potential before taking the step into governing themselves. It has analysed this progression by identifying key incidents in each party's history which have characterised each of these phases and had an impact upon how the party has developed in the intervening years. The latter sections on each party analysed the move from opposition into government and the factors informing the decisions to govern alone (in the case of the SNP) and in coalition (in the case of Plaid). The subsequent chapters deal with the public engagement strategies of the parties in office. These include the specific constitutional consultations established by the respective governments (the *National Conversation* in Scotland and *The All-Wales Convention*) followed by a chapter which considers the outcome of those consultations: a further devolution referendum in Wales and the lack of a similar referendum in Scotland during the SNP's minority term in office.

Chapter 4: *A National Conversation*

Introduction

The Scottish National Party's position as the Scottish Government – albeit in a minority position – allowed the party to promote its constitutional preference through the apparatus of government. To this end, the SNP opened a consultation with the Scottish public entitled *A National Conversation* in the summer of 2007. This consisted of: the publication of a White Paper (*Choosing Scotland's Future*) setting out the Scottish Government's preferred constitutional option (independence); a predominantly online debate featuring blogs from Scottish Cabinet members, short videos and podcasts with information and summaries of Scottish Government events and heated discussion between contributors to the consultation; local events, such as question and answer sessions which have allowed the Scottish electorate the opportunity to raise with Scottish Government ministers a wide range of issues; and the publication of documents on several policy areas including fiscal autonomy, oil, foreign affairs and broadcasting which have set out how Scotland might react to independence in these policy areas, as well as potential powers short of independence.

This chapter will examine the construction of *A National Conversation* as a means of taking forward the SNP's constitutional goals and as an opportunity to engage with the public on the issue, as well as considering the reaction of opposition politicians to the SNP Scottish Government's actions. It will begin by looking at the origins and designs

of *A National Conversation*, and how it evolved from what was a small-scale web-based consultation to a much larger, event and publication-orientated debate with the Scottish electorate.

Next it analyses the public face of *A National Conversation*, the events themselves, arguing that while the consultation itself has proved popular, the constitutional debate has only provoked a minority of questions at these events. This led to questions over the independence agenda of the SNP, support for which remained static for the duration of *A National Conversation* though opinion polls did suggest that the SNP remained popular as a government. The public perception of independence is examined in the following section before the impact of *A National Conversation* is evaluated in terms of three criteria: how it contributed to setting the agenda within the Scottish political scene, how the opposition parties reacted, and how it provided the foundations for the Scottish Government's proposed referendum on Scottish independence. Finally, the chapter concludes by arguing that while *A National Conversation* proved a popular consultation, its impact upon the Scottish electorate's views on independence was limited, and that convincing the population that their primary policy objective – independence – is necessary remains a challenge for the SNP. Nevertheless, the success of *A National Conversation* in setting and maintaining the constitutional debate at the heart of the political agenda and engaging not only the political parties in Scotland but also much of civic society in the discussion cannot be understated.

Why consultation?

In the opening chapter, the notion that involving the population in the making of public policy through consultations as a societal good was considered.¹ And, indeed, that consultations promote an environment in which the decisions taken in the aftermath of public engagement appear more legitimate is also clear from the literature.² Consultations have become a “pervasive... feature of the policy process in Britain”,³ providing governments opportunities to engage with the public, “holding a dialogue and encouraging a debate”.⁴ However, the practice of consultation can “range from cosmetic ritual to meaningful bargaining between government and group”, meaning that while in some cases consultation makes a real difference to policy outcomes, in other cases the exercise is simply a means of appearing accessible and transparent.⁵

For the SNP, a constitutional consultation represented something that they had never had the opportunity to do before: engage the public through the apparatus of government on the issue upon which the party was founded. It was built as an attempt to do three things: build support for independence, engage the political and governmental establishment in Scotland on the constitutional debate and to maintain

¹ Baxter, G. ‘The Best Laid Schemes? The Provision and Accessibility of Government Consultation Information in the UK’ in *LIBRI – International Journal of Libraries and Information Services*, Vol. 6, No. 3, 2010, p.253

² Cornwall, A. ‘Locating Citizen Participation’ in *IDS: Institute of Development Studies Bulletin*, Vol. 33, No. 2, April, 2002, p.49.

³ Hogwood, B. W. ‘If Consultation is Everything Then Maybe It’s Nothing’ in *Strathclyde Papers on Government and Politics*, No. 44, 1986, p.11.

⁴ Jones, R. and Gammell, E. *The Art of Consultation: Public Dialogues in a Noisy World*, London, Biteback Publishing Ltd., 2009, p.3.

⁵ Hogwood, B. W. 1986, *op cit.* p.12.

the issue of independence on the political agenda in Scotland.⁶ To do so successfully meant engaging the Scottish public at various different events and through governmental publications over a sustained period of time. This strategy developed largely from the perceived success of the Scottish Constitutional Convention of the late 1980s and early 1990s in bringing about devolution in the first instance. That the party themselves were not involved in this process until such times as the referendum was secured and the campaign at the referendum itself was underway meant that they had not had the opportunity to engage with the public on such a large scale until they were in office in 2007.

The evident success of the Scottish Constitutional Convention (see chapter two) in achieving its desired outcome provided the party with a blueprint for their own consultation strategy. What is also striking here is that, though a Royal Commission on the Constitution had been established prior to the 1979 referendum, its pool of evidence was small, with only a handful of pressure groups and public bodies engaged in the process, including the Faculty of Advocates, the Law Society of Scotland, the Scottish Economic Planning Council and the Scottish Plebiscite Society.⁷ Indeed, in the period between the publication of the Commission's report and the first devolution bill, the devolution debate "took place mainly... within the Labour Party."⁸ While a "consultation document" was launched in the summer of 1974 on the issue, attempts at public engagement were limited – the document was published on 3 June and

⁶ Interview with Kevin Pringle (Scottish Government Special Advisor) (May 2010).

⁷ Drucker, H. M. and Brown, G. *The Politics of Nationalism and Devolution*, London, Longman, 1980, p.72.

⁸ *ibid.* p.87.

invited responses by 30 June, allowing very little time for evidence to be collected.⁹ Indeed, for much of the public, the first engagement with the issue of devolution, the first time they had been asked their opinion and been able and willing to answer, was on the occasion of the referendum in 1979. In essence, the referendum in 1979 – and to an extent in 1997 – *was* the consultation. Much has changed in the manner in which governments conduct consultations in the intervening period, not least the transparent nature of governing, the accountability of decision-making and the legitimisation of the decision-making process afforded by consulting the electorate.¹⁰ Thus, for a new party in government, the ability to engage with the public – and the necessity of doing so in an open and transparent manner – was one which was keenly grasped by the SNP. And though there was a clear lack of government-led consultation prior to the 1979 and 1997 referendums, the campaign for devolution provided some inspiration for the SNP’s consultation strategy.

The Roots of the Strategy: The Scottish Constitutional Convention

Mitchell examines the use of constitutional conventions by the Scottish National Movement throughout the twentieth century, and argues that “there has never been any serious attempt made to bring the Scottish public into the decision-making process”. Instead, they had been “elite affairs” which held a “disdainful attitude towards the Scottish people”.¹¹ However, the Campaign for a Scottish Assembly’s realisation of the concept was to be different – a vehicle for civic society, including

⁹ Bogdanor, V. *Devolution*, Oxford, Oxford University Press, 1979, p.152.

¹⁰ See National Consumer Council, *Government Consultations: Not Just a Paper Exercise – A Consultation Document*, London, NCC, 1997 and Cornwall, A. *op cit*.

¹¹ Mitchell, J. *Constitutional Conventions and the Scottish National Movement: Origins, Agendas and Outcomes*, Strathclyde Papers on Government and Politics, No. 78, Glasgow, University of Strathclyde, 1991, p.39-40.

political parties, to join together and engage in the debate and, crucially, to provide a united voice arguing the case for devolution. It was an idea which gathered momentum within civic society and, though the SNP dropped out after initially showing tentative support, Labour and the Liberal Democrats furnished the Convention with their combined 57 Scottish MPs, thereby providing the political legitimacy the fledgling organisation required. They were joined by all bar one of Scotland's MEPs (the SNP representative in Brussels), all 12 of Scotland's Regional and Island Councils and 47 of the 53 District Councils, as well as representatives of the Social Democrats, Co-Operative Party, the Communist Party of Great Britain, the Scottish Greens, the Orkney and Shetland Movement, several church leaders and the Scottish Trades Union Congress (STUC).¹² There was, however, a lack of input from the business community, though the National Federation of Self-Employed and Small Businesses (which would later become the FSB) did send representatives. While this was a Convention which drew representatives from a wide spectrum of Scottish society, some still argued that it was "difficult to see how it could claim to speak for Scotland".¹³ Indeed, even though it drew support from civic society, the Convention's membership appeared to be "socially narrow and very traditional in its composition and style".¹⁴ Despite its limitations and, most noticeably, the setbacks of Conservative electoral victories in 1987 and 1992, the Convention galvanised support around the concept of a Scottish Parliament and strengthened itself through public activities, including a vigil on Calton Hill beginning after the 1992 general election.

¹² Mitchell, J. 1991 *op cit.* p.15-16.

¹³ Mitchell, J. *Strategies for Self-Government: The Campaigns for a Scottish Parliament*, Edinburgh, Polygon, 1996, p.131

¹⁴ Paterson, L. and Wyn Jones, R. "Does civil society drive constitutional change? The case of Wales and Scotland" in Taylor, B. and Thomson, K. (eds) *Scotland and Wales: Nations Again?* Cardiff, University of Wales Press, 1999, p.180.

Origins and Designs of *A National Conversation*

In their 2007 manifesto for the Scottish Parliament election, the SNP promised the:

*Publication of a White Paper detailing the concept of Scottish independence in the modern world as part of preparations for offering Scots the opportunity to decide on independence in a referendum, with a likely date of 2010.*¹⁵

When the party won the election 2007 Scottish Parliamentary election – by the slimmest of margins – it was this commitment to hold a referendum on independence that was to foil negotiations with the Liberal Democrats and force the SNP into governing alone.¹⁶ Support for the SNP’s constitutional preference of independence within the Scottish Parliament was limited to the SNP themselves, the two Green MSPs (Robin Harper and Patrick Harvie) and Independent MSP Margo MacDonald, a former member of the party. The staunchly unionist Conservative party lined up in opposition with Labour and the Liberal Democrats, the latter in favour of providing more powers to the Scottish Parliament but stopping well short of independence. The arithmetic for the SNP was bleak – with only 50 of the 129 MSPs in favour, the party lacked a majority to legislate for a referendum on independence.

Nevertheless, the party held to their manifesto commitment and produced a White Paper entitled *Choosing Scotland’s Future – A National Conversation* in August 2007, only three months after taking office. This began what would be a three-year consultation on Scotland’s constitutional future. It was a malleable process, designed to adapt to the changing circumstances and political environment of the time. As was

¹⁵ Scottish National Party, *Manifesto 2007: It’s Time*, Edinburgh, Scottish National Party, 2007, p.8.

¹⁶ Lynch, P. and Elias, A. ‘Devolution in the UK and the Inexorable Rise of Scottish and Welsh Nationalism?’ World Congress of Political Science Conference paper, July, 2009, p.11.

pointed out to the author, *A National Conversation* was not the policy of the Scottish Government – independence for Scotland was. The consultation process was just that – a process designed to move Scotland closer to that constitutional future.¹⁷ However, *A National Conversation* bears all the hallmarks of a policy process, whether the Scottish Government recognised it as such or not. Hogwood and Gunn note nine stages through which an issue may pass with regards policy analysis (box 4.1) and indicate that, although the order of the stages may be different and that actors may not consciously be performing those roles specifically, the process of progressing a policy often follows these stages.¹⁸

Box 4.1: Stages of Policy Analysis¹⁹

1. Deciding to decide (agenda-setting)
2. Deciding how to decide (issue filtration)
3. Issue definition
4. Forecasting
5. Setting objectives and priorities
6. Option analysis
7. Policy implementation, monitoring and control
8. Evaluation and review
9. Policy maintenance, succession or termination

Taking the stages in the order listed and applying them to *A National Conversation* shows some correlation with the model. Stages one and two are really party-level decisions. The issue of constitutional change – specifically independence – is the party's *raison d'être*, and the issue required movement, not only to maintain activist support but also given the opportunity that the party's first term in office afforded

¹⁷ Interview with senior Scottish Government Official (March 2010).

¹⁸ Hogwood, B. W. and Gunn, L. A. *Policy Analysis for the Real World*, Oxford, Oxford University Press, 1984, p.4.

¹⁹ *ibid.*

them. It was a key component of their manifesto and, though there would be repercussions and costs to be met, it was central to the party's ideology. The definition of *A National Conversation* remained quite vague in the early stages but the SNP as a governing party were able to proceed with forecasting, speculating in *Choosing Scotland's Future* about the "alternative possible futures" Scotland faced.²⁰ The objective of *A National Conversation* was thus threefold: to lay the groundwork for an independence referendum at some point in the future; to engage the public in discussions about Scotland's constitutional future and to maintain the issue on the political agenda.²¹ The first of those could be described as the "ultimate" goal, while the latter two "proximate" goals, the means to the higher end that is independence.²² In terms of option analysis, consultation was the preferred choice of the SNP, primarily because it allowed the party to engage the public in discussion about the constitution and did so through a type of process with which they were familiar, thereby using a traditional method (consultation) to normalise a debate (constitutional change) which had not commonly been discussed in public forums.²³ The implementation and evaluation of the policy process will be dealt with in subsequent sections. Finally, the maintenance of *A National Conversation* over a three-year period indicates continual review of the process.

Thus, with regard to Hogwood and Gunn's model for policy analysis, *A National Conversation* can clearly be conceptualised as a policy. However, while consultation is

²⁰ *ibid.* p.8.

²¹ Harvey, M. and Lynch, P. 'Inside the National Conversation: The SNP Government and the Politics of Independence 2007-2010' in *Scottish Affairs*, No. 80, Summer 2012(b), p113.

²² Hogwood, B. W. and Gunn, L. A. 1984, *op cit.* p.157.

²³ Interview with Keith Brown MSP (then-Minister for Schools and Skills) (April 2010).

a fairly common tool of governance, this consultation was distinctive for the SNP in that it was directed not at a policy area such as health or education, but at the party's core value – independence. In this respect, it was like no other consultation, and was much more of a means to an end than an end in itself.²⁴

A National Conversation – White Paper

The White Paper itself set out what the Scottish Government viewed as three “realistic choices” for the future of Scotland. These were: maintaining the status quo of a Scottish Parliament within the United Kingdom, redesigning devolution to extend the powers of the Scottish Parliament (including fiscal powers but short of independence) and the Scottish Government's preferred option, independence.²⁵ The Scottish Government went to great lengths within this document to show that this was not to be a one-way street, that all views, even – and perhaps, in particular – those which were opposed to independence, were welcomed within the discussion.²⁶ Schedule 5 of the Scotland Act (1998) details the powers which are, at present, reserved to the UK Parliament. These include international relations, defence, the economy, immigration, energy, social security, broadcasting and the constitution.²⁷ Chapter 2 of the *Choosing Scotland's Future* saw the Scottish Government propose several alterations to the

²⁴ The Scottish Government lists on its website (www.scotland.gov.uk/Consultations/Current) the consultations which are active at any given period of time. At the time of writing there were 24 active consultations, on issues ranging from Procurement Reform to Biodiversity.

²⁵ Scottish Government, *Choosing Scotland's Future: A National Conversation – Independence and Responsibility in the Modern World*, Edinburgh, Scottish Government, 2007, p.vii-viii.

²⁶ Jones, P. 'Scotland: The Nationalist Phoenix' in Trench, A. (ed) (2008) *The State of the Nations 2008* Exeter, Imprint Academic, 2008, p.51; Mitchell, J. 'Ever Looser Union' in Trench, A. (ed) *The State of the Nations 2008*, Exeter, Imprint Academic, 2008, p.254.

²⁷ HM Government *Scotland Act 1998*, Schedule 5, London, Her Majesty's Stationery Office.

Scotland Act 1998 which would strengthen devolution.²⁸ The proposals included the devolution of powers in the field of taxation, energy policy, firearms legislation, employment law and broadcasting.²⁹ These proposals were pragmatic in their approach: the party recognised that their own constitutional preference – independence – was not the constitutional preference of the majority in the Scottish Parliament (and, indeed, according to opinion polls, only a minority of the Scottish population).³⁰

Thus, by presenting their own, more radical, goal alongside proposals which would provide the Scottish Parliament with more powers, the SNP were able to promote their second preference – more powers for the Scottish Parliament – as a more reasoned, less radical proposal. This transformed the end-game that the SNP were playing.³¹ Instead of presenting themselves as a government transfixed upon independence, stopping at nothing to achieve their constitutional goal, the party changed the rules of the game. Rather than seeing independence as a zero-sum, all-or-nothing game, the option of constitutional reform stopping short of independence – or, as it was subsequently approximated, “devo-max” – meant that the SNP could legitimately argue that they have made progress towards their long-term goal, if and when devolved powers are extended into other areas.³² The inclusion of a further

²⁸ Lynch, P. ‘Regionalist Parties, Economic Development and Regional Government: The SNP in Government 2007-2009’, Conference Paper, IXth Congreso Asociación Española de Ciencia Política y de la Administración (AECPA), Malaga, September, 2009, p.12-13.

²⁹ Scottish Government, 2007, *op cit.* p.11-17.

³⁰ TNS System Three polls for the Sunday Herald, cited Curtice, J. ‘Public Attitudes and Elections’ in Cairney, P. (ed) *Scotland: Devolution Monitoring Report*, UCL, London: The Constitution Unit, May, 2009(b), p.16-17.

³¹ Müller, W. C. and Strøm, K. *Policy, Office or Votes? How Political Parties in Western Europe Make Hard Decisions*, Cambridge, Cambridge University Press, 1999, p.306.

³² Lynch P. and Elias, A. *op cit.* p.20.

constitutional option would also play an important role later in the process towards the referendum, particularly with regard to the ballot paper design (specifically, whether there should be a single question on independence, or a second question asking if voters wanted “devo-max”) and the campaigns themselves. That it was the SNP which proposed a third constitutional option – extended devolution short of their constitutional goal of independence – was also an insight into the party’s strategy. The 1980s divisions between fundamentalists and gradualists within the party appears to have been settled in the ascendancy of the latter, with the party now apparently happy to accept further devolution as a stepping stone towards independence. Indeed, as it was put in interviews with the author, “everyone is a gradualist now”³³ and “‘devo-max’ would be a great success for the SNP, part of a continuum on to independence”.³⁴

Naturally though, independence did feature heavily in the White Paper alongside these proposals. Chapter 3 set out the steps which would be taken in order that Scotland “achieve” full independence, the likely format of negotiations with the UK Government and the European Union in order to continue membership of the latter, the Scottish Government’s view of defence and foreign policy and the relationship between Scotland and the monarchy post-independence.³⁵ A draft form of the SNP’s proposed referendum question was included in Annex B of the White Paper:

³³ Interview with Alasdair Allan (SNP MSP) (March 2010).

³⁴ Interview with Ian McKee (SNP MSP) (March 2010).

³⁵ Scottish Government, 2007, *op cit.* p.18-24.

*The Scottish Government should negotiate a settlement with the Government of the United Kingdom so that Scotland becomes an independent state.*³⁶

The White Paper made clear that the Scottish Parliament has no competence over the UK constitution, but proposed that if the question were framed in such a way as a precursor to negotiations on independence rather than as a demand for independence, the Scottish Parliament would likely have the competence to hold such a referendum.³⁷

This is derivative of the work of one of the SNP's foremost legal and constitutional scholars, the late Neil MacCormick, who argued that such a referendum, with an advisory nature, would be well within the competence of the parliament.³⁸ He pointed out that an advisory referendum would be consistent with previous UK referendums (since the UK's unwritten constitution makes no provision for referendums to be legally binding) and that, in the event that the Scottish population vote in favour of the SNP's proposal, such a vote would be sufficient for secession negotiations to begin.³⁹ And though a referendum was the stated end point of the Scottish Government's *National Conversation*, the process of getting to that point and how the government presented their case, as well as the debate surrounding the constitutional future of Scotland, is important in itself. It is this debate which the

³⁶ *ibid.* p.35.

³⁷ *ibid.*

³⁸ MacCormick, N. 'Is There a Constitutional Path to Scottish Independence' in *Parliamentary Affairs*, 2000, Vol, 53, No. 4, p.726.

³⁹ *ibid.* p.723, p.726.

Scottish Government's White Paper began and one which the *National Conversation* consultation sought to develop on the road to a referendum on independence.⁴⁰

The White Paper was the first step to this end. It allowed the SNP to give substance to their constitutional goals through the apparatus of government. They were able to use their position as the Scottish Government to present their proposals, not in a party political manifesto but – for the first time – as a government document, with the intention of producing legislation in this area and moving forward towards independence. This is important in several respects. By making the “hard choice”⁴¹ of taking office, the SNP gave themselves the opportunity to achieve – or at the very least, advance – their constitutional goals through governing. The party could thus call on the expertise of civil servants, special advisors and constitutional experts in order to evaluate and refine their strategies in campaigning for independence. History will show the SNP have always been in a position to influence the policy positions of state-wide parties by increasing their electoral viability and campaigning vigorously for a measure of home-rule for Scotland – with varying degrees of success.⁴² However, as a party of government, the party was able to set the agenda on the constitutional debate by establishing their own government consultation process. The *National Conversation* process was prefaced by the White Paper, which set the tone for the debate and the parameters for discussion. But this was just the beginning of the

⁴⁰ While the Scottish Government were keen to solicit the views of the Scottish electorate on the constitutional question, this was not an exercise in “constitutional crowd-sourcing”, as seen in the case of reforming the Icelandic constitution between 2011 and 2012. See Gylfason, T. ‘From Collapse to Constitution: The Case of Iceland’ in *CESifo Working Paper*, June 2012, available online at: www.cesifo-group.de/portal/pls/portal/docs/1/1214953.PDF for more details on the Icelandic constitutional process.

⁴¹ Müller, W. C. and Strøm, K. *op cit.* p.1.

⁴² Bogdanor, V. *Devolution in the United Kingdom* Oxford, Oxford University Press, 1999, p.127-8.

process, and one which made clear from the outset the intentions of the SNP Scottish Government – to build towards and win a referendum on independence to be held in 2010.

Aims of A National Conversation

Herein lay the objectives – both formal and informal – of *A National Conversation*. The primary objective of the consultation was to lay the groundwork for a referendum on independence. This was made clear in the introductory White Paper.⁴³ However, even this was a minor misrepresentation of the consultation’s objectives. For while building towards a referendum did dominate the Scottish Government’s thinking through the consultation, independence itself – and not the referendum – was the long-term objective of the process.⁴⁴ Building towards a yes vote at a referendum then, could be understood as the key objective of the process. Nevertheless, behind this objective lay several secondary aims. Firstly, and perhaps most importantly, the consultation allowed the party to set the political agenda in Scotland. This was a key consideration of *A National Conversation* and provided “a tangible means of judging the success of the consultation”.⁴⁵ Agenda-setting was key to the SNP’s strategy of normalising the constitutional debate, providing the party with the opportunity to explain their vision of independence through an “apparatus which was bigger than the party” and, perhaps even more crucially, engaged the civil service in Scotland in the constitutional debate, preparing the wider Scottish Government for the possibility of

⁴³ Scottish Government, 2007, *op cit.* p.18-24.

⁴⁴ Interview with a senior Scottish Government Official (March 2010).

⁴⁵ Interview with Kevin Pringle, Special Advisor to the Scottish Government (March 2010).

independence and what it would mean for government.⁴⁶ Public engagement then, was crucial to the SNP's strategy, not only as a means of promoting their constitutional goal, but also as a means of placing and maintaining the constitutional issue on the political agenda and engaging the political classes (as well as the machinery of government and the media) in discussions upon the issue.

A National Conversation – A National Process

Phase one of *A National Conversation* began with a speech by First Minister Alex Salmond at Napier University on 14 August 2007 and the launch of the White Paper *Choosing Scotland's Future*. The First Minister indicated that it was “the start of the next... phase of Scotland's progress of constitutional reform.”⁴⁷ He also argued that “there is now no substantive debate about whether there should be change, only what change there should be,” and that a “range of options” would be considered in the process of consultation.⁴⁸ At the same time, an interactive website was launched on which Cabinet Secretaries and Ministers from the Scottish Government contributed articles and blog posts and which allowed the public to post comments and join discussions on a wide range of topics related to the constitutional debate. For six months, the consultation process was predominantly limited to written submissions – articles by Cabinet members and comments, letters and emails from the public, with only the First Minister delivering a series of public lectures to keep the consultation in the public eye.⁴⁹ A St Andrew's Day lecture on national days was the first of these, in

⁴⁶ Interview with a senior Scottish Government Official (March 2010).

⁴⁷ Salmond, A. *Launch of A National Conversation*, speech at Napier University, 14 August, 2007(a).

⁴⁸ *ibid.*

⁴⁹ Keating, M. 'The Scottish Constitutional Debate' in Cairney, P. (ed) *Scotland: Devolution Monitoring Report*, UCL, London: The Constitution Unit, May, 2009, p.6.

which the First Minister emphasised the nature of the constitutional process, arguing that “the case for consulting the people is unanswerable.”⁵⁰ At the Playfair lecture, the First Minister reiterated his party’s position that “an independent Scotland has at its core an active and positive membership of the EU.”⁵¹ The message that Scotland would play an active role in global politics was one which was further emphasised in the First Minister’s subsequent lecture, to the Scotland in the World Forum at the University of Aberdeen. Here, he argued that it is “those smaller, independent nations which have been the great success story;” that “independence matters” but that “interdependence is a welcome fact of modern global politics.”⁵² And these themes continued to play a large part in the First Minister’s public appearances as he gave speeches in Dublin, Virginia and Brussels, widening the discussion to an overseas audience and making clear the international relevance of the constitutional debate.

Box 4.2: First Minister Speeches at *National Conversation* events⁵³

- Launch of *Choosing Scotland’s Future* – Napier University, August 2007
- Playfair Lecture – Edinburgh University, December 2007
- Scotland in the World Forum – University of Aberdeen, February 2008
- Shaping Scotland’s Future – Trinity College, Dublin, February 2008
- Launch of Phase Two of *National Conversation* – Edinburgh, March 2008
- Scotland and America – University of Virginia, April 2008
- *Choosing Scotland’s Future* – Scotland House, Brussels, April 2008

⁵⁰ Salmond, A. *St Andrew’s Day Lecture*, National Days Conference, Glasgow Caledonian University, 30 November, 2007(b).

⁵¹ Salmond, A. *Playfair Lecture on the 40th Anniversary of the Europa Institute*, Edinburgh University, 12 December, 2007(c).

⁵² Salmond, A. *Reflections on Scotland in the World*, Lecture to the “Scotland in the World” Forum, University of Aberdeen, 4 February, 2008(a).

⁵³ The First Minister’s participation at *National Conversation* events is part of the list of events comprising the process, available on the Scottish Government’s website at: <http://www.scotland.gov.uk/Topics/a-national-conversation/nctimeline>

These public engagements played a different role to the question and answer sessions of the Cabinet roadshows. Far from being a two-way conversation with the public, these events were traditional political speeches, with the First Minister setting out his – and the Scottish Government’s – views on governance, independence and the political process. They provided a starting point for the later discussions as well as being relatively large media events which engaged the (predominantly anti-independence) Scottish press in discussions about Scotland’s constitutional future. While the editorials of these newspapers may not be to the Scottish Government’s taste, the fact that the press was writing about independence and the *National Conversation* was a step forward in itself for both the SNP and the Scottish Government.⁵⁴ This was about setting the political agenda. The opportunity to address wide audiences both at the events themselves and through the media reports allowed Alex Salmond to control the constitutional agenda. With no opposition politicians present at the *National Conversation* publication launches or public speeches, the Scottish Government has taken the opportunity to present the public with a clear idea of their view of independence. Indeed, the fact that the events themselves allowed for direct engagement with the public – “without the traditional anti-SNP, anti-independence media filter” – was seen as a clear advantage to the Scottish Government’s consultation.⁵⁵

Phase two of *A National Conversation* began with another public lecture from Alex Salmond, this time delivered to leaders of several Scottish institutions – schools, businesses, trade unions and churches. Here, the First Minister stressed the “broad

⁵⁴ Harvey, M. and Lynch, P. 2012(b), *op cit.* p.95.

⁵⁵ Interview with Stuart McMillan (SNP MSP) (March 2010).

acceptance across the entire political spectrum” that Scotland required “greater decision-making responsibility” and welcomed any moves towards this end – including what was at the time a proposal by the opposition unionist parties to establish a Commission on Scottish Devolution.⁵⁶ What was also a clear message from the First Minister’s speeches was that the Scottish population should be consulted as to their preferred constitutional future, reiterating his view that “the people are sovereign” and that “the right to choose the future for this country is their right”.⁵⁷ Thus, it was clear early in the consultation process that, in the Scottish Government’s view, the public should have a central role in the constitutional debate. And this was evident throughout this phase of *A National Conversation*, which was marked by more public events, including meetings with several of these institutions, as well as Cabinet meetings scheduled around Scotland and public meetings in the style of Question and Answer sessions, where members of the public were invited to share their thoughts, questions and concerns with Cabinet Secretaries and Ministers present.

At the same time, the Scottish Government published several documents on several different aspects of policy (box 4.3) while reiterating their intention to introduce a bill proposing a referendum on independence for Scotland in the 2009-2010 parliamentary session. Phase three was intended to include the campaign for a referendum and the referendum itself – but, given the lack of a parliamentary majority for a referendum, this bill was never brought forward. The lack of a referendum is discussed in chapter six.

⁵⁶ Salmond, A. *National Conversation with Scotland’s institutions* speech, Edinburgh, 26 March, 2008(b).

⁵⁷ *ibid.*

Box 4.3: Scottish Government *National Conversation* Publications⁵⁸

- **Choosing Scotland's Future White Paper** (August 2007)
- **Fiscal Autonomy in Scotland** (February 2009)
- **An Oil Fund For Scotland** (July 2009)
- **Europe and Foreign Affairs** (September 2009)
- **Opportunities for Broadcasting** (September 2009)
- **Rural Affairs, Environment and Climate Change** (October 2009)
- **People and Communities** (November 2009)
- **Employability and Skills** (November 2009)
- **Energy** (November 2009 – web only)
- **Supporting Business and Enterprise** (November 2009 – web only)
- **Your Scotland, Your Voice White Paper** (November 2009)

The consultation itself was designed to allow the Scottish population an opportunity to engage with the constitutional debate. The White Paper, *Choosing Scotland's Future*, as detailed above, gave an overview of the Scottish Government's position and the various other constitutional options available to Scotland. In February 2009 the Scottish Government Published *Fiscal Autonomy in Scotland: The case for change and options for reform*, examining the options for change in relation to the fiscal arrangements surrounding the Scottish Parliament. Here, the Scottish Government set out five potential scenarios:

- Full fiscal autonomy in an independent Scotland
- Devolution "max" – full fiscal autonomy within the UK ("devo-max")
- Creating enhanced devolution
- Assigning revenues to the Scottish Parliament
- Continuing with, or marginally changing the current framework⁵⁹

⁵⁸ A *National Conversation* was chronicled on the Scottish Government website at: www.scotland.gov.uk

⁵⁹ Scottish Government *Fiscal Autonomy in Scotland: The Case for Change and Options for Reform*, Edinburgh, Scottish Government, February, 2009(a), p.25.

In July 2009, the Scottish Government published a further document entitled *An Oil Fund for Scotland: Taking Forward our National Conversation*, the next of a series of reports published as part of the *National Conversation* consultation.⁶⁰ *An Oil Fund for Scotland* detailed the Scottish Government's plan to establish an oil fund based on the tax revenues from North Sea oil, saving and investing the revenues for long-term prosperity rather than for short-term consumption.⁶¹ The Scottish Government followed up *An Oil Fund for Scotland* in September with *Europe and Foreign Affairs: Taking forward our National Conversation* which set out several questions regarding Scotland's role in international affairs and the ability of the Scottish Government to act dependent on the evolution of the devolution settlement. The paper explored the constitutional options open to Scotland and their impact upon Scotland's membership of international bodies such as the European Union, the United Nations, the World Trade Organisation and the Commonwealth.⁶² Also in September 2009, the Scottish Government published *Opportunities for Broadcasting: Taking forward our National Conversation*, examining how broadcasting powers were distributed and how they might be devolved. It drew upon work undertaken by the Scottish Broadcasting Commission which had made several recommendations regarding a Scottish Network and a Scottish public service television channel, as well as various recommendations for the BBC regarding its Scottish programming and more power for Scottish Ministers over broadcasting appointments.⁶³

⁶⁰ Scottish Government, *An Oil Fund For Scotland: Taking forward our National Conversation*, Edinburgh, Scottish Government, July, 2009(b), p.9.

⁶¹ *ibid.* p.23.

⁶² Scottish Government, *Europe and Foreign Affairs: Taking forward our National Conversation*, Edinburgh, Scottish Government, September, 2009(c), p.33.

⁶³ Scottish Broadcasting Commission, *Platform for Success: Final Report of the Scottish Broadcasting Commission*, Edinburgh, Scottish Government, 2008, p.5-6.

In October and November 2009, five more subject papers were published by the Scottish Government to widen the debate further. The first paper dealt with the combined fields of rural affairs, the environment and climate change. It argued that the Scottish Government had done much in these areas to improve the situation, but that the “limits on Scotland’s responsibilities constrain and have constrained this and previous Scottish Governments’ capacity fully to deliver”.⁶⁴ The second paper dealt with issues in the fields of justice, health and transport – three further areas in which responsibility for legislation is devolved. It considered the success of distinctive policy-making that the Scottish Parliament has been able to achieve under the Scotland Act 1998 (including Free Personal Care for the Elderly and the Smoking Ban – with the latter prompting the UK’s other nations to adopt similar legislation).⁶⁵ A third paper, focused on post-education opportunities, argued that, though the Scottish Government had attempted to improve employability in Scotland through a new “Curriculum for Excellence,” key levers – such as social security and employment support – remained reserved, limiting the Scottish Government’s scope for action in this area.⁶⁶

With the Scottish Government building towards a St Andrew’s Day launch of their next consultation paper, the following two papers were hurriedly published in an online-only format on the Scottish Government’s *National Conversation* website. The first of those focused on energy policy, discussing topics such as energy regulation, the future

⁶⁴ Scottish Government, *Rural Affairs, Environment and Climate Change – Taking forward our National Conversation*, Edinburgh, Scottish Government, October, 2009(e), p.5.

⁶⁵ Scottish Government, *People and Communities – Taking forward our National Conversation*, Edinburgh, Scottish Government, November, 2009(f), p.10-13.

⁶⁶ Scottish Government, *Employability and Skills – Taking forward our National Conversation*, Edinburgh, Scottish Government, November, 2009(g), p.9-12.

of the oil and gas industry and reducing energy demand.⁶⁷ It considered the fact that Scotland is “an energy rich nation” but that “influence in a number of areas is constrained”.⁶⁸ The second of these web-only publications dealt with business. It argued that though devolution had provided business with some benefits, Scotland lacked “the full set of levers for building a wealthier and fairer nation”.⁶⁹ This was an unsurprising theme throughout the subject papers, with the Scottish Government painting devolution as a half-measure – that the powers it had delivered were good as far as they went, but that it was only with the powers associated with “devo-max” and, ultimately, independence, that the Scottish Government could deliver in each of the policy areas outlined.

The ideas formulated in each of the subject papers were pulled together in a second White Paper, the final *National Conversation* publication *Your Scotland, Your Voice* published on St Andrew’s Day 2009. This publication functioned both as a conclusion to *A National Conversation*, drawing together information from the original White Paper, the events around the country and the subject papers, and as an introduction to the next phase of the Scottish Government’s strategy for a referendum. It discussed the same options for change (the proposals of the by-then completed Calman Commission, devo-max and independence) while setting out the Scottish

⁶⁷ Scottish Government, *Energy – Taking forward our National Conversation*, Edinburgh, Scottish Government, November, 2009(h), p.4, online-only publication at: <http://www.scotland.gov.uk/Resource/Doc/293342/0090572.pdf>

⁶⁸ *ibid*, p.10, 16.

⁶⁹ Scottish Government, *Supporting Business and Enterprise – Taking forward our National Conversation*, Edinburgh, Scottish Government, November, 2009(i), p.14, online-only publication at: <http://www.scotland.gov.uk/Resource/Doc/293471/0090636.pdf>

Government's own preference for independence.⁷⁰ In this respect, it also functioned as a manifesto for independence, with the perceived benefits of each constitutional option discussed in detail – but with independence clearly identified as the preferred option. It is important to point out that, at this stage, the Scottish Government remained intent on introducing legislation for a Referendum Bill into the Scottish Parliament in 2010.⁷¹ However, with opposition parties refusing to support the SNP's proposed referendum, the party decided, in May 2010, to publish their intended referendum bill as a consultation paper. This change of strategy is considered in more detail in the final chapter.

The *National Conversation* in Action

In addition to the publications discussed above, the Scottish Government was keen to engage the public in *A National Conversation* through events and public meetings. Taking place around the country as part of the Scottish Cabinet roadshow or as stand-alone events hosted by Cabinet Secretaries and Ministers, these events allowed the Scottish public to question ministers about their views on a wide range of issues. Depending on the host town in question, the questions ranged from Scottish Government policy on energy and wind power (the Borders), science and research grants (Dundee), Gaelic education and population migration (Western Isles) and oil production (Aberdeen). These issues – and many others – were raised with Cabinet ministers alongside the issue which the Scottish Government had intended to discuss

⁷⁰ Scottish Government, *Your Scotland, Your Voice – A National Conversation*, Edinburgh, Scottish Government, November, 2009(j), p.5, 137.

⁷¹ *ibid.* p.139.

at these events: the constitutional future of Scotland.⁷² This debate, however, largely played second fiddle to the many policy concerns that the public had, and comprised only a fifth of the questions asked over the course of the public events (see graph below).⁷³ However, the Scottish Government viewed the process as a success in that it allowed members of the public access to Government Ministers to discuss their views on any issue of importance to them.⁷⁴ While this was public engagement, it was engagement on the public's terms.

The events themselves took three forms. For some events, one or two members of the Cabinet hosted an event in the style of a town hall forum. The lead Minister (or Cabinet Secretary) would speak for fifteen minutes to outline the Scottish Government's constitutional preference and then take questions from the audience for approximately one hour. A similar format was initiated at *National Conversation* events immediately following meetings of the Scottish Cabinet around the country. On those occasions, First Minister Alex Salmond would address the audience for around twenty minutes and questions could be directed to any member of the Cabinet. These events tended to be larger, with more questions of a specific nature which allowed the relevant Cabinet minister to answer in more detail. Finally, the Scottish Government arranged several events in co-operation with voluntary organisations – the Scottish Council for Voluntary Organisations (SCVO) and the Council of Ethnic Minority Voluntary Organisations (CEMVO) in particular – while several events were organised by Young Scot, a charity which provides information to

⁷² Scottish Government, 2007, *op cit.* p.38.

⁷³ Harvey, M. and Lynch, P. 2012(b). *op. cit.*

⁷⁴ Interview with Ian McKee (then SNP MSP) (March 2010).

young people in Scotland. These organisations became involved with the process in different ways – partly because of their engagement across different Scottish Government portfolios and partly through pre-existing contacts between the organisations themselves and the Scottish Government. The process itself was intended to be “fluid, not rigid; a flexible vehicle” to be altered to suit the circumstances.⁷⁵

These events were marked by questions predominantly related to the voluntary sector – funding, education and, in the case of CEMVO, similar issues from other events (health, education, immigration) but framed in the context of the impact upon and specific concerns of ethnic minority communities. For CEMVO, assisting the Scottish Government with *A National Conversation* helped the organisation to “increase black and ethnic minority participation in the civic and democratic process”, and organisers welcomed the opportunity in particular to “allow all communities to contribute to the constitutional debate and to feel that their views were taken into account.”⁷⁶ Whatever the context of the issues raised, however, the events allowed the Government Minister(s) in attendance an opportunity to listen to the concerns of both members of the public and members of organisations with an interest in government policy, to address those issues in responses and to engage the public in a discussion not only about the issues raised but also about issues which may be of concern to them in the future.

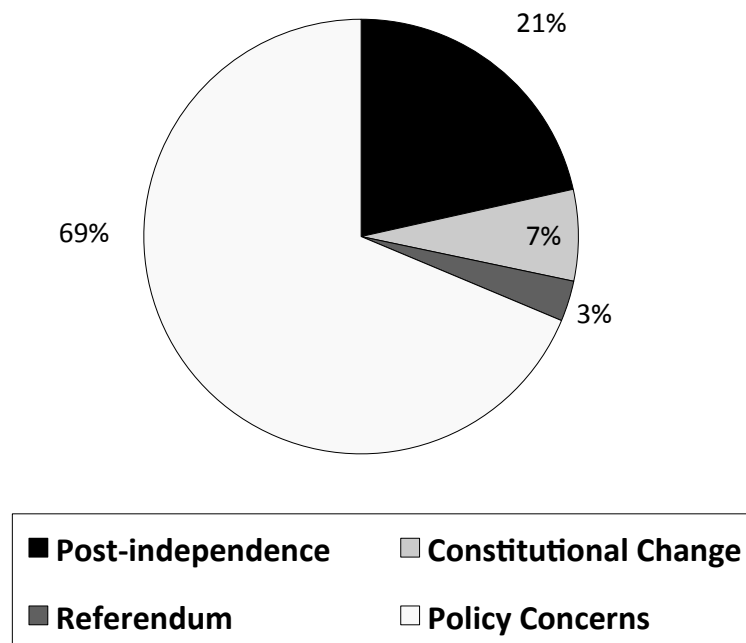
⁷⁵ Interview with a senior Scottish Government official (May 2010).

⁷⁶ Email interview with Fiaz Khan (CEMVO organiser) (January 2009).

Issues Raised

While the primary purpose of *A National Conversation* was to engage the Scottish population in discussion about the constitutional future of Scotland,⁷⁷ a number of wide-ranging issues were raised with members of the Scottish Cabinet at these events.

Graph 4.1: Questions at National Conversation Public Events⁷⁸



Of the 69% of questions to ministers comprising policy concerns, a large number related to the future of the voluntary sector, in particular how it was to be financed and the services utilised, both under the current constitutional arrangements and in a potentially independent Scotland. This was an unsurprising outcome, since voluntary organisations played a role in organising some of the events and members of these

⁷⁷ Interview with Kevin Pringle (Special Advisor to the Scottish Government) (May 2010).

⁷⁸ Podcasts or videos of 25 of the 42 events were available on the National Conversation. The questions from participants were coded into four different categories. The total number of questions was as follows: Post-Independence Scotland – 95 questions; Constitutional Change – 24 questions; Referendum – 13 questions; Policy Concerns – 248 questions.

organisations were present during the discussions. Energy policy was also a major concern, for oil industry workers in Aberdeen, anti-wind farm campaigners in Jedburgh and energy sector stakeholders at the post-Cabinet event in Pitlochry. However, there was recognition that a variety of energy sources would make up Scotland's energy future, as this questioner put it in Melrose:

*Nuclear, tidal, wind, clean-coal are, in varying proportions, ingredients for energy. The Scottish Government is against nuclear energy, so is there any confident assurance that other remaining sources are adequate to meet present and future demands, and within reasonable timescales?*⁷⁹

Each concern was met with the same response from Scottish Government Ministers: oil supplies would not last forever, Scotland was already investing in renewable energy solutions and that wind, offshore marine and tidal power would provide Scotland with a "second great win on the energy lottery".⁸⁰ Transport links from rural communities comprised a number of queries at the Cabinet events in Melrose and Stornoway while questions on affordable housing, pension schemes, the recession and broadcasting regulations were raised at several events around the country, alongside a variety of specifically local concerns. While the Scottish Government perhaps did not get the discussion they had hoped for with regards to the constitution, many pointed out that – in their view – policy issues could be dealt with more efficiently with independence, thereby linking the policy questions to the constitutional debate.⁸¹

⁷⁹ Question from Melrose Summer Cabinet, 28 July, 2009 (contributor unidentified), cited Scottish Government, 2009(j), *op cit.* p.85.

⁸⁰ Salmond, A. *Untitled speech*, Scottish Cabinet/ National Conversation Event at the Corn Exchange, Melrose, 28 July, 2009.

⁸¹ Interview with Richard Lochhead (SNP MSP and Cabinet Secretary for Rural Affairs and the Environment in the Scottish Government) (May 2010).

Community engagement

Responses to questions surrounding the utility of the events to community councils, however, drew a mixed response. The representative from Westhill and Elrick Community Council thought it

*very welcome and somehow quite surprising that the Scottish Government showed on the day to many organisations that a consultation process can be open, led by questions from the floor and yet rich in the content of its delivery. If the aim of the consultation was a conversation between the Scottish Government and local organisations like ours then it was just that.*⁸²

He also considered the event of great benefit to his own community council, describing it as a “unique opportunity for community leaders to share their views with the members of the Scottish Cabinet”.⁸³ This was a view shared by the representative of Meldrum, Bourtie and Daviot Community Council, who thought it was “commendable that so many ministers took the trouble to put themselves on a public platform in this way”.⁸⁴ Turriff and District Community Council’s representative felt that the process was “well-organised and friendly” but that he “came away feeling that it was a wasted day”.⁸⁵ The latter viewpoint was more in-keeping with sentiments from community councils outwith the north-east of Scotland. In Glasgow, the event was seen as “poorly focused”, the aims “laudable, but laughable”⁸⁶ while the Melrose event was considered to be “more like propaganda” though it “did provide a useful

⁸² Email interview with Christian Allard (Westhill and Elrick Community Council) (January 2010).

⁸³ *ibid.*

⁸⁴ Email interview with Isabel Page (Meldrum, Bourtie and Daviot Community Council) (January 2010).

⁸⁵ Email interview with J. Smith (Turriff and District Community Council) (January 2010).

⁸⁶ Email interview with Allan Clarke (Broomhill Community Council) (January 2010).

platform for individuals to air their concerns”.⁸⁷ Thus, while community councils were happy to be involved in the process, there was a consideration that while it was a good idea to “get the gang together and talk to people,” it was clear that “talking and being constructive are entirely different”⁸⁸ and that *A National Conversation* was another consultation just for the sake of consultation. The Scottish Government’s strategy of engaging the people in the process was thus considered with some cynicism, with the biggest question being: what is in this for us? And, from the answers of selected community councils, it looked like the answer was “not very much.”

The question and answer sessions at these events were lively and covered a wide variety of issues. They were also useful in providing the Scottish Government with an opportunity to make themselves accessible to the public around the country, to engage with their issues and to consult widely on the issue of the constitutional future of Scotland.⁸⁹ However, the evidence here suggested that a broader constitutional debate was required, with engagement from both sides of the debate, for an informed decision to be made by Scotland’s population in any referendum on the subject.⁹⁰

Pressure Group Engagement

The process of widening the debate did take place – to a certain extent – through Scottish Government engagement with several pressure groups, charities, voluntary organisations and churches. *National Conversation* events were organised not only by

⁸⁷ Email interview with R. Thomson (Floors, Makerstoun, Nenthorn and Smailholm Community Council) (January 2010).

⁸⁸ Email interview with Allan Clarke (Broomhill Community Council) (January 2010).

⁸⁹ Interview with Alasdair Allan (SNP MSP) (March 2010).

⁹⁰ Keating, M. 2009, *op cit.* p.13.

Scottish Government Ministers but also by the Scottish Council for Voluntary Organisations (SCVO), the Council for Ethnic Minority Voluntary Organisations (CEMVO), in association with Young Scot, and with religious leaders in Scotland as part of phase two of the *A National Conversation*, which focused upon civic institutions in Scotland. A total of £98,793 was provided to the SCVO (£37,873), Young Scot (£50,000) and CEMVO (£10,920)⁹¹ in order to organise and promote events linked to the *National Conversation*. These events included the town hall-style events, with government ministers present to participate in question and answer sessions as well as several informal round-table discussions attended by members of local organisations and MSPs open to the debate.

However, perhaps the most remarkable engagement with civil society was the Scottish Government's discussions with the faith community in Scotland. Church leaders from eleven different churches – including the leader of Scotland's Roman Catholic Church, Cardinal Keith O'Brien – met with Scottish Government Ministers and officials in June 2008 as part of the *National Conversation*. Most present were members of Action of Churches Together in Scotland (ACTS), an umbrella body of nine different denominations in Scotland. The group focused on three main themes in their meeting: principles and values, history and tradition, and communication, and agreed that the principles of the *National Conversation* were consistent with those present, and that the question of Scotland's constitutional future was one in which the churches should play an active role in debating.⁹²

⁹¹ Foulkes, G. Parliamentary Question, 11 February, 2009(a), *op cit*.

⁹² The meeting between ACTS and members of the Scottish Government was held in the Scottish Parliament on 12 June 2008. While no minutes of the meeting have been made publicly available, the

Among attendees themselves, the perception of the event was rather mixed. The Scottish Government's attempt to engage with the faith community was applauded, and those in attendance felt that the Scottish Government "properly respected the autonomy of the Churches to arrive at their own view."⁹³ And while the Methodist Church welcomed the opportunity for "communication between denominations and links between churches," it was clear that "constitutional change was not a vital issue for churches – poverty and homelessness were much further up the agenda".⁹⁴ This was a sentiment shared by the Roman Catholic Church in Scotland, who maintained:

*It is not for Churches to decide on constitutional arrangements. The autonomy of people in the political sphere should be respected and many Christians will have contradictory views. The Church's role is to remind political authority of the dignity of the human person and that political structures exist to serve each person in society.*⁹⁵

The practicalities of constitutional change were also problematic, with Dr Reid noting that the Methodist Church, the Salvation Army and the United Reform Church are all structured within a British framework. The concern of his own organisation was clear:

How these organisations would operate with vastly different legislation across the UK – particularly if Scotland was a sovereign state – is something that needs more

ACTS members released a statement supporting *A National Conversation* which is available on the Scottish Government website at: <http://www.scotland.gov.uk/Topics/a-national-conversation/actsnationalconversation>

⁹³ Email interview with John Deighan (Roman Catholic Church Parliamentary Liaison/ Assistant to Cardinal O'Brien) (January 2010).

⁹⁴ Interview with Dr William Reid (Methodist Church Connexional Liaison Officer for Scotland) (January 2010).

⁹⁵ Email interview with John Deighan (Roman Catholic Church Parliamentary Liaison/ Assistant to Cardinal O'Brien) (January 2010).

*consideration. Planning for the future whilst in constitutional limbo is difficult for voluntary organisations and churches.*⁹⁶

Thus, it was clear that while the constitutional issue was a priority for the SNP in government, other organisations simply wanted clarity on the issue and a decision made quickly.

Public Opinion and Independence

Through the *National Conversation*, the SNP Scottish Government were able to keep constitutional change on the political agenda in Scotland. This was a key objective of the process, as discussed previously, and agenda-setting proved successful in a number of ways, normalising the constitutional debate and engaging the civil service in the process.⁹⁷ Alongside this objective, the party were able to maintain popular levels of support in opinion polls for the duration of the consultation.

The party continued to do better in polls testing intention to vote in Scottish Parliamentary elections over Westminster election, suggesting that the public continued to see the SNP as more relevant at Holyrood than at Westminster, and that the party's position as the Scottish Government strengthened their claim to be the party that best represents Scotland's interests. This is the structural and institutional advantage of devolutionary politics for the SNP – the fact that Scottish politics is about Scottish issues and interests allows the party to take control of the agenda.⁹⁸

⁹⁶ Interview with Dr William Reid (Methodist Church Connexional Liaison Officer for Scotland) (January 2010).

⁹⁷ Interviews with Kevin Pringle (Special Advisor to the Scottish Government) (May 2010) and with a senior Scottish Government official (May 2010).

⁹⁸ Trench, A. 2008, *op cit.* p.5.

Table 4.2: Scottish Parliament Opinion Polls (2007-9)⁹⁹					
Date	Poll	SNP	Lab	Con	Lib Dem
		%	%	%	%
May 2007	ELECTION	32.9/31.0	32.2/29.1	16.6/13.9	16.2/11.3
Aug 07	YouGov/Times	32/32	32/25	12/13	12/12
Jan 08	YouGov/Express	38/30	29/27	14/13	14/12
Feb/Mar 08	MRUK/Times	39/40	31/30	15/13	12/11
Apr 08	YouGov/Sun	40/33	32/30	12/13	13/12
Apr 08	YouGov/Telegraph	36/37	31/28	13/13	15/13
Aug 08	YouGov/SNP	44/-	25/-	13/-	14/-
Sept 08	YouGov/Times	42/35	26/25	14/13	15/14
Oct 08	YouGov/Times	39/32	31/29	14/16	12/11
Jan 09	YouGov/Times	38/34	32/28	13/15	12/11
Mar 09	YouGov/Times	35/30	34/32	14/15	12/11
Apr 09	YouGov/SNP	37/37	20/28	15/15	13/13
Apr 09	TNS/Herald	41/40	29/30	15/13	11/10

First figure represents constituency vote; second figure represents regional vote.

In the first Scotland-wide election after the SNP won the 2007 Scottish Parliamentary election, the party topped the poll, indicating that this support was not confined to opinion polls.¹⁰⁰ This was the European Parliament election in June 2009, just over halfway through the Scottish Parliamentary term – the SNP’s first in office – and indicated that the SNP’s honeymoon period as the Scottish Government remained intact. This was widely seen as the first major test of support for the SNP since their election victory and although they failed to add to their two MEPs, the party succeeded in winning more votes than Labour for the second election in a row. The

⁹⁹ Poll data from: Paun, A. ‘Public Opinion’ in Paun, A. (ed) *Scotland: Devolution Monitoring Report*, September, UCL, London, The Constitution Unit, September, 2007; Curtice, J. ‘Public Attitudes’ in Jeffrey, C. (ed) *Scotland: Devolution Monitoring Report*, UCL, London, The Constitution Unit, January, 2008(a); Curtice, J. ‘Public Attitudes and Elections’ in McEwen, N. (ed) *Scotland: Devolution Monitoring Report*, UCL, London, The Constitution Unit, May, 2008(b); Curtice, J. ‘Public Attitudes’ in Jeffrey, C. (ed) *Scotland: Devolution Monitoring Report*, UCL, London: The Constitution Unit, September, 2008(c); Curtice, J. ‘Public Attitudes and Elections’ in Cairney, P. (ed) *Scotland: Devolution Monitoring Report*, UCL, London: The Constitution Unit, January, 2009(a); Curtice, J. 2009(b), *op cit*.

¹⁰⁰ Peev, G. and Macdonell H. ‘Labour trounced by SNP in Euro election’, *The Scotsman*, 8 June, 2009.

party managed to maintain support by delivering on populist policies from their manifesto.

Governing as a minority administration provided the SNP – as a party in government for the first time – with increased challenges.¹⁰¹ Every SNP policy, every manifesto commitment scrutinised in fine detail as opposition parties worked to support the government on an issue-by-issue basis, lending their support to policies they approve of, rejecting out of hand anything with which they disagreed. The Scottish Parliament, for the first time, became an actor in the day-to-day business of government.¹⁰² Evidence of the difficulties of minority government can be seen in the budget negotiations of both 2008 and 2009, with the latter voted down at the first attempt on the casting vote of the Presiding Officer.¹⁰³ The potential for this had led the SNP to streamline their government – reducing the Scottish Cabinet from the nine senior members the previous administration maintained to six departments heads – while also limiting the amount of legislation brought before the Scottish Parliament.¹⁰⁴ Thus, while the first Labour-Liberal Democrat coalition delivered 52 bills in the first four years of the Scottish Parliament and the second administration an even 50, the SNP passed only 13 pieces of legislation (ignoring budget bills) in their first two years in office (see box 4.4).

¹⁰¹ Deschouwer, K. (ed) *New Parties in Government: In power for the first time*, Abingdon, Routledge, 2008, p.5.

¹⁰² Trench, A. 2008, *op cit.* p.12.

¹⁰³ Lynch, P. and Elias, A. 2009, *op cit.* p.15.

¹⁰⁴ Scottish National Party, 2007, *op cit.* p.14.

Box 4.4: Scottish Government Bills Enacted (2007-9)¹⁰⁵

- Abolition of Bridge Tolls (Scotland) Bill
- Climate Change (Scotland) Bill
- Convention Rights Proceedings (Amendment) (Scotland) Bill
- Damages (Asbestos-related Conditions) (Scotland) Bill
- Education (Additional Support for Learning) (Scotland) Bill
- Flood Risk Management (Scotland) Bill
- Glasgow Commonwealth Games Bill
- Graduate Endowment Abolition (Scotland) Bill
- Health Boards (Membership and Elections) (Scotland) Bill
- Judiciary and Courts (Scotland) Bill
- Public Health etc. (Scotland) Bill
- Scottish Local Government (Elections) Bill
- Sexual Offences (Scotland) Bill

This was a direct result of the political position the party found themselves in – governing as a minority administration with an opposition openly hostile to core ideological principle. However, much was achieved without the need for legislation. Cabinet Secretary for Finance and Sustainable Growth John Swinney negotiated a concordat with COSLA – the umbrella organisation for Scotland’s 32 local authorities – which saw the Council Tax frozen across Scotland for the duration of the parliamentary term: a popular policy from the SNP’s manifesto. The party also provided a cut in business tax for small businesses (with Conservative support), preserved facilities at two hospitals threatened with downgrading under the previous administration, legislated for the abolition of the graduate endowment fee for students (with Liberal Democrat support) and scrapped the tolls on the Forth and Tay bridges – all policies which were popular with various sections of Scottish society.¹⁰⁶

¹⁰⁵ The Bills passed by the Scottish Parliament during its 2007-11 session are listed on the institution’s website at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25539.aspx>

¹⁰⁶ Jones, P. 2008, *op cit.* p.50

The SNP identifies itself as a social democratic party,¹⁰⁷ and pursued a policy programme which, in the main, adhered to this particular ideological leaning. However, social democracy is not the defining characteristic of the party: independence is. This is the party's *raison d'être*.¹⁰⁸ And it is upon this criteria – whether the party can achieve independence – that the success of the party in government will be judged.¹⁰⁹ And while, for the duration of *A National Conversation*, the SNP maintained the support of the public as a popular government, this support did not translate into support for the party's constitutional preference. Opinion polls indicated that support for independence remained static for the period of the consultation and, dependent upon how the question was worded, support ranged from just under to just over one third in support of independence, with just under half saying they would vote against (see table 4.3).¹¹⁰ A Populus poll for *The Times* in April 2009 gave respondents four options regarding their constitutional preference: independence, further devolution within the United Kingdom, the status quo and significantly fewer powers for the Scottish Parliament. The result saw only one in five indicate a preference for independence, with 41% supporting increased devolution – a finding that confirmed previous polls on the subject.¹¹¹

¹⁰⁷ Scottish National Party, 2007, *op cit.* p.20.

¹⁰⁸ Newell, J. L. 'The Scottish National Party: development and change' in De Winter, L. & Türsan, H. (eds) *Regionalist Parties in Western Europe* London, Routledge, 1998, p.112.

¹⁰⁹ Müller, W. C. and Strøm, K. 1999, *op cit.* p.7.

¹¹⁰ Cutice, J. 2009(b), *op cit.* p.18.

¹¹¹ *ibid.* p.17-18.

Poll Date	I agree that the Scottish Government should negotiate a settlement with the Government of the United Kingdom so that Scotland becomes an independent state.	I do not agree that the Scottish Government should negotiate a settlement with the Government of the United Kingdom so that Scotland becomes an independent state.
Aug 07	35%	50%
Nov/ Dec 07	40%	44%
Mar/ Apr 08	41%	40%
June/ July 08	39%	41%
Oct 08	35%	43%
Jan/Feb 09	38%	40%

Thus, there was a distinct dilemma for the SNP in power. With the advent of the Scottish Parliament and the party's elevation from main opposition to government in Scotland, the SNP's strategy was clear. The party was determined to govern effectively and competently, and to deliver popular policies in government.¹¹³ Anything which they could not deliver could be blamed on the limited powers of the Scottish Parliament, the tight financial settlement from the UK Government and the global recession.¹¹⁴ If the message was right, the Scottish population would sympathise with the SNP in government, recognise their ambitions for Scotland and support independence as their constitutional preference. However, while the SNP's execution of this strategy was – with one or two difficulties – relatively successful (their standing in opinion polls certainly indicated that they were a popular government) they were unable to shift public opinion in favour of independence.¹¹⁵

The *National Conversation*, as a consultation based upon the SNP's constitutional

¹¹² TNS System Three polls for the Sunday Herald, cited Curtice, J. 2009(a), *op cit.* and Curtice, J. 2009(b), *op cit.*

¹¹³ Trench, A. 2008, *op cit.* p.4-5.

¹¹⁴ *ibid.* p.10.

¹¹⁵ Mitchell, J. 'Ever Looser Union' in Trench, A. (ed) *The State of the Nations 2008*, Exeter, Imprint Academic, p.245.

preference, had a marginal impact upon support for independence (see table above). While the public were, in general, happy to attend events, to meet ministers and engage them in debate, those debates rarely (as demonstrated above) centred on Scotland's constitutional future. Instead, the public took the opportunity to discuss issues of importance to them.

Impact of A *National Conversation*

The process of consultation, of transparency and accountability, was a success for the SNP in terms of being a popular activity. The public like to be consulted on issues, like to be able to present their views and to hold those in power to account. This benefited the SNP in several ways, notably as a means of appearing as a government which was open to the public but also in terms of popular support. As the opinion polls suggest, the SNP remained a popular party of government.¹¹⁶ And, indeed, while questions relating to the constitution remained in the minority at these events, the issue remained on the political agenda throughout the SNP's term in office – a significant success for the party in terms of agenda-setting.¹¹⁷ However, as a means of continuing the debate upon Scotland's constitutional future, the *National Conversation* failed to deliver upon its primary objective – a distinct increase in support for independence. And this remained the difficulty for the SNP even after 2011, when they moved from minority to majority government – how to translate their support as a government into support for their constitutional preference.¹¹⁸

¹¹⁶ Lynch, P. and Elias, A. 2009, *op cit.* p.20.

¹¹⁷ Interview with Keith Brown (SNP MSP and then-Scottish Government Minister for Schools and Skills) (April 2010).

¹¹⁸ Harvey, M. and Lynch, P. 2012(b), *op cit.* p.113.

A National Conversation allowed the SNP to firmly set the agenda on the constitutional debate though, and this was a significant achievement for the party. With the publication of the White Paper *Choosing Scotland's Future* just three months after taking office, the SNP did not hesitate in setting out their position as advocates of independence and offered a timescale for moving towards a referendum in which the Scottish population would be allowed to determine the constitutional future of Scotland. This was opposed by the collective Unionist parties in the Scottish Parliament – Labour, the Conservatives and the Liberal Democrats – but supported by the Greens and former SNP MSP Margo MacDonald.

For the SNP, the agenda-setting aspect of *A National Conversation* was a major success. While the opposition parties did not wish to countenance constitutional change during the 2007 election campaign, the SNP's presence in government, their constitutional consultation and their continual pursuit of the issue meant that they were forced into the constitutional debate. The Scottish Government were thus driving the agenda, and their opposition were forced to react – and react they did. For while, individually, the opposition parties were limited in their response to the *National Conversation*, collectively, and with the backing of UK counterparts at Westminster, the parties established the Calman Commission in an attempt to wrest the constitutional debate out of the hands of the SNP.

The Calman Commission process, and recommendations – and the subsequent attempts to legislate for them through the Scotland Bill – provided evidence of two things: that the SNP achieved something in the way of success with regard to their

autonomy goals, and that they continued to set the agenda with regard to constitutional issues, even when they were not the protagonist of the action.¹¹⁹ Indeed, although the Calman Commission was considered “a political response to *A National Conversation*”¹²⁰ by one Scottish Government minister, it was also considered as *part* of the constitutional discussion the Scottish Government had initiated.¹²¹

As a minority government, the SNP struggled to turn all of their manifesto commitments into legislation. As a party whose core business was and remains independence, the SNP succeeded in forcing the opposition – Unionist – parties into recommending the ceding of further powers to the Scottish Parliament. The establishment and subsequent report of the Calman Commission were an acknowledgement by Labour, the Conservatives and the Liberal Democrats that the devolution settlement as it existed was insufficient and that the Scottish Parliament required more powers in order to function more efficiently.¹²²

It was also a tacit admission that questions about the constitutional future of Scotland must be addressed and that the electoral success of the SNP has placed this issue at the forefront of Scottish politics. That, in itself, represents progress for the SNP in government, just as the home rule debate of the 1970s and the devolution referendum of the 1990s did for the party in opposition.

¹¹⁹ Jones, P. 2008, *op cit.* p.53.

¹²⁰ Interview with Richard Lochhead (SNP MSP, Cabinet Secretary for Rural Affairs and the Environment) (May 2010).

¹²¹ Interview with Kevin Pringle (Special Advisor to the Scottish Government) (May 2010).

¹²² Commission on Scottish Devolution, 2009, *op cit.*, p: remit.

Evaluating *A National Conversation*

The impact of the Scottish Government's *National Conversation* was therefore twofold. Firstly, it played an agenda-setting role in promoting the constitutional debate. It forced independence onto the political agenda in Scotland and engaged – albeit at a distance – the opposition parties in discussions regarding the constitutional future of Scotland. In doing so, it established the Scottish Government's position through a series of papers aimed at providing information to the Scottish population in order that an informed decision might be made regarding Scotland's future. Secondly it laid the groundwork for a referendum on independence which the SNP hoped would allow them – as the Scottish Government – to open negotiations with Westminster with a view to Scotland becoming a sovereign state.¹²³ In the wake of the Final Report of the Calman Commission, First Minister Alex Salmond announced that *A National Conversation* would conclude with a White Paper on independence which would be published on St. Andrew's Day 2009. Providing substantive policy analysis of what Scotland would look like as an independent state under the SNP, *Your Scotland, Your Voice* combined elements of the previous *National Conversation* documents and concluded the consultation by maintaining the SNP's intention to hold a referendum on independence on St. Andrew's Day 2010.¹²⁴ However, this was where the process came predictably unstuck for the SNP, and their inability to convince their opposition to support a referendum led to a new tactic. The referendum bill was published in draft format in early 2010 as a consultation paper with a concession that it would not

¹²³ Scottish Government, 2007, *op cit.* p.35.

¹²⁴ Arnott, M. A. and Ozga, J. 'Policy Making & the 'Nation' under the SNP Government: Interdependencies & Interrelationships in Post Devolution Territorial Governance' *Scotland: Ten Years On* Conference Paper, June, 2009, p.5.

be brought before the Scottish Parliament.¹²⁵ The publication was in two parts: a consultation paper, which outlined choices for a referendum (ballot options, organisation and rules, and financial arrangements for the vote itself) and secondly, the draft bill itself, which outlined legislation which would be required to establish an independence referendum.¹²⁶ Instead of bringing forward the legislation at the time, the SNP cited a lack of parliamentary support for the referendum and postponed the bill, asking instead that voters re-elect the party, this time as a majority, in the May 2011 Scottish Parliamentary election. The efforts to achieve this majority, and the draft bill consultation itself, are considered more fully in chapter five.

However, while *A National Conversation* provided the opportunity for the SNP to keep independence on the political agenda and to lay the groundwork for a proposed referendum on the subject, it failed to capture the imagination of the Scottish electorate. While Scottish Government figures suggest that there were 474,000 hits on the *National Conversation* website and 4,300 comments¹²⁷ and over 3,500 people attended *National Conversation* events around the country,¹²⁸ discussion at these events centred on predominantly local issues and not, as the Scottish Government had hoped, upon the constitutional future of Scotland.¹²⁹ In engaging the Scottish electorate in a discussion about constitutional options, the SNP had intended that

¹²⁵ Scottish Government, 2010, *Scotland's Future: Draft Referendum (Scotland) bill consultation paper*, Edinburgh, Scottish Government.

¹²⁶ Harvey, M. and Lynch, P. 'Getting to Yes: What Can Scottish Independence Campaigners Learn From the Devolution Referendums of 1979 and 1997?' *Political Studies Association Conference Paper*, April, 2012(a), p.5.

¹²⁷ Answer to a Parliamentary Question asked by George Foulkes on 26 February, 2009(c) by Michael Russell on 9 April, 2009 and available at <http://www.scottish.parliament.uk/Apps2/Business/PQA/default.aspx?pg=S3W-21421>

¹²⁸ Purvis, J. Parliamentary Question, 23 April, 2009(a), *op cit*.

¹²⁹ Harvey, M. and Lynch, P. 2012(b), *op cit*.

their ability to promote independence as a viable option for Scotland through public events would increase support for independence in advance of a proposed referendum on the issue. However, as detailed above, support for independence remained static while the SNP in government maintained and even increased in popularity due, in part, to delivering popular policies in government and engaging in consultation with the Scottish electorate. In this respect, the impact of *A National Conversation* was limited to maintaining the popularity of the SNP Scottish Government but not increasing support for their constitutional goals. And that is emblematic of the problem facing the SNP – and, indeed, other regionalist parties in government: how to transfer support for the party to support for constitutional change. The SNP did achieve success in forcing the issue onto the political agenda – and parties in Scotland that are vehemently opposed to independence had to react by discussing options for reforming devolution and, in particular, the devolution of further powers to the Scottish Parliament.

While the lack of a referendum to complete the process of *A National Conversation* has led to opposition parties and political commentators arguing that the consultation had failed.¹³⁰ However, and perhaps importantly, given the lack of support for independence at the consultation's conclusion, the fact that *A National Conversation* began, maintained and developed a widespread constitutional debate, inclusive of political elites, civic society and pressure groups among others, appeared to contradict this viewpoint. Since the SNP entered minority government in 2007, we appear to have entered an expansionist phase of constitution-making in Scotland. Indeed, while

¹³⁰ Hassan, G. 'The SNP falters on independence', *The Guardian*, 26 January, 2010, online at www.guardian.co.uk/commentisfree/2010/jan/26/snp-scotland-independence-alex-salmond

the Calman Commission spawned the Scotland Bill – a clear, tangible outcome which altered the devolution settlement – *A National Conversation* appears to have left a lasting legacy of public engagement. While the government’s consultation is long since complete, what we see now is a multi-lateral consultation on the constitution – advocates for independence and the union leading the debate with civic society, pressure groups and wider Scottish society in a variety of places and through a variety of media – in which government is no longer the main actor. In the wake of *A National Conversation* – and more prominently, since the SNP were returned to power as a majority government – civic society has engaged in constitutional debates amongst themselves. Herein lies the lasting legacy of the *National Conversation* process: a public engaged in the constitutional debate, actively interested in the discussion and pursuing preferred ends. By this measure, the consultation itself can be judged a relative success.

Conclusion

The Scottish Government’s *National Conversation* provided an opportunity for the SNP to open a dialogue with the electorate on the issue of Scotland’s constitutional future. This comprised several components – a White Paper, an online interactive website, local events, Scottish Cabinet tours, publication of a series of research papers – all aimed at promoting the constitutional debate in general and the Scottish Government’s preference of independence in particular. At a cost of over £600,000, *A National Conversation* provoked condemnation from opposition parties, who established their own review of devolution with a remit to improve the devolution settlement and increase the powers of the Scottish Parliament. The Calman

Commission, however, had one crucial difference – it ignored the SNP’s preferred option of independence and focused solely on how to improve the work of the Scottish Parliament within the context of the United Kingdom. Nevertheless, the establishment of such a commission – given the vehement opposition of the Unionist parties to further autonomy for Scotland prior to the SNP’s election – is a measure of the progress the SNP have made in terms of their autonomy goals. *A National Conversation* allowed the party to set the political agenda in Scotland and force the opposition parties into discussing the potential for constitutional reform through the Calman Commission. If any of the recommendations of the Commission are enacted, as would appear likely, then the SNP Scottish Government can claim that they have been the protagonist of reform – despite the party refusing to engage with it.

Engagement with the public was also largely a success, with well attended events across the country. Government Ministers were accessible, answering questions on a wide range of subjects, including independence. Alongside the delivery of several popular and high profile manifesto commitments such as freezing the council tax and abolishing the graduate endowment for students, public engagement helped to maintain the SNP as a popular government. Opinion polls regularly had the party obtaining a higher share of the vote than when they were elected in 2007 – an achievement not often associated with governments halfway through their term in office, especially those governing for the first time.¹³¹ However, if the events had an impact upon the electorate’s views on constitutional reform, it was negligible, with polls indicating that support for independence remained static, and that increasing the

¹³¹ Deschouwer, K. 2008, *op cit.* p4-5.

powers of the Scottish Parliament remained the constitutional preference of the Scottish electorate. There is some indication that support for “devolution max” as a constitutional preference could be considered ‘soft’ and those who held that view may swing towards independence by the time of a referendum. But, for the period of its existence, *A National Conversation* failed to provide any real movement towards independence in the polls.¹³²

As an exercise in providing the Scottish Government with the opportunity to consult with wider Scottish society, to provide information regarding the SNP’s constitutional preference and to lay the groundwork for a referendum on the subject, *A National Conversation* proved moderately successful. The voluntary sector and religious leaders in particular were successfully engaged in discussions about Scotland’s constitutional future, while opposition parties wasted no time in criticising the publications released by the Scottish Government as part of the *National Conversation* series. As noted above however, the only substantive of *A National Conversation* – at least, prior to the SNP’s victory in the 2011 Scottish Parliamentary election – were the limited recommendations of the Commission on Scottish Devolution, which became legislation through the Scotland Bill.

¹³² Lynch, P. and Elias, A. 2009, *op cit.* p.20.

Chapter 5: The All Wales Convention

Introduction

The 2007 One Wales Agreement between the Welsh Labour Party and Plaid Cymru led to the latter taking government office for the first time. This gave Plaid Cymru the opportunity to promote further autonomy for Wales as a party of government, and the power of an implicit threat to leave the coalition if progress was not made towards their autonomy goals. To this end, the Welsh Assembly Government agreed to convene the *All Wales Convention*, a Wales-wide consultation chaired by former UN diplomat Sir Emyr Jones Parry. In contrast to the Scottish Government's *National Conversation*, the *All Wales Convention* had a wide remit: to provide information on how the National Assembly for Wales currently operates; to debate the extension of its powers; and to report to the Welsh Assembly Government its findings at the end of the consultation process.¹ The process consisted of public meetings around Wales as well as written submissions of evidence to the executive committee. In all, 2,700 submissions were made, from a variety of sources and in a variety of formats, before the final report of the committee was prepared and presented to the Welsh Assembly Government in November 2009.²

Why Consultation?

In contrast to the Scottish Constitutional Convention, which provided the blueprint for devolution in Scotland and achieved its ambition of a devolved Scottish Parliament after

¹ All Wales Convention, *Report of the All Wales Convention*, Cardiff, National Assembly for Wales, 2009.

² *ibid.*

the 1997 referendum, the clear lack of public consultation in advance of the Welsh referendum made for an “inauspicious start” for the National Assembly for Wales, with the active support of just one in four of the population.³ The referendum campaign in 1997 focused upon the “functional arguments for devolution”, giving the public a view of what could be achieved within the structure of devolution but without engaging with or soliciting their views on what the structure of devolution itself should look like.⁴ Thus, for the initial period of devolution in Wales, there was a sense that, not only was the National Assembly for Wales desired by a minority of the population, its purpose, remit and responsibilities were ill-defined and ill-understood. By the time the Government of Wales Act 2006 was passed, and the system of Legislative Competence Orders adopted, the system of devolution in Wales had become increasingly complex, it was “quite clear” that people didn’t understand the process, and that trying to explain it to the public was “maddeningly difficult”.⁵ There was a feeling then, that if a further referendum – a referendum mandated by the 2006 Act – was to be won, a period of electorate education would be required. Recognising this, when Plaid Cymru entered office for the first time after the 2007 elections, they did so only after an agreement with Labour was reached which would see them work towards a referendum on further powers for the National Assembly for Wales by way of a consultation with the Welsh public on the issue. The *All Wales Convention* was the outcome of this agreement. With a remit to educate the Welsh population about devolution, “to explain the settlement under the Government of Wales Act 2006 and how it might change” through the referendum, this was a “mammoth

³ Rawlings, R. *Delineating Wales: Constitutional, Legal and Administrative Aspects of National Devolution*, Cardiff, University of Wales Press, 2003, p.49.

⁴ Bradbury, J. ‘Devolution in Wales – An Unfolding Process’ in Bradbury, J. (ed) *Devolution, Regionalism and Regional Development: The UK Experience*, Abington, Routledge, 2008, p.47.

⁵ Interview with Most Rev’d Dr Barry Morgan (Archbishop of Wales and Chair of *Cymru Yfory*) (June 2010).

task” and one which was not envied by those with experience of political engagement in Wales.⁶

Jones and Gammell note that “there is no standard methodology” when it comes to consultations, which makes judging the success of a consultation difficult, particularly from a comparative perspective.⁷ In many ways, the success or failure of a consultation should be judged against its own aims and objectives, succeeding only when it has achieved what it set out to do. Underpinning the use of consultation as a means of involving the public in the policy process is the idea that doing so encourages a more engaged citizenry, better decisions on policy and better government.⁸ Not only do consultations improve decision-making, according to this thesis, they are part of a process of legitimising the decision itself. Decisions on how to proceed with a particular policy are still the bastion of elected representatives, but if the public have been invited to provide their opinions, and those opinions have been listened to, engaged with, and incorporated into the decisions, the policy itself is seen as more legitimate (even by individual citizens who still disagree with the outcome). Fishkin identifies a further difficulty with public engagement, arguing that it has become “difficult to effectively motivate citizens in mass society to become informed”, establishing a real need to use consultations not simply to gather information but to educate as well.⁹ The *All Wales Convention’s* remit (discussed in more detail below) combined these considerations, aiming to inform the Welsh

⁶ Interview with Huw Rhys Thomas (Assembly Advisor, NFU Cymru) (July 2010).

⁷ Jones, R. and Gammell, E. *The Art of Consultation: Public Dialogues in a Noisy World*, London, Biteback Publishing Ltd., 2009, p.149.

⁸ Cornwall, A. “Locating Citizen Participation’ in *Institute of Development Studies IDS Bulletin*, Vol. 33, No. 2, April, 2002, p.49.

⁹ Fishkin, J. S. *When the People Speak: Deliberative Democracy and Public Consultation*, Oxford, Oxford University Press, 2009, p.2.

population about how the devolved settlement had changed, how it could be further altered, and to engage the public in considering whether such further changes were desired. The *All Wales Convention* could thus be judged according to how well it achieved these objectives.

Origins and Design of the *All Wales Convention*

The establishment of the National Assembly for Wales in 1999, following the narrow referendum victory in 1997, was both a beginning and an end for devolutionists in Wales. An end, because it finally laid to rest the ghosts of the heavy 1979 referendum defeat by delivering the institution which activists had spent generations campaigning for. A beginning, because it opened up a new chapter in Welsh politics and society – and with a system of devolution which amounted to executive powers controlled through a “body-corporate” model, a chapter which would provide cause for debate. Devolution in Wales, in the oft-quoted and well-considered words of Ron Davies, was very much a process and not an event in and of itself.¹⁰ The remainder of Davies’ sentiments are seldom expressed and yet in this context they merit further consideration, for they continue to ring true. For Davies goes on to argue that devolution “is not an event and neither is it a journey with a fixed end point... it is not an end itself but a means to an end”.¹¹ Given the substantial upheaval in the Welsh political system since the advent of the National Assembly for Wales in 1999, a process with no fixed end point appears an apt way to describe Welsh devolution. It was also everything to everyone: for Labour it was the culmination of work done in opposition to the Conservative governments of the 1980s

¹⁰ Davies, R. ‘Devolution: A Process not an Event’ in *The Gregynog Papers*, Vol. 2, No. 2, Cardiff, Institute of Welsh Affairs, 1999, p.15.

¹¹ *ibid.*

and 1990s and the opportunity to deliver on a pre-election pledge to provide an electoral assembly for Wales; for Plaid Cymru it was an opportunity to work in an exclusively Welsh political context and to promote their Welsh-specific policies; for the Conservatives (who, at the time of the referendum, were resolutely opposed to devolution) it restored political representation in Wales to a party who had seen electoral wipe-out in the 1997 General Election; and for the Liberal Democrats it was a step towards the federal future they saw for the UK. For each of the parties, however, devolution was a new challenge – a unique model of devolution set against the somewhat-familiar difficulties always inherent in multi-level political systems. And in a new institution which had no primary legislative functions, limited powers over secondary legislation and no separation of the executive and legislature, the difficulties were apparent from the outset. From the establishment of the Assembly in 1999 through changes to its procedures, the establishment (2002) and report (2004) of the Richard Commission, the UK Government's response (2005) and the Government of Wales Act of 2006, the devolution settlement in Wales has undergone substantive development, with each point on this journey influencing significantly the next. The passing of the Government of Wales Act 2006 was an important staging point for what was to come in the aftermath of the 2007 elections to the National Assembly for Wales, and as such is where discussion of the origins of the *All Wales Convention* begins.

Government of Wales Act 2006

The Government of Wales Act 2006 made several significant changes to the devolution settlement in Wales. Taking on board some of the Richard Commission's recommendations, the Government of Wales Act 2006 made provision for the creation of

an executive – the Welsh Assembly Government – making this officially separate from the role of the National Assembly for Wales for the first time.¹² Minor changes were also made to the electoral arrangements for the National Assembly for Wales – establishing the ability of the National Assembly for Wales to call an extraordinary election when the Assembly in its constituted state could not continue to function (requiring a two-thirds majority vote) and allowing the Assembly to provide public information broadcasts and leaflets regarding an upcoming election, as well as disbaring those candidates standing in individual constituencies from also putting their names forward as candidates on the regional lists.¹³ However, the most significant changes to the devolution settlement in Wales featured in Parts 3 and 4 of the Government of Wales Act 2006.

Part 3 endowed the Assembly with the ability to pass primary legislation, known as Measures of the National Assembly for Wales, in twenty specific areas known as Fields – set out in Schedule 5 of the Government of Wales Act 2006. However, in order to do so, the Assembly would first have to acquire the competence to pass legislation in these particular areas. There were two processes of transferring the power to the National Assembly for Wales as set out in the Government of Wales Act 2006. The first required the Welsh Assembly Government to make a proposal to the UK Government that the transfer of power over part of a Field (known as a Matter), incorporating the area in which they wish to legislate, be included in a UK Government Bill which, when passed as an Act of Parliament, would insert the Matter into Schedule 5 and allow the legislation in

¹² HM Government *Government of Wales Act 2006*, London, Her Majesty's Stationery Office, 2006, p.28.

¹³ *ibid.* p.4-6.

the National Assembly for Wales to be competent – that is, within their power to legislate.¹⁴

Box 5.1: Government of Wales Act 2006 Fields¹⁵

- 1: Agriculture, fisheries, forestry and rural development
- 2: Ancient monuments and historic buildings
- 3: Culture
- 4: Economic development
- 5: Education and training
- 6: Environment
- 7: Fire and rescue services and promotion of fire safety
- 8: Food
- 9: Health and health services
- 10: Highways and transport
- 11: Housing
- 12: Local government
- 13: National Assembly for Wales
- 14: Public administration
- 15: Social welfare
- 16: Sport and recreation
- 17: Tourism
- 18: Town and country planning
- 19: Water and flood defence
- 20: Welsh language

The second process – whereby Legislative Competence Orders (LCO) were utilised – was somewhat more complicated (see figure 5.1). Rather than the Welsh Assembly Government negotiating with the UK Government, this method involved the National Assembly for Wales drafting and approving an LCO, before publishing it for scrutiny by both an Assembly Committee and the Welsh Affairs Committee at Westminster. After both reported on the LCO, the Welsh Assembly Government and the UK Government considered the LCO again before it would be laid before the National Assembly for Wales

¹⁴ All Wales Convention 2009, *op cit.* p.18.

¹⁵ HM Government 2006, *op cit.* (Schedule 5)

for approval. If accepted it would be passed to both the House of Commons and the House of Lords for approval there. If final approval was granted there, the LCO would be passed and the additional Matters added to Schedule 5, allowing the National Assembly for Wales to legislate in the proposed Field.¹⁶ This process allowed powers to be devolved to the National Assembly for Wales gradually, a step-by-step process which only gave the Assembly power to legislate in areas which it specifically requested.¹⁷

The Government of Wales Act 2006 did however provide the National Assembly for Wales the opportunity to acquire legislative powers in all 20 Fields collectively. Part 4 of the Government of Wales Act 2006 also set out the process by which a referendum (to establish whether the powers in each of those 20 Fields should be transferred to the National Assembly for Wales instantly) could be held, with a positive outcome in such a referendum removing the need for the gradual devolution of powers. In that event, Part 3 of the Government of Wales Act 2006 would be nullified and replaced by Part 4, with Schedule 7 listing the 20 areas (now called “Subjects”) under which the National Assembly for Wales would now be able to legislate.¹⁸ The process by which a referendum could be called was also established in the Government of Wales Act 2006, allowing for either the UK Government or the Welsh Assembly Government through the National Assembly for Wales to initiate legislation to that effect. 40 out of 60 Assembly Members (that is, a two-thirds majority) would have to vote for a referendum before the First Minister could notify the Secretary of State for Wales of their intention. The Secretary of State would

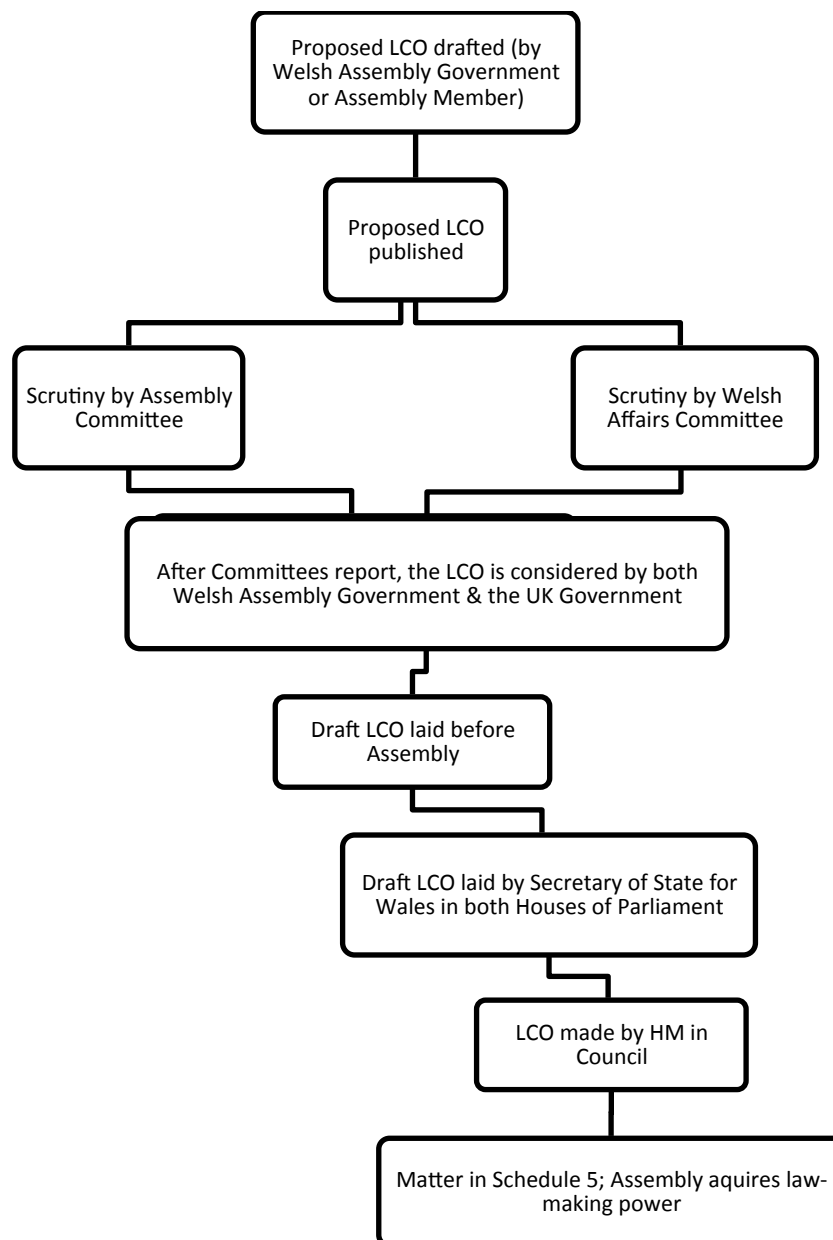
¹⁶ All Wales Convention 2009, *op cit.* p.18-19, 28.

¹⁷ For a more comprehensive summary of the LCO process, see House of Commons Welsh Affairs Committee *Review of the LCO process*, Fifth Report of Session 2009-10, HC Paper 155, London, Her Majesty’s Stationery Office, 2010.

¹⁸ HM Government 2006, *op cit.* p.59.

then have 120 days to decide whether to proceed with their intention, which would then require a subsequent two-thirds majority in the National Assembly for Wales and a simple majority in both Houses of Parliament to pass.¹⁹

Figure 5.1: The Process of Legislative Competence Orders²⁰



¹⁹ *ibid.* p.58-9.

²⁰ HM Government 2006, *op cit.*; All Wales Convention, 2009, *op cit.*

The One Wales Agreement

Plaid Cymru's 2007 manifesto *Make a Difference* set out seven priorities for the party in government: cut energy use by 10%, affordable childcare, laptops for every 11 year old in Wales, help students with loan repayments for five years, provide a home grant for first-time buyers, tax cuts for small and medium sized businesses, and a new community health service.²¹ Also included – in the final page of their manifesto – was Plaid Cymru's approach to governance. This section cited the principle that the party based their manifesto on – that “sovereignty lies with the people of Wales” – setting out their aim to hold a referendum during the forthcoming National Assembly for Wales term to establish a “proper parliament for Wales” following the model set out in the Government of Wales Act 2006.²² The principle of the sovereignty of the Welsh people and the seven manifesto commitments provided the foundation for the party in coalition negotiations – and became the heart of the One Wales Agreement. Among commitments to health, the economy, housing, education, the environment, culture and social justice – the latter a key part of both parties' manifestos – was a section entitled “A Strong and Confident Nation.”

*There will be a joint commitment to use the Government of Wales Act 2006 provisions to the full under Part III and to proceed to a successful outcome of a referendum for full law-making powers under Part IV as soon as practicable, at or before the end of the Assembly Term.*²³

²¹ Plaid Cymru, *Make a Difference: Manifesto for the National Assembly for Wales*, Cardiff, Plaid Cymru – The Party of Wales, 2007, p.7-19.

²² *ibid.* p.36.

²³ Labour Party Wales and Plaid Cymru, ‘One Wales: a progressive agenda for the government of Wales: an agreement between the Labour and Plaid Cymru Groups in the National Assembly’, Cardiff, Welsh Assembly Government, 2007, p.6.

This set out an agreement to govern using the new powers of the National Assembly for Wales and to continue to campaign for an increase to these powers. It also set out a commitment that both Plaid Cymru and Labour in Wales – which had not always given its full-throated support to devolution – would support a campaign to increase the powers of the National Assembly for Wales:

Both parties agree in good faith to campaign for a successful outcome to such a referendum. The preparations for securing such a successful outcome will begin immediately. We will set up an all-Wales Convention within six months and a group of MPs and AMs from both parties will be commissioned to set the terms of reference and membership of the Convention based on wide representation from civic society. Both parties will then take account of the success of the bedding down of the use of the new legislative powers already available and, by monitoring the state of public opinion, will need to assess the levels of support for full law-making powers necessary to trigger the referendum.²⁴

In October 2007, the Welsh Assembly Government made good their commitment to a national consultation, with First Minister Rhodri Morgan and Deputy First Minister Ieuan Wyn Jones appointing Sir Emyr Jones Parry, previously the UK's Permanent Representative to the United Nations, to chair the Convention.²⁵

The All Wales Convention Process

With a remit that covered public information as well as public engagement around the devolution agenda, and the practical issues which this entailed, the Executive Committee of the *All Wales Convention* had to remain flexible with regard to the structure of the process. The Committee had to obtain expert opinion from government officials, political

²⁴ *ibid.*

²⁵ All Wales Convention, 2009, *op cit.* p.9.

parties and academics, whose knowledge helped to equip the *All Wales Convention* with the information they required to fulfil their remit. Equally, the Committee had to find ways of engaging with the wider public in forums which were less formal than traditional means of consultation. The geography of Wales – and the poor transport links between north and south Wales – provided a further consideration for the Executive Committee to take into account.²⁶ This led the Committee to make their communications and consultation strategy one of their first priorities.²⁷ The strategy included engagement with key stakeholders with Executive Committee members attending events held by these organisations. It included public events – held, at the suggestion of Executive Committee member Rob Humphrey, in every local authority in Wales. Mr Humphrey had wanted to have even more events, stating in an interview:

*I thought we had to get out and meet the public – and I was very much a proponent of having meetings in every local authority. I actually wanted to do more – I thought we should have about 40 or 50 public meetings, but the Committee met me halfway.*²⁸

At the same time, formal evidence gathering – both in the form of written submissions and oral evidence sessions in different parts of Wales – were undertaken. Finally, the Convention’s communication strategy was also employed, a strategy which included advertising through local newspapers and radio, invitations to schools to participate in the Convention, and public appearances by Sir Emyr Jones Parry. A website and interactive discussion forum on *Facebook* were also established to advertise the Convention to the public.²⁹

²⁶ Interview with Sally Hyman (All Wales Convention Executive Committee) (June 2010).

²⁷ All Wales Convention, 2009, *op cit.* p.11.

²⁸ Interview with Rob Humphrey (All Wales Convention Executive Committee) (July 2010).

²⁹ All Wales Convention, 2009, *op cit.* p.12.

Stakeholder engagement

Part of the Welsh Assembly Government's considerations in establishing the *All Wales Convention* rested upon the fact that, unlike Scotland, where engagement with civic society through the Scottish Constitutional Convention had been successful prior to the devolution referendum in 1997, there had been no such process in Wales. Thus the opportunity to involve Welsh civic society – as well as the wider Welsh public – in the process that the Welsh Assembly Government hoped would end with a positive outcome in a referendum was an attractive one to the coalition. However, as Labour AM Alun Davies commented, the objectives of the two processes were entirely different:

*[The Scottish Constitutional Convention] was done in opposition, with civic society, against an unpopular government, in a sense defining a nation. What we're doing is essentially a government consultation by two parties in coalition to take us to a destination which is already known. It is a different process to do a different thing at a different time.*³⁰

In his opinion, there had been “huge, fundamental change of mood in Wales” with regard to devolution between 1979 and 1997, and that the government consultation was a means of “catching up with public opinion”.³¹ This was a unique perspective among interviewees. Most argued that the *All Wales Convention* was required to bridge the gap between the narrow mandate for devolution in 1997 and the intended transfer of powers to the National Assembly for Wales through the Government of Wales Act 2006, but here was a suggestion that there was a public desire for such a transfer of powers – from a Labour AM – and that the politicians in Wales were the ones who were following the public.

³⁰ Interview with Alun Davies (Labour AM; All Wales Convention Establishing Committee) (July 2010).

³¹ *ibid.*

Nevertheless, the *All Wales Convention* attempted to recreate the Scottish model's links with civic society, and did so by actively engaging stakeholders in the consultation process. Getting organisations involved in the process, both in the discussion process itself and by utilising their networks to further widen the Convention's reach among the population, was a key aspect of the communications strategy.³² This led to *All Wales Convention* Executive Committee members attending events hosted by stakeholder organisations, as well as writing articles for newsletters and magazines of some of these organisations.

Box 5.3: Sir Emyr Jones Parry Speeches to Stakeholder Organisations³³

- Wales Council for Voluntary Action (WCVA) conference (Apr 2008)
- Institute of Welsh Affairs/ *Cymru Yfory* conference (Apr 2008)
- Capita conference (July 2008)
- Welsh Local Government Association conference (Oct 2008)
- Institute of Directors Wales meeting (Oct 2008)
- Council of Ethnic Minority Voluntary Organisations community event (Oct 2008)
- Chartered Institute of Public Finance and Accounting Wales conference (Nov 2008)
- Confederation of British Industry (CBI) Wales council meeting (Dec 2008)
- Wales TUC conference (May 2009)
- Capita conference (June 2009)

Executive Committee chair Sir Emyr Jones Parry was particularly involved with this element of the *All Wales Convention's* strategy. Being the public face of the Convention meant that his appearances at events provided some publicity for the consultation, and he delivered 10 stand-alone speeches at various events hosted by stakeholders (see box 5.3). These ranged from business leaders (CBI Wales; Institute of Directors) to voluntary organisations (WCVA; CEMVO) and academia (Institute of Welsh Affairs). In addition, he

³² All Wales Convention, 2009, *op cit.* pg11-12.

³³ *ibid.* p.109-11.

delivered four speeches at student events at Cardiff, Swansea, Aberystwyth and Bangor Universities, and one at the Workers' Educational Association event in Llanelli which preceded lengthier, wider discussions on devolution and the implications of moving to Part 4 of the Government of Wales Act 2006.

Box 5.4: All Wales Convention Stakeholder Presentation and Discussion Events³⁴

- National Eisteddfod Q&A, Cardiff (Aug 2008)
- Carmarthenshire Partnership Annual Forum, Llanelli (Sept 2008)
- Public Affairs Cymru, Cardiff (Sept 2008)
- Pembrokeshire Local Community Event, Haverfordwest (Sept 2008)
- Caernarfon Community and Voluntary Group, Caernarfon (Oct 2008)
- "Understanding Modern Government" Seminar 1, Cardiff (Nov 2008)
- Royal Welsh Winter Fair, Builth Wells (Dec 2008)
- 4 WCVA policy events, Cwmbran, Carmarthen, Llandrindod Wells, Rhyl (Jan 2009)
- Cardiff University event (Feb 2009)
- Workers' Educational Association event, Llanelli (Feb 2009)
- Swansea University event (Feb 2009)
- Aberystwyth University event (Feb 2009)
- Bangor University event (Feb 2009)
- One Voice Wales NEC meeting, Newtown (Feb 2009)
- "Understanding Modern Government" Seminar 2, Cardiff (Mar 2009)
- Funky Dragon Grand Council, Carmarthenshire (Apr 2009)
- Institute of Welsh Affairs conference, Cardiff (Apr 2009)
- Cyswllt event, Cardiff (May 2009)
- Council for Education and World Citizenship event, Cardiff (May 2009)
- Urdd Gobaith Cymru Eisteddfod Q&A, Cardiff (May 2009)
- Bevan Foundation conference, Cardiff (June 2009)

In total, there were 40 events organised by or in conjunction with Welsh civic society at which members of the *All Wales Convention's* Executive Committee gave presentations or speeches, engaged in discussions or question and answer sessions at, or simply attended to draw attention to the consultation process. In addition, 21 separate organisations – including the Football Association of Wales, the Welsh Rugby Union, the Welsh Local

³⁴ *ibid.* p.109-11.

Government Association and the NFU – supported the *All Wales Convention* by publishing articles within their newsletters and on their websites, sending information leaflets on the Convention to their members or otherwise promoting the Convention’s work. In addition, Sir Emyr Jones Parry met with representatives of each local authority in Wales, with the express aim of obtaining views from all over the country.³⁵

Public Events

Engagement with stakeholders was only part of the *All Wales Convention’s* remit however, and there was a concern among some involved with the process that, if it was to do the job it had been asked to do,

*it was critical that we moved beyond the political actors – those members of policy processes, the people and organisations always involved – because I think there is too much of that in Welsh politics. And there is a feeling that political elites are apart from the Welsh population... so we needed to take the process to the people.*³⁶

There was concern too that, while stakeholders could help the Convention to disseminate information on devolution and to promote its work, when the referendum came around, it was the Welsh population who would have to deliver their votes in order for the law-making powers to be delivered. For that to be the case, they had to be engaged in the consultation process, a task which would not prove easy for the *All Wales Convention*, and one which required some creative – and often unconventional – thinking.

The Convention devised a six-month programme, comprising four different types of public event and running from January until June 2009 – towards the end of the *All Wales*

³⁵ *ibid.* p.112.

³⁶ Interview with Rob Humphrey (All Wales Convention Executive Committee) (July 2010)

Convention process and almost immediately prior to the Executive Committee's final report. They held 23 separate events in that six month period and engaged 1,700 people in discussions about devolution.³⁷ The Convention held 9 Discussion Group events in total in venues across Wales. These began with a presentation from an Executive Committee member to set the context of debate, which was then followed by smaller, group discussions whereby members of the public could contribute both through verbal and written means. Attendance at these events varied, from the 17 who attended the event at Pontypridd Rugby Club to the 96 that contributed to the discussion at the Quins Club event in Carmarthen – though many of the attendances were at the lower end of that scale for these events, with fewer than 30 people attending events in Denbigh, Wrexham, Barry, Abertillery and Newport.³⁸

Similar in style to the Discussion Group events, the Convention also held events based on the BBC's "Question Time" format, which began with a short presentation from a Convention member and subsequently saw a panel of politicians, councillors, academics and local business people, as well as Convention representatives, answering questions from the audience on the devolution debate. There were 8 of these events held in community centres, theatres, and schools (and even, in one case, a stadium) across Wales, with Sir Emyr Jones Parry on the panel at each event. He was joined by local representatives, from ministers and university employees at the event in Anglesey to MPs and businesspeople at events in Mold and Monmouth. Generally, these events were better attended than the Discussion Groups, ranging from the 45 who attended the event in Newtown to the 170 at the event at Cardiff City Hall.

³⁷ All Wales Convention, 2009, *op cit.* p.113.

³⁸ All Wales Convention, 2009, *op cit.* p.113.

Box 5.5: All Wales Convention Public Events³⁹

Discussion Groups (9)

Port Talbot; Llandudo; Carmarthen; Pontypridd; Denbigh;
Wrexham; Barry; Abertillery; Newport

Question Time (8)

Newborough; Aberystwyth; Swansea; Newtown; Cwmbran;
Mold; Monmouth; Cardiff

Roadshow (5)

Bridgend; Caerphilly; Bangor; Haverfordwest; Cardiff

Family Day (1)

Merthyr Tydfil

The *All Wales Convention* Roadshow events were very different in nature to the Discussion Groups and Question Time events. On five occasions, Executive Committee members set up stalls in shopping centres, farmers' markets and busy shopping streets to take the discussion directly to the people. Instead of inviting participants to attend potentially lengthy meetings, the Convention simply asked shoppers to take a few minutes out from their shopping to complete surveys and to engage with the debate. Naturally, participation rates at these events was higher than at the arranged events, since there was less of an "opt-in" arrangement involved in participation in the Roadshow events, and this is reflected in the number of contributions received at these events – with over 100 participants recording views at each event. The Convention recognised that work and family commitments may have contributed to some members of the populace being unable to attend events at certain times, and that events in more formal settings – like the Question Time events – could have proved intimidating to potential contributors.

³⁹ *ibid.* p.114-16.

This led the Executive Committee to make use of the Roadshow events – and, the last type of event, a Family Day held in Merthyr Tydfil, which provided a crèche facility to allow those with young families to join the debate. This was intended to encourage people to contribute to the debate in a more leisurely environment, especially those who found attending the other events impractical.

In total, during the public events phase, the Convention engaged with over 1,700 people. As a proportion of the Welsh electorate (2.3m) this is a relatively small number, and critics argued that this fell well below what was expected of the Convention. Michelle Matheron, of the WCVA put it most succinctly:

*The All Wales Convention's remit was for **all** Wales – and to **inform** – and when you take it like that, it has clearly not done this.⁴⁰*

However, she was quick to qualify this criticism:

But there are reasons for this – it is hugely difficult to do. Communication links, transport links, the media and the language issue – they all make it difficult to reach people... The All Wales Convention's Executive was very good – they didn't have an easy job... but meeting people in shopping centres worked well, so too did meeting with stakeholders and taking evidence from them.⁴¹

Indeed, the *All Wales Convention* Executive Committee recognised this themselves. Sally Hyman picked up on both the geographic and media-related issues:

Most of the meetings were in South Wales, but that is predominantly where the population is, so that was to be

⁴⁰ Interview with Michelle Matheron (WCVA) (June 2010).

⁴¹ *ibid.*

*expected. For our purposes, the Convention had to be all-encompassing, but again we hadn't realised that the media was so English-based until we were too far into the process to change how we could get our message across.*⁴²

Politicians were also quick to identify the difficulties in travelling around Wales. Gareth

Jones AM noted that:

*There is sadly a lot lacking in the way of transport systems in Wales. There are plenty places that remain remote because it suited Wales' natural resources and industrial change – in particular, the coal mines in both North and South Wales are well-connected but not much is in between. We must overcome the North/South divide in Wales, but we must also be realists about it.*⁴³

It appears that public engagement in the Convention process was limited by several issues – as identified in the passage above. However, the Convention was still able to produce a full report based predominantly upon the formal evidence gathering sessions.

Formal Evidence-Gathering

This evidence was gathered in three ways. Firstly, the *All Wales Convention* opened its website to contributions, providing an online form which allowed visitors to the site to engage in the discussion – and it did so, as in each of the Convention's forums, in both English and Welsh. This allowed the Convention to target a slightly different audience than it had when inviting oral evidence. From the website itself, the Convention received 392 separate contributions, with the names of all of those contributing through this means appearing in Annex F of their final report.⁴⁴ While this was a useful exercise in

⁴² Interview with Sally Hyman (All Wales Convention Executive Committee) (June 2010).

⁴³ Interview with Gareth Jones (Plaid Cymru AM) (June 2010).

⁴⁴ All Wales Convention, 2009, *op cit.* pg122-5.

engaging members of the public in debate, the number of anonymous contributions limited their usefulness in demonstrating that the website had engaged a widespread cross-section of the Welsh population. Of the 392 contributions to the site, 46 were labelled “Anonymous” – 12% of the total – with several more individuals identified only by their initials or first names. Nevertheless, online engagement with the discussion did provide the *All Wales Convention* with a collection of widely varying views. Boyd Williams of Fishguard complained that:

*The current LCO system of transferring legislative competence to the National Assembly is hopelessly slow and inefficient. In a nutshell, we need exactly the same devolution deal as Scotland and nothing less, and we already needed it 10 years ago.*⁴⁵

Ed in South Wales wanted to discuss abandoning the whole devolution project:

*The question itself demonstrates what is wrong with this whole process. I have yet to hear any argument as to why transferring a specific law making power to the assembly is needed. To my mind, we should not be transferring additional powers just for the sake of it, particularly given the huge cost of running the Assembly that we taxpayers are already saddled with. We should be trying to reduce waste and bureaucracy in times of recession, not increase it...*⁴⁶

And while Ed’s contribution was over 100 words long, Adam Daniels in Cardiff kept his response to the question of when the powers should be transferred to the Assembly as short as he could:

*As soon as possible, all at once.*⁴⁷

⁴⁵ Contribution to the All Wales Convention via online form, viewed on the Convention’s website at <http://allwalesconvention.org/getinformed/evidence/onlineforms/?lang=en>

⁴⁶ *ibid.*

⁴⁷ *ibid.*

There were even some who wanted to go further, with Ian Seaton in Swansea beginning his contribution:

*I think that the excellent report of Lord Richard on the future constitutional set up in Wales should be implemented in full. The current arrangements are barely understandable even by those who drew them up and have certainly left the general public in Wales confused...*⁴⁸

The website contributions provided the Executive Committee with evidence, if it were required, that there was little agreement among the Welsh public as to the future direction of devolution in Wales.

In addition to the online debate, the *All Wales Convention* invited written evidence to be submitted. This could be done in two ways. Firstly, the Convention devised a questionnaire on the debate which was completed by 1,925 people – predominately at events run by or for the *All Wales Convention* (events like the shopping centre Roadshows were particularly useful for providing completion of these questionnaires). Secondly, the Convention published consultation questions which were aimed at aiding contributors in focusing their submissions (the list of questions was also published as Annex E in the Convention’s final report). While the Convention was keen to ascertain people’s views on the specific questions they had asked, they accepted all contributions which were within the remit of the consultation. This resulted in written evidence from 608 organisations and individual members of the public, ranging from political elites (Welsh Assembly Government ministers and officials) and political parties to interested stakeholders (the British Medical Association, Federation of Small Businesses and the TUC Cymru) and

⁴⁸ *ibid.*

individuals with no official affiliations.⁴⁹ In some instances, the written contributions from members of the public mirrored the quality and length of contributions from the online sources – most were deliberately short and to the point. However, some contributions – from academics writing as individuals and not through their institutions for example – were much more detailed, and provided evidence of extensive research on the issue.⁵⁰

Contributions from political parties were typically reflective of the respective parties' position on the devolution issue. The Welsh Liberal Democrats' submission warned that:

*the current devolution settlement is overly complex, poorly understood and unresponsive.*⁵¹

In addition, they argued for fiscal powers for the National Assembly for Wales, in a similar model to that of the Scottish Parliament:

*We envisage moves, in the long-term, towards a legislative settlement such as that which Scotland enjoys, where the National Assembly has legislative competence over all areas that are not specifically excepted. We believe that a good model for this would be Schedule 5 of the Scotland Act, 1998.*⁵²

Plaid Cymru's parliamentary group titled their contribution "Time for a Proper Parliament?" and also compared the powers of the National Assembly for Wales with

⁴⁹ *ibid.* p.13.

⁵⁰ This is particularly true of the contribution from Professor Laura McAllister and Diana Stirbu, of the University of Liverpool, which stretched to a 5,000 word article comparing the National Assembly for Wales with other European regional institutions. Accessed on the All Wales Convention website at:

<http://allwalesconvention.org/getinformed/evidence/writtenevidence/public/April09/?lang=en>

⁵¹ Welsh Liberal Democrats, *Submission to the All Wales Convention*, p7. Accessed on the All Wales Convention website at:

<http://allwalesconvention.org/getinformed/evidence/writtenevidence/political/?lang=en>

⁵² *ibid.* p.7-8.

those of the Scottish Parliament, arguing that, given the Scotland Act provided clear evidence of the powers which the UK Parliament reserved,

*The establishment of competence in the Scottish context therefore is relatively straightforward, whereas the Welsh context is far from being so.*⁵³

Finally, the *All Wales Convention* held 13 formal evidence gathering sessions to hear evidence from 76 individuals and organisations across Wales.⁵⁴ Of the 13 sessions, 7 were held in Cardiff (see box 5.6) which did nothing to aid the perception that the Convention was an elite-based, South Wales-centric consultation.

Box 5.6: *All Wales Convention* Oral Evidence Gathering Sessions⁵⁵

- Cardiff 1 (Feb 2009)
- Caernarfon (Feb 2009)
- Carmarthen (Mar 2009)
- Swansea (Mar 2009)
- Cardiff 2 (Mar 2009)
- Newport (Apr 2009)
- Wrexham (Apr 2009)
- Cardiff 3 (May 2009)
- Cardiff 4 (June 2009)
- Cardiff 5 (June 2009)
- Cardiff 6 (June 2009)
- Llandrindod Wells (June 2009)
- Cardiff 7 (June 2009)

NFU Cymru's Assembly Advisor, Huw Rhys Thomas noted this was particularly noticeable within his organisation, arguing that:

⁵³ Plaid Cymru Parliamentary Group, *Official Submission from the Plaid Cymru Parliamentary Group to the All Wales Convention*, p.6. Accessed on the All Wales Convention website at: <http://allwalesconvention.org/getinformed/evidence/writtenevidence/political/?lang=en>

⁵⁴ All Wales Convention, 2009, *op cit.* p.13.

⁵⁵ All Wales Convention, 2009, *op cit.* pg126-9.

*it was hard to get farmers to articulate their views on something like the All Wales Convention – most held the view that it was far removed from what they were doing, and wasn't that important to them.*⁵⁶

This perception provided some evidence of the fact that the Convention had difficulty in fulfilling the second of their objectives – to “facilitate and stimulate a widespread, thorough and participative consultation at all levels of Welsh society on the issue of primary law-making powers”. Indeed, Sally Hyman, of the Executive Committee itself argued:

*I'd go as far as saying that the one failing of the All Wales Convention was the lack of communication with the populace.*⁵⁷

Nevertheless, these sessions proved invaluable for the Executive Committee by providing access to individuals who played a key role in the operation of the LCO process within the National Assembly for Wales and the Welsh Assembly Government – including the First Minister and Deputy First Minister, members of the Assembly Commission and civil service, and politicians from Plaid Cymru, the Liberal Democrats and Labour. In addition, the Executive Committee invited evidence from organisations which had experience of working with the National Assembly for Wales, including the Association of Chief Police Officers (ACPO), NFU Cymru, CBI Cymru and the Wales Council for Voluntary Action (WCVA), as well as dedicating a session to taking evidence from Welsh media bodies, including BBC Wales, Real Radio and the Western Mail.⁵⁸

⁵⁶ Interview with Huw Rhys Thomas (Assembly Advisor, NFU Cymru) (July 2010).

⁵⁷ Interview with Sally Hyman (All Wales Convention Executive Committee) (June 2010).

⁵⁸ All Wales Convention, 2009, *op cit.* p.127-8.

Evidence

The first distinct piece of information which was discerned by the Convention was that a reluctance to accept devolution – as witnessed by the narrow majority in favour of an elected Assembly in the 1997 referendum – remained prevalent among the general population. Though members of the public could identify some policies delivered by the National Assembly for Wales, instinctively they were critical of devolution and sceptical of its benefits. The Convention was quick to recognise that difficulties in effective communication across Wales contributed to a lack of public understanding of devolution. However, they saw a bigger problem in the complexity of devolution itself.⁵⁹ In short, the public had difficulty identifying the benefits of devolution in part because the process itself was not well understood.

Similarly, the fact that the *All Wales Convention* was established to consult upon an “arcane issue” about the “minutia of the law-making process”⁶⁰ was identified as part of its problem in engaging the wider Welsh population in the devolution debate. During the oral evidence gathering sessions, Sir Emyr Jones Parry repeatedly invited respondents to consider the “Mrs Jones Test”.⁶¹ This was the Convention’s view that the Welsh public were interested in the political process only in as far as they could identify how it affected their interests. Indeed, their interest in the process was only concerned with the specific policy outcomes arising from the decision-making process. How those decisions were made were of little concern to the vast majority of the population – and this, as the

⁵⁹ *ibid.* p.23-4.

⁶⁰ Interview with Harry Ludgate (All Wales Convention Executive Committee) (June 2010). This point was also made in an interview with Huw Rhys Thomas (Assembly Advisor, NFU Cymru) (July 2010).

⁶¹ In interviewing Adam Price MP, Sir Emyr Jones Parry placed Mrs Jones in Bon-y-maen, while in addressing Kirsty Williams AM, Mrs Jones was said to be from Froncysyllte. The point was that there was a Mrs Jones in every Welsh village and town represented by the caricature.

Executive Committee pointed out in these evidence gathering sessions, would be a problem for any subsequent referendum campaign.

This was further complicated by the enactment of the Government of Wales Act 2006 and the system of Legislative Competence Orders which ensued. The Convention took substantial evidence on this issue. The broad consensus among those who were actively involved in the processes – the First Minister, the Welsh Assembly Government, Assembly Commission and the Welsh Affairs Committee – was that though the system was complex, through practise it was working more efficiently.⁶² However, further evidence from a variety of sources suggested disquiet with the process. Indeed, one member of the public went as far as arguing:

*If we judge it against the criteria of openness, simplicity and value for money it fails on all three. It is not a model for good governance.*⁶³

This is a view shared by many involved in the political process in Wales. In interviews with the author, the perceived success of the LCO system amongst those who had been involved directly with it was accepted with the caveat that the only way reason had worked well to that point was because there was the political will in both Cardiff Bay and Westminster to make it work. Were the two to diverge – as they did after the UK General Election in 2010 – then the complications of the process would be much more apparent and the process manipulated for political gain.⁶⁴ Indeed, there were signs that this was occurring prior to the change in UK Government, with the Welsh Assembly Government's

⁶² All Wales Convention, 2009, *op cit.* p.30.

⁶³ Written evidence of Michael Haggett, 31 January 2009, p6, 15. Accessed on the All Wales Convention website at: <http://wales.gov.uk/docs/awc/publications/090219michaelhaggettfeben.pdf>

⁶⁴ Interview with Mr Harry Ludgate (All Wales Convention Executive Committee) (June 2010).

LCO pertaining to Housing policy – sent to Westminster with the express support of the National Assembly for Wales and, through consultation, the wider Welsh public and interested stakeholders – returned without permission to legislate.⁶⁵

The evidence from representatives of political parties, though subsequently in agreement (at the level of the Assembly at least) about the desirability of moving to Part 4 of the Government of Wales Act 2006, was focused on several different issues. Giving oral evidence, Nick Ainger, then Labour MP for Carmarthen West and South Pembrokeshire and formerly a Minister in the Wales Office, argued about the need for unanimity among the parties in support of the referendum – and indeed within each party – as well as confidence in politicians, as a precursor to moving to a referendum:

*[T]he lessons that you learn from the two referendums are you certainly need the major parties united, you certainly need the Labour Party having a settled view of the policy, and you need I think as well something which we are lacking at the moment, which is confidence in politicians, confidence in the political system. We do not have that at the moment.*⁶⁶

He also reaffirmed the view of then Secretary of State for Wales Peter Hain that moving too quickly towards a referendum could be disastrous for devolution if there was a negative response.⁶⁷ Peter Hain himself wrote to Sir Emyr Jones Parry arguing that moving towards a referendum quickly – before the LCO system had really bedded in and so soon after the UK Government had passed its last legislation pertaining to the devolution settlement in Wales, the Government of Wales Act 2006 – would show “bad

⁶⁵ Interview with Janet Ryder (Plaid Cymru AM and Chair of the Subordinate Legislation Committee in the National Assembly for Wales) (June 2010).

⁶⁶ Nick Ainger, then Labour MP, oral evidence to the All Wales Convention, 25 June 2009, accessed on the All Wales Convention website at: <http://wales.gov.uk/docs/awc/publications/090714nickaingeren.pdf>

⁶⁷ Interview with Nick Ainger (then Labour MP) (March 2010).

faith” to the UK Parliament. Consequently, he felt that MPs would not be minded to “trigger a referendum before or during 2011” since they had only passed the 2006 Act on the understanding that the LCO system would be in place for a considerable period of time before moving to a referendum. Peter Hain went further in his evidence, arguing that even if the UK Parliament agreed to move to a referendum, if it “were held today [writing in October 2009], it would be lost”.⁶⁸

All Wales Convention Recommendations

The Final Report of the *All Wales Convention* – a report which carried the unanimous backing of its Executive Committee – was presented to the Welsh Assembly Government in November 2009. It contained broad recommendations in six areas. Firstly, the Convention commended the progress made by the National Assembly for Wales and the UK Parliament in improving the level of scrutiny involved in the LCO process. However, recommendations were made that, whether the LCO system remained in operation or the move to Part 4 of the Government of Wales Act 2006 was completed, further work in this area would be required in order to bring the level of scrutiny of Welsh legislation into line with other legislatures in the UK. Secondly, the Convention reported a distinct lack of understanding throughout the general public in Wales about the scope and impact of devolution. Members of the Convention’s Executive Committee⁶⁹ and other interested stakeholders⁷⁰ recognised the challenges of effective communication in Wales and noted that the Convention itself had largely failed in this part of its remit – that is, in educating

⁶⁸ Peter Hain MP, then Secretary of State for Wales, letter to Sir Emyr Jones Parry on the issue of the referendum, 2 October 2009, and quoted in the final report of the All Wales Convention, 2009, *op cit*, p.94.

⁶⁹ Interviews with Sally Hyman (All Wales Convention Executive Committee) (June 2010) and Harry Ludgate (All Wales Convention Executive Committee) (June 2010).

⁷⁰ Interview with Michelle Matheron, (WCVA) (June 2010).

the public on devolution. The Convention recommended that more work also needed to be undertaken in this area if devolution was to be accepted as part of the Welsh political landscape in a way it was not in the immediate aftermath of the 1997 referendum victory. Thirdly, and related to the perceived lack of public understanding of devolution, the Convention recommended the continuation of a wide-ranging public debate on devolution. The fact that the debate needed to involve the public and not simply political elites – and, specifically, the disconnect between the public and the political elites – was emphasised in interviews with the author.⁷¹

Fourthly, and perhaps most importantly given it related directly to the Convention's remit, was the Convention's recommendation that Part 4 of the Government of Wales Act 2006 offered a "substantial advantage"⁷² over the LCO system. This was a significant and important recommendation, validating as it did the coalition's own view that progress towards Part 4 through a referendum was desirable (as set out in the One Wales Agreement). In some respects, this outcome could have been predicted – a Convention established to examine the arguments for moving to further legislative devolution delivers a report which supports the views of those who established it and provided its remit. However, this cynical view of the Convention has not gained any real traction for several reasons: the selection of former UN diplomat, the widely respected Sir Emyr Jones Parry as its chair; the thoroughness with which evidence was collected during the Convention process; and, crucially, the neutrality maintained by the Convention throughout the process. Thus, though the final report did provide proponents of

⁷¹ This was particularly evident in an interview with Rob Humphrey (All Wales Convention Executive Committee) (July 2010).

⁷² All Wales Convention, 2009, *op cit.* p.98.

devolution with the recommendation they had hoped for, it did so from an impartial and unbiased perspective, guided only by the evidence collected. That neutral perspective also lent the Convention's fifth recommendation – that a 'Yes' vote in a referendum was obtainable but could not be guaranteed – more weight. Given the evidence collected by the Convention (as outlined above) but particularly that the understanding of devolution in Wales is still lacking, it was this recommendation which the Welsh Assembly Government took most careful note of. The *All Wales Convention's* report made clear that this judgement was relevant *only* to the period for which the Convention took evidence and that in any referendum a confluence of factors combine to influence the eventual outcome. Thus, the Convention concluded that it could be said with no certainty that a 'Yes' vote would be delivered. Finally, in terms of timescale, the Convention recommended that if the original timetable for a referendum outlined in the One-Wales Agreement was to be adhered to (that is, that the referendum was to be held prior to the dissolution of the 2007-2011 session) then a decision on holding the referendum would be required by June 2010 at the latest. This recommendation took into account the time required by the Secretary of State for Wales to consult upon the potential referendum question, for the Electoral Commission to itself make recommendations in this field as well as designating actors on either side of the debate, and for a full and informative campaign to take place.

Impact of the *All Wales Convention* on Welsh politics

With the *All Wales Convention* recommending that a move to a referendum was preferable, the Convention had a clear influence on the Welsh political agenda for the following two years. It played a considerable role in shaping the devolution debate, most

prominently at the level of the Assembly itself, where the four parties represented devised their individual and collective strategies to move towards and win a referendum on the issue.

For Labour and Plaid Cymru, the *All Wales Convention* had been a key component of the One Wales Agreement and one which their continued partnership depended upon. Indeed, the establishment of the Convention was central to the coalition negotiations – without agreement on this issue there may have been no coalition at all. Plaid Cymru’s Chief Executive, Dr Gwenllian Lansdown made the point that the Convention was a “red-line issue” for her party – a point underlined by the fact that negotiations as to the wording of this section were conducted by Rhodri Morgan and Ieuan Wyn Jones themselves.⁷³ Bethan Jenkins AM argued that it was a necessary part of the agreement, and that it was needed to “gauge the views of the public” soon after the enacting of the terms of the Government of Wales Act 2006. The latter also noted that Wales had not gone through the process of public engagement prior to the establishment of the National Assembly for Wales in the same way that Scotland had with the Scottish Constitutional Convention, and that the *All Wales Convention* might fulfil a similar role.⁷⁴

For Labour – whose MPs had only passed the Government of Wales Act a year before the coalition agreement was signed – the *All Wales Convention* gave an opportunity to assess the operation of the LCO system and how the arrangements would work in practice, and to review how devolution had functioned in its first two terms. Primarily, however, it bought the party some time to consider its strategy. This applied internally: how to

⁷³ Interview with Dr Gwenllian Lansdown (Plaid Cymru Chief Executive) (June 2010).

⁷⁴ Interview with Bethan Jenkins (Plaid Cymru AM) (June 2010).

approach the issue of a referendum with Labour MPs, some of whom had only agreed to the Government of Wales Act 2006 on the basis that provision for a referendum was included, and whose expectation was that the referendum would not be in the foreseeable future?

The publication of the *All Wales Convention's* report caused the constitutional tension at the heart of the coalition to bubble to the surface, and a governmental crisis ensued. The issue which had the potential to bring the government down was instead resolved very quickly. First Minister Rhodri Morgan and Secretary of State for Wales Peter Hain on behalf of the Labour party put out a statement about the recommendations, calling for internal (Labour party) consultation and implying a lengthy exercise. This meant that the timeframe agreed to in the One Wales coalition would not be met. Plaid immediately hit the nuclear button, briefing that they were ready to bring down the government if Labour's statement was not retracted.⁷⁵ While Labour relented, and Morgan made a statement which welcomed the recommendations, it did not quite go far enough, and Plaid continued to press Labour to re-affirm their commitment to the referendum timeline as expressed in the coalition agreement. Morgan did so, and his successor as First Minister and leader of Welsh Labour, Carwyn Jones, went further, and scheduled the Assembly vote to move forward with the referendum. This – albeit short – crisis in Welsh coalition relations emphasised two things: one, that Plaid's sole focus in office was the constitutional question – it was why they had entered office with Labour in the first place, and they were positive they were going to hold Labour to their commitment – and two, that there was a clear fault line within Labour in Wales, between their Welsh MPs who

⁷⁵ Wyn Jones, R. and Scully, R. *Wales Says Yes: Devolution and the 2011 Welsh Referendum*, Cardiff, University of Wales Press, 2012, p.86-7.

had passed the Government of Wales Act 2006 in the first instance but were reluctant to move forward to a referendum on further powers, and their Assembly Members, particularly those in government, who were generally more amenable to further devolution.

Evaluation of the *All Wales Convention*

The *All Wales Convention's* remit suggested it was never intended as a precursor to a Yes campaign in any referendum on further powers which may have been forthcoming – and the neutrality of the Convention throughout its period of active engagement was strongly emphasised in interviews with the author.⁷⁶ However, the reasons for its establishment – as a consultation with the Welsh population to discuss the potential move towards a referendum – suggest otherwise. When governments control a referendum – the timing, the question, the campaign for a positive result – they will “tend to use it only when they expect to win”.⁷⁷ The Welsh Assembly Government’s own One Wales Agreement made clear the coalition’s intention to “proceed to a successful outcome of a referendum” and that “the preparations for securing such a successful outcome will begin immediately” with the establishment of the *All Wales Convention*.⁷⁸ Indeed, as Alun Davies AM put it, the *All Wales Convention* was “essentially a government consultation by two parties in coalition to take us to a destination which is already known”⁷⁹ while comparisons were made with the Scottish Constitutional Convention. It is true that the latter was a bottom-

⁷⁶ Members of the Executive Committee Sally Hyman, Harry Ludgate and Rob Humphrey were particularly keen to point out the Convention’s neutrality, while members of political parties (Plaid Cymru’s Gwennllian Lansdown and Gareth Jones AM, and Liberal Democrat AM Jenny Randerson in particular) also noted their respect for the neutrality of the process. Interviews June/ July 2010.

⁷⁷ Lijphart, A. *Democracies: Patterns of majoritarian and consensus government in twenty-one countries*, New Haven, Yale University Press, 1984, p.203.

⁷⁸ Labour Party Wales and Plaid Cymru, 2007, *op cit.* p.6.

⁷⁹ Interview with Alun Davies (Labour AM) (July 2010).

up process, set in a different time period and aimed predominantly at civic society but its goal was similar – to establish public support in a referendum on devolution.

Thus, while the comparison in activity between the *All Wales Convention* and the Scottish Constitutional Convention of the 1980s might be limited, the evidence is there to suggest that when a referendum on constitutional change is required, prior consultative engagement with the population is considered a prerequisite for success by governments in favour of the proposals. This was the case in Scotland in 1997, and though the Welsh referendum in the same year was won with a wafer-thin margin, there was no desire from pro-devolutionists in Wales to see such a narrow outcome in any subsequent referendum.

The *All Wales Convention* became everything to everyone. It was both a review of devolution – with evidence provided both from key actors and members of the public evaluating the strengths and weaknesses of devolution to that point – and an opportunity to build a platform for discussions on the future direction of devolution. It had a specific focus on the potential for a referendum which would allow the powers set out in the Government of Wales Act 2006 to be devolved in one go rather than the incremental devolution of powers which existed through the LCO system. It helped to maintain the momentum for legislative powers for the National Assembly for Wales which had begun with the 1997 referendum and continued through a review of Assembly procedures (2002), the Richard Commission recommendations (2004) and the Government of Wales Act 2006. To put it in its proper context, the Convention has followed a number of

previous initiatives which have considerably aided the building of a consensus around the desirability of further devolution to Wales.

Conclusion

This chapter has examined the *All Wales Convention* as a means of moving forward the constitutional debate in Wales. Its origins in the One Wales Agreement between Labour and Plaid Cymru, as well as support from the Conservatives and Liberal Democrats in nominating participants to the Executive Committee and the installation of the former UN diplomat Sir Emyr Jones Parry as chair, provided the process with a legitimacy which was perhaps lacking in the minority-SNP Scottish Government's consultation *A National Conversation*. With its wide remit – informing the public, debating the extension of powers for the National Assembly for Wales and reporting its findings to the Assembly – the process was widely seen as a success, though with some qualifications, particularly about the breadth of public engagement. The process itself has been examined thoroughly, with analysis of the evidence provided to the Executive Committee, the different types of event held throughout Wales and the recommendations included in the *All Wales Convention* final report. It examined the impact of the *All Wales Convention*, citing five key ways in which the process has affected the devolution process. Firstly, it maintained the governing coalition between Labour and Plaid Cymru in office and was a key part of Plaid Cymru's support for the coalition. Secondly, it maintained the momentum in favour of devolving further powers to the National Assembly for Wales by providing a forum for discussions surrounding the constitutional future of Wales – and it did so without breaking its strict requirement to remain neutral for the duration of the process. Thirdly, it played a key role in preparing the groundwork for the powers

referendum through its engagement with the public in those discussions, its recommendation that such a referendum could be won, and the subsequent National Assembly for Wales unanimous vote on the issue. And fourthly, it has played a role in convincing the public of the need for change by recommending in its final report that Part 4 of the Government of Wales Act 2006 offered a “substantial advantage” over the LCO system.⁸⁰ Finally, it considered the impact of the *All Wales Convention* on the Welsh political dynamic, which incorporated a great degree of consensus on the issue of the referendum. This was in spite of the fact that all four of the parties represented in the National Assembly for Wales were involved in the governance of Wales at various points in the process. Nevertheless, the consensus in Cardiff Bay that the Welsh Assembly Government should move forward to a referendum prevailed. The following chapter will examine this watershed event in Welsh politics in more detail, looking specifically at the role of Plaid Cymru in the Yes campaign and the arguments made in favour of moving to Part 4 of the Government of Wales Act 2006.

⁸⁰ All Wales Convention, 2009, *op cit.* p.98.

Chapter 6: Constitutional Referendums in the UK

Introduction

This chapter will contrast an actual event – the successful campaign to hold and then win a referendum to give the National Assembly for Wales the legislative powers it had been allocated in the Government of Wales Act 2006 – with the decision of the SNP Scottish Government not to proceed with their pre-election pledge in 2007 to hold a referendum on Scottish independence before the end of their first term in office as a minority government. It considers two clear questions: why were referendums considered to be the best means to deliver upon constitutional change in each case, and why were the decisions to proceed (in Wales) and postpone (in Scotland) made? While the answers to these questions are superficially simple – they were decided upon to gain public legitimacy, and were held (and postponed) on the judgement that public opinion was of a sufficient level – there are more complicated undercurrents in each case. In the context of the deliberative theory with which this thesis has engaged, this chapter considers the underlying decision and the data which informed them, arguing that the perception of public attitudes in each case played an important role in shaping elites' decision-making on the principle and timetable of the proposed referendums. It also provides a normative angle from which to judge the processes, arguing that while public engagement is broadly seen as a societal good, the use of deliberative methods in these cases appears to have been done not through any appeal to democratic principles, but as a pragmatic means of delivering support for government policy. In that regard, both consultation and referendum were used

rather more cynically than deliberative theorists would desire – however, their use did engage the public in the constitutional process.

The Government of Wales Acts 1998 and 2006

The model of devolution delivered by the Government of Wales Act 1998 created an institution without constitutional precedent, a unique scheme of elected executive devolution which had as its purpose not the devolution of new powers to the new Assembly but the democratisation of the existing functions of the Secretary of State for Wales.¹ The administrative powers which had been vested in the Welsh Office were now given over to the new National Assembly for Wales as a corporate body – to the institution itself rather than individual ministers themselves. This lack of an institutional division between the executive and deliberative functions of the National Assembly for Wales led to significant problems and confusion in the early years of the Assembly's existence.² The result was a “remarkable degree of constitutional volatility” and a process which has evolved in a flexible and ad hoc manner.³ Since the devolution referendum in 1997, Wales has seen two Wales Acts (1998 and 2006), a commission, a convention, a review of procedures and a further referendum which itself has provided the National Assembly for Wales with legislative powers the original Government of Wales Act did not envision.⁴ Chapter three (on the *All Wales Convention*) set out the aspects of the Government of Wales Act 2006 dealing with the

¹ Patchett, K. 'The New Welsh Constitution: The Government of Wales Act 1998' in Barry Jones, J. and Balsom, D. *The Road to the National Assembly for Wales*, Cardiff, University of Wales Press, 2000, p.229; Trench, A. 'Wales and the Westminster Model' in *Parliamentary Affairs*, Vol. 63 No. 1, 2010, p.119.

² Trench, A. 2010, *op cit.* p.121.

³ *ibid.* p.118.

⁴ Harvey, M. 'How to Lose a Referendum in Seven Ways: Thoughts on the Upcoming Welsh Powers Referendum' in *Regional and Federal Studies* Vol. 21 No. 1, March, 2011(a), p.91.

powers which were transferred as a result of the affirmative referendum vote in 2011. This section will discuss why the Government of Wales Act 2006 was required and how a referendum on extending legislative powers to the Assembly was part of that requirement.

From the “inauspicious start” offered to the National Assembly for Wales by the wafer-thin majority in the 1997 referendum, the ‘body corporate’ model of devolution provided a number of challenges for actors within and outwith the Assembly.⁵ Indeed, such were the challenges – particularly given the lack of division between the executive and the remainder of the Assembly – that the National Assembly for Wales itself took responsibility for a change in its own procedures in 2002, creating a de facto separation between the Assembly Administration (the executive) and the “Presiding Office” (the Assembly itself). With this separation also came changes in nomenclature: Assembly Secretaries became Ministers, the Executive Committee became the Cabinet and the executive itself became known as the Welsh Assembly Government.⁶ However, this was only the beginning. Part of the agreement which saw the Liberal Democrats enter coalition with Labour in the Welsh Assembly Government led to the establishment of the Richard Commission to examine ways devolution in Wales could be improved. While there was general acceptance of some aspects of the report, recommendations – including the use of the Single Transferable Vote electoral system and an increase in Assembly Members from 60 to 80 – were ignored.⁷ Indeed, while it

⁵ Rawlings, R. (2003) *Delineating Wales: Constitutional, Legal and Administrative Aspects of National Devolution*, Cardiff, University of Wales Press, 2003, p.49.

⁶ *ibid.* p.133, 157.

⁷ Richard Commission, *Report on the Powers and Electoral Arrangements of the National Assembly for Wales*, London, The Stationery Office, 2004, p.255, 259.

was the National Assembly for Wales itself which commissioned Lord Richard to investigate devolution in Wales, the Assembly was not empowered to implement these recommendations.⁸

Instead, it fell to the UK Government to respond, which it did through *Better Governance for Wales*, a 2005 White Paper. *Better Governance for Wales* largely ignored the more controversial aspects of the Richard Commission Report but did recommend several distinct changes to the devolution settlement in Wales.⁹ It recognised the confusion and the lack of scrutiny time in the committees as distinct problems arising from the body corporate model of devolution delivered in 1998, as well as the problems of accountability that occur with the Assembly as a whole taking responsibility for individual ministerial decisions.¹⁰ Rather than engaging with the recommendations of the Richard Commission, *Better Governance for Wales* made proposals “in isolation”¹¹ and set out a three-part process for legislative powers to be devolved to the National Assembly for Wales in a “more gradual, staged move” to make the Assembly a legislature.¹²

The three stages – a period of “framework powers”; a second period of Legislative Competence Orders (LCOs), where the Assembly would apply to Westminster for powers to be devolved on an individual basis; and a third period, when primary

⁸ Trench, A. 2010, *op cit.* p.127.

⁹ Wyn Jones, R. and Scully, R. ‘Welsh Devolution: The End of the Beginning and the Beginning of...?’ in Trench, A. (ed) *The State of the Nations 2008*, Exeter, Imprint Academic, 2008(a), p.63.

¹⁰ Wales Office, 2005, *op. cit.* p.12-3.

¹¹ Trench, A. ‘Better Governance for Wales: An Analysis of the White Paper on Devolution for Wales’ *ESRC: The Devolution Policy Papers No. 13*, London, The Constitution Unit, 2005, p.3.

¹² Wales Office, 2005, *op cit.* p.21.

legislative powers in twenty specific fields would be devolved – were discussed in more detail in the previous chapter. The White Paper was clear that the later stage would “represent a fundamental change to the Welsh settlement” and that a referendum would be required to verify the electorate’s desire for such a change.¹³

The precedent established by the 1979 and 1997 referendums meant that an argument could be made for a referendum to be held if any considerable change to the devolution settlement was to be made. There was nothing written in the Government of Wales Act 1998 which *required* a referendum, but political expediency (attaching a referendum clause to Part 4 of the 2006 Act was “the only way the Act would be passed”¹⁴) meant that such a path was needed. Indeed, the argument was made that:

*The 1997 referendum set up the NAW with executive responsibilities, and giving it legislative powers is a fundamental change to the system. The 1997 referendum did not provide a mandate for that, therefore there is a case that a referendum was required.*¹⁵

In 1979 and 1997 the constitutional change on offer was to have a democratically elected assembly take on the executive and administrative responsibilities of the Welsh Office. On offer in the White Paper – which formed the basis of the Government of Wales Act 2006 – was a move from executive to legislative devolution, moving the Assembly in the direction of a Parliament.¹⁶ Some saw the White Paper as obfuscating the issue, creating confusion as to what the powers of the Assembly would

¹³ *ibid.* p.25.

¹⁴ Interview with Senior Welsh Assembly Government Official (July 2010) (Cardiff).

¹⁵ *ibid.*

¹⁶ Wyn Jones, R. and Scully, R. 2008(a) *op cit.* p.59.

be, and that the three-step process from framework powers through LCOs to the referendum and legislative powers was a “political compromise” aimed at passing the legislation through the UK Parliament.¹⁷ Others argued that the solution found by then-Secretary of State for Wales Peter Hain, though it was a compromise and a difficult compromise for proponents of devolution to stomach at the time, was “elegant, ingenious and potentially highly favourable to their cause”.¹⁸ It had been clear to Hain that the majority of his Welsh Labour MP colleagues were not in favour of extending the powers of the National Assembly for Wales and would not be disposed to support moves in that direction – and a referendum was a concession required to obtain their support for the legislation.¹⁹ Rather than allowing their reluctance to devolve more power to derail the bill, Hain inserted a post-legislative referendum into the legislation – meaning that the powers sought by the Assembly and outlined in the bill would be devolved pending an affirmative outcome in a referendum, to be held at an undetermined date in the future. Hain – and, indeed, his Labour colleagues – recognised that, at the time, victory in such a referendum was unlikely. This meant more devo-sceptic Labour MPs could consider the promise of such a referendum as a major victory against the devolution of further powers.²⁰ That being the case, the Secretary of State for Wales – a lifetime supporter of devolution – had no intention of holding the referendum until he was confident that it would deliver a victory.²¹ For that reason, he inserted several locks on its delivery. First, a

¹⁷ Trench, A. 2005, *op cit.* p.9, 14; Trench, A. ‘Old Wine in New Bottles? Relations between London and Cardiff after the Government of Wales Act 2006’ in *Contemporary Wales*, Vol. 20, No. 1, October, 2007, p.33.

¹⁸ Wyn Jones, R. and Scully, R. 2008(a) *op cit.* p.64.

¹⁹ *ibid.* p.61.

²⁰ *ibid.* p.64.

²¹ Hain, P. ‘Good News: Comprehensive Law-Making Powers for Wales’, Speech delivered at Cardiff University, 29 October 2009(a).

two-thirds majority would be required in the Assembly itself (which gave Labour, with roughly half the AMs in each Assembly session, an effective veto over the referendum) and the Secretary of State would then have to give assent. The referendum bill would then need a majority in both the UK House of Commons and the House of Lords to be enacted and scheduled. Thus, Hain's solution was considered a win for both sides. Anti-devolution MPs saw the need for a referendum (and the small majority in favour of devolution itself in 1997) as a potential block on the devolution of further powers while pro-devolutionists considered the referendum a means of furthering support for devolution, with the added bonus that it would be up to those in favour of more powers to decide the timing of the referendum itself.²²

Campaigning for a referendum

While the *All Wales Convention* and the desire to move towards the referendum had been part of the Welsh Assembly Government's coalition agreement, there was unity across the Assembly as to the need for the powers offered by the referendum to be devolved as quickly as possible. Plaid AMs were critical of the "unworkable" LCO system, and that criticism was shared by Liberal Democrat and Conservative AMs who were united in their desire to move towards Part Four of the Government of Wales Act 2006 at the earliest opportunity.²³ The politically united front was extended to questioning the constitutional need to have a referendum on the extension of devolution, with AMs from all parties considering the referendum an unnecessary

²² Navarro, M. and Lambert, D. 'Some Effects of the Government of Wales Act 2006' *Contemporary Wales* Vol. 20, No. 1, October, 2007, p.19.

²³ Interviews with Bethan Jenkins (Plaid AM), Gareth Jones (Plaid AM), Mike German (then Liberal Democrat AM) and Nick Bourne (then Conservative AM and leader of the Welsh Conservatives) (June and July 2010).

hurdle to the Assembly securing the legislative powers it craved. Gareth Jones saw the referendum as simply a “constitutional exercise” which risked polarising the Welsh public on the merits of devolution itself.²⁴ Mike German argued against the need for a second referendum on the basis that the changes which would result from an affirmative vote were not substantial enough to require a public vote. He also argued that the referendum itself was redundant:

*The issue is simple – it isn’t about more powers, it is about getting control of the powers which it has already been agreed that we should have. Which makes it crazy that we’re now asking people to okay something which has already been okayed by their representatives.*²⁵

The Assembly’s then Presiding Officer, Lord Elis-Thomas, voiced his own concerns about the referendum as a device, considering that, in the wake of the MPs expenses scandal, any request for public support could result in an anti-politics vote.²⁶ Indeed, even Labour AMs were critical of the process. Alun Davies was clear that he considered the LCO system a “bizarre and Byzantine process” and that the idea of having a referendum was “terrible”:

*It’s a terrible idea. Awful. In my view, the principle of legislative powers was passed in 1997. Of course, others will see it differently. But the NAW was, in 1997, empowered to make laws – okay, it was secondary legislation, but that is still legislation – and we had a referendum then, and it was approved. We shouldn’t need another one... When you move to an elected body – as opposed to executive functions carried out by the Secretary of State – the principle of legislative devolution has been approved.*²⁷

²⁴ Interview with Gareth Jones (Plaid AM) (June 2010).

²⁵ Interview with Mike German (then Lib Dem AM) (July 2010).

²⁶ Interview with Lord Elis-Thomas (Plaid AM and then Presiding Officer of the National Assembly for Wales) (June 2010).

²⁷ Interview with Alun Davies (Labour AM) (July 2010).

He was also keen to emphasise that the narrative surrounding Welsh Labour MPs being somewhat sceptical about devolution was misplaced – pointing out that if it were not for them neither the powers devolved through the LCO system nor the opportunity to obtain further powers in the referendum would have been there.²⁸ Of course, those who were critical of the principle of holding a referendum were pro-devolutionists, who feared the damage that a No vote would do to devolution in Wales.

The Conservatives' David Melding offered a contrasting opinion, arguing that it was only the principle of executive devolution which had been considered in 1997, and that what was on offer in this referendum was legislative devolution – a distinctly different principle. He argued that while people voted narrowly for the former, it was not right to consider that as support for the latter, and thus a second referendum was the proper means of determining the issue.²⁹ He was, however, in agreement with his Assembly colleagues on the timing of the referendum, declaring the LCO system “preposterous” and “constitutionally crazy”, and the sooner a referendum was held to deliver the full legislative powers available, the better.³⁰

Thus Plaid were not alone in holding the somewhat contradictory position of questioning the principle of holding a referendum on the one hand and calling for it to occur as soon as practically possible on the other. As a party of government in the

²⁸ *ibid.*

²⁹ Interview with David Melding (Conservative AM) (July 2010).

³⁰ *ibid.*

Assembly they were however in a more difficult position than Conservative and Liberal Democrat AMs who were pushing for the referendum.

A further difficulty in pursuing the referendum came in the shape of Secretary of State for Wales Peter Hain, the architect of the Government of Wales Act 2006 who saw the Act as having “settled the question of Wales’ constitutional status, if not forever, then for generations to come.”³¹ He remained positive about the operation of the LCO system and considered that a referendum held at that time would be lost – though he was clear that he would support a referendum when he was confident that it could be won.³² He also remained cautious of the public perception of the National Assembly for Wales, and considered the situation – asking a public which was sceptical of the current role of the Assembly to enhance it by convincing them that it had made a discernible and positive impact upon their lives – problematic, with his conclusion that a referendum should not be rushed.

Table 6.1: Wales Constitutional Preferences (1997-2007)³³

	Independence	Parliament	Assembly	No devolution	Don't Know
1997	13	18	25	37	7
1999	10	28	33	24	5
2001	12	37	25	23	4
2003	13	36	25	20	5
2006	11	40	24	20	5
2007	12	42	26	16	5
2009	15	34	27	17	6
2011	13	34	27	18	8

³¹ Hain, P. ‘Devolution’s Next Step’ in *Agenda*, No. 38, Summer, 2009(b), p.20.

³² *ibid.* p.21.

³³ Wyn Jones, R. and Scully, R. 2012, *op cit.* p.68. Data from 1997 Welsh Referendum Study; 1999 Welsh Assembly Election Study; 2001 Wales Life and Times Survey; 2003 Wales Life and Times Survey; 2006 Survey by NOP for the Electoral Commission; 2007 Welsh Election Study; 2009 YouGov poll for Aberystwyth University and Cardiff University; 2011 Welsh Election Study.

Nevertheless, when the *All Wales Convention* reported their view that a referendum was winnable, and with public attitudes in Wales continuing to shift towards favouring a “Parliament” rather than “Assembly” (see table 6.1), the Welsh Assembly Government were keen to move forward with the referendum itself. The motion to move to a referendum was considered in the Assembly in February 2010 and was passed unanimously, beginning the process which was set out in Part Four of the Government of Wales Act 2006.³⁴ This put on record formally the consensus in the Assembly for the referendum.

The Welsh Powers Referendum: Timeline

However, as noted above, a two-thirds majority in the National Assembly for Wales was only the beginning of the process – in order to hold the referendum, the Secretary of State for Wales was still required to give his permission for the legislation in the UK Parliament to proceed.³⁵ The Welsh First Minister wrote to the Secretary of State, Peter Hain, in the aftermath of the vote, indicating the support of the Assembly for the progression towards the referendum and asking him to begin the process at Westminster. On receipt of the letter, the Secretary of State then had 90 days in which to agree to their request or to reject it. The Assembly vote, an expected consequence of the One Wales Agreement between Welsh Labour and Plaid Cymru, put Peter Hain in a difficult position. He had succeeded in convincing many Welsh Labour MPs to support the Government of Wales Act 2006 – with the referendum

³⁴ The Record of Proceedings in the National Assembly for Wales for Tuesday, 9 February, 2010, at: <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=166346&ds=2/2010#6>

³⁵ HM Government, *Government of Wales Act 2006*, London, Her Majesty’s Stationery Office, 2006.

included – on the basis that the referendum itself would not occur for some time.³⁶

Now he was in a position to accede to the Assembly’s request for a referendum, or decline.

In the event, he did neither. A UK General Election intervened in May 2010, which allowed the Secretary of State to delay his decision until after the election. With the new Conservative-Liberal Democrat coalition replacing Labour in government, Cheryl Gillan was appointed Secretary of State for Wales, with the responsibility for the referendum now in her hands. First Minister Carwyn Jones wrote to the new Secretary of State for Wales two weeks after the election, notifying her of the Assembly’s preference to have the referendum in the latter part of 2010, and to advise upon the wording of the question.³⁷ Addressing the National Assembly for Wales on the event of the Queen’s Speech, Gillan made clear that the referendum was “a priority” for the incoming government, and that it “should be held as rapidly as possible, in accordance with the wishes and requests” of the Assembly vote.³⁸ To that end, the new Secretary of State for Wales set out a timeline which suggested the referendum would be held in the first quarter of 2011, before the next elections to the Assembly and in line with the Welsh Assembly Government’s coalition agreement.³⁹

A week after announcing that the referendum would be held in the early part of 2011

³⁶ Wyn Jones, R. and Scully, R. 2012, *op cit.* p.77.

³⁷ Welsh Assembly Government statement from the First Minister on the Referendum, 20 May, 2010, at: <http://wales.gov.uk/newsroom/firstminister/2010/referendum/?lang=en>

³⁸ The Record of Proceedings in the National Assembly for Wales for 16 June, 2010, at: <http://www.assemblywales.org/bus-home/bus-third-assembly/bus-chamber/bus-chamber-third-assembly-rop/rop201006016qv.pdf?langoption=3&ttl=The%20Record%20%28PDF%2C480KB%29>

³⁹ *ibid.*

Cheryl Gillan provided the Electoral Commission with a draft question for the referendum.⁴⁰ The Electoral Commission then took its recommended ten weeks⁴¹ to test the question, reporting its findings in September 2010.⁴²

In shaping their response, the Electoral Commission invited contributions from several interested actors, including political parties represented in Wales, those who might be involved in the upcoming campaign, and noted academics.⁴³ Alan Trench and Keith Patchett registered concerns regarding the consistency in language between the Government of Wales Act 2006 and the proposed question, and considered that a short preamble would be useful for clarity.⁴⁴ Responding to these concerns, the Electoral Commission recommended a preamble and question (as set out in box 6.1), which was subsequently accepted by the Secretary of State for Wales, and the question outlined below was adopted as the question to be tabled in the referendum. The Secretary of State for Wales then announced in October 2010 that the date for the referendum itself would be 3 March 2011, as agreed with the Welsh Assembly Government.⁴⁵ The National Assembly for Wales itself had to give its consent for the referendum to proceed, and it duly did so with a second unanimous vote in the

⁴⁰ Wales Office *Referendum Question Press Statement*, 27 June, 2010(a), at: <http://www.walesoffice.gov.uk/files/2010/06/cg-referendum-question-230610.pdf>

⁴¹ Interview with Rhydian Thomas (Electoral Commission) (June 2010).

⁴² Electoral Commission, 'Referendum on lawmaking powers of the National Assembly for Wales' *Report of Views of the Electoral Commission on the proposed referendum question*, London, The Electoral Commission, 2010(a), at: http://www.electoralcommission.org.uk/_media/response-submission/commission-responses-to-external-consultations/Question-assessment-report-English-FINAL-no-embargo.pdf

⁴³ *ibid.* p.35.

⁴⁴ *ibid.* p.12.

⁴⁵ Wales Office, *Secretary of State Written Statement on Referendum*, 21 October, 2010(b), at: <http://www.walesoffice.gov.uk/files/2010/10/Written-Ministerial-Statement-on-Referendum.pdf>

Senedd on 9 November 2010.⁴⁶ Approval from the House of Commons and House of Lords followed sixteen days later, which allowed the referendum process itself to begin in mid-December.⁴⁷

Box 6.1: Electoral Commission Wales - Proposed 2011 Referendum Question⁴⁸

The National Assembly for Wales: what happens at the moment

The Assembly has powers to make laws on 20 subject areas, such as:

- agriculture
- education
- the environment
- health
- housing
- local government

In each subject area, the Assembly can make laws on some matters, but not others. To make laws on any of these other matters, the Assembly must ask the UK Parliament for its agreement. The UK Parliament then decides each time whether or not the Assembly can make these laws.

The Assembly cannot make laws on subject areas such as defence, tax or welfare benefits, whatever the result of this vote.

If most voters vote 'yes'

The Assembly will be able to make laws on all matters in the 20 subject areas it has powers for, without needing the UK Parliament's agreement.

If most voters vote 'no'

What happens at the moment will continue.

Question

Do you want the Assembly now to be able to make laws on all matters in the 20 subject areas it has powers for?

Yes/ No

⁴⁶ The Record of Proceedings in the National Assembly for Wales for 9 November, 2010, at: <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=202350&ds=11/2010#cynn>

⁴⁷ Wales Office, *Secretary of State Written Statement on Referendum*, 25 November, 2010(c), at: <http://www.walesoffice.gov.uk/2010/11/25/referendum-on-further-powers-for-assembly-another-step-closer-says-welsh-secretary/>

⁴⁸ *ibid.*

The Yes campaign agreed on the appointment of Roger Lewis, chairman of the Welsh Rugby Union, to lead their campaign, with the official launch of the ‘Yes for Wales’ campaign on 4 January 2011. Campaigning against were ‘True Wales’, anti-devolutionists who had participated in many of the *All Wales Convention* events, outlining their opposition to the extension of the Assembly’s powers (and, indeed, to the Assembly itself). True Wales was in the unenviable position of making a case for something they didn’t like (the National Assembly for Wales, as it was currently constituted) to oppose something they wanted even less – an extension of its powers.⁴⁹ Their preferred option – complete abolition of the Assembly – was not on the table. This position was to have a considerable impact upon the referendum campaign itself.

While the Electoral Commission had a role in recommending the question for the referendum, it also had a further part to play in designating which organisations, if any, should be described as “lead campaigns”. Such a designation carried with it the campaigning responsibility for their respective side of the debate plus funding for start-up costs. The Electoral Commission were clear in the run up to the process that, legally, if only one side met the criteria for designation – or if only one side applied for designation – then they would have to deny both sides designation as lead campaigners, thereby not providing any institutional advantage to one side over the other.⁵⁰ In the event, that is exactly what happened. Yes for Wales applied for designation as lead campaigners on the Yes side, and their application was

⁴⁹ Trench, A. ‘The Welsh referendum campaigns, and the question of turn-out’ in *Devolution Matters*, self-published, 12 January, 2011(a), at: <http://devolutionmatters.wordpress.com/2011/01/12/the-welsh-referendum-campaigns/#more-1907>

⁵⁰ Interview with Rhydian Thomas (Electoral Commission) (June 2010).

provisionally accepted by the Electoral Commission. However, True Wales declined to apply for designation and, though an individual did apply for designation as lead campaigner for the No campaign, his application did not meet the criteria for designation. Thus neither side could be designated as lead campaigns. The Electoral Commission did note that information in the campaign – on both sides – would be required for voters to make an informed choice in the referendum and thus would deliver some neutral information, as well as working with the “participated participants” (those parties involved in the campaign) in the referendum to ensure that information was widely distributed.⁵¹ Despite not being appointed as designated campaigns, Yes for Wales and True Wales were the primary actors in the campaign on the respective sides of the debate.

Yes for Wales: The Yes Campaign

The lessons of the disjointed and disunited campaign in 1979 had been learned the hard way and were put right by Yes campaigners in the 1997 referendum campaign, when the early establishment of the Yes for Wales campaign helped to provide direction and focus to the campaign.⁵² And while the 2011 version of the Yes for Wales campaign had been working in the background prior to its public launch in January 2011 – just two months prior to the referendum date – there were concerns about the readiness of actors for the campaign in the months prior.⁵³ In interviews

⁵¹ Electoral Commission, ‘No “lead campaigners” for National Assembly referendum’, *Press Statement*, 25 January, 2011(b). Also at: <http://www.electoralcommission.org.uk/news-and-media/news-releases/electoral-commission-media-centre/news-releases-referendums/no-lead-campaigners-for-national-assembly-referendum>

⁵² Andrews, L. 1999 *op. cit.* p.70.

⁵³ Harvey, M. 2011(a), *op cit.* p.93.

with the author in the summer of 2010, key stakeholders identified seven distinct concerns regarding the campaign:

- Cost of campaigning
- Activist engagement
- Timing
- Unity
- Leadership
- Communication
- Message⁵⁴

Yes for Wales tried to address some of these concerns early in the campaign. Given the lack of designation as a lead campaign, funding became both more and less of an issue. On the one hand, the campaign missed out on public funding to help with establishment costs and instead had to rely on donations and help from political parties. But on the other hand, with the lack of a designated No campaign, the amount Yes for Wales required to run the campaign was much less. Indeed, those campaigning for a No vote spent just £3,968 in the referendum campaign (£3,785 of that figure was spent by True Wales) which, compared to the £140,000 spent by those campaigning for a Yes vote (including £81,452 by the Yes for Wales umbrella organisation) shows the disparity in spending power between the two camps.⁵⁵ As an umbrella group, Yes for Wales maintained some control over the national campaign but gave considerable freedom to organisations to run their own local campaigns, helping to maintain activist interest in the campaign by allowing those local groups to have a say in the planning of events. The leadership of the campaign by the WRU's

⁵⁴ For an overview of these issues, see Harvey, M. 'How to Lose a Referendum in Seven Ways: Thoughts on the Upcoming Welsh Powers Referendum' in *Regional and Federal Studies* Vol. 21, No. 1, March, 2011, pp91-99.

⁵⁵ Electoral Commission, 'Referendum Spending Receipts', published 28 June, 2011(d) at: <http://www.electoralcommission.org.uk/party-finance/party-finance-analysis/campaign-expenditure/welsh-referendum-expenditure>

Roger Lewis and the experienced Daran Hill meant that political parties could focus on their own contributions to local campaigns without worrying about the Yes for Wales team, and this helped to maintain the unity that the parties had pledged from the beginning of the process. And while communication might have been a problem, the Yes for Wales campaign kept their message simple. For Yes for Wales, the advantages of a Yes vote were fivefold:

- To save time and resources;
- To allow prompt implementation of policy as needed;
- To make it easier for the public and organisations to understand and participate;
- To create more strategic legislation; and
- To allow AMs to concentrate on policy rather than powers.⁵⁶

It was a message that the referendum was a means of giving the National Assembly for Wales the opportunity to become a more efficient tool for legislation in Wales, allowing it greater scope to help the Welsh population in particular policy areas. True Wales, meanwhile, focused on what it saw as the failure of the Assembly to deliver on the economic promises made during the 1997 referendum campaign, arguing that a No vote would help to “roll back” and “undermine” devolution in Wales.⁵⁷ The debate thus became about efficiency, with Yes campaigners making the case that allowing the Assembly to use the powers devolved to it in Part 4 of the Government of Wales Act 2006 would improve legislation in Wales while No campaigners argued that it would only add to the inefficiency of the Assembly and that devolution in Wales needed to be reviewed and revised.⁵⁸ No campaigners were also keen to emphasise the one-

⁵⁶ Yes for Wales website at <http://www.yesforwales.com>

⁵⁷ True Wales website at <http://www.truewales.org.uk>

⁵⁸ *ibid.*

sided nature of the debate, with the “100 per cent of the membership” of the National Assembly for Wales in favour of the changes, they considered the campaign itself undemocratic.⁵⁹

Attitudes towards devolution and the referendum

The inability of the Electoral Commission to designate lead campaigns for the referendum made the campaign itself a low-key affair, with concerns that information on the either side of the debate would be hard to come by for both journalists and the wider public, and a resultant expectation that turnout would be negatively affected.⁶⁰

Date of Poll		Yes	No	Don't Know
24 Nov 2010	ITV Wales/ YouGov	52%	29%	13%
28 Nov 2010	BBC Wales/ ICM	57%	24%	18%
22 Dec 2010	ITV Wales/ YouGov	48%	30%	14%
26 Jan 2011	ITV Wales/ YouGov	49%	26%	26%
23 Feb 2011	ITV Wales/ YouGov	58%	29%	13%
28 Feb 2011	Western Mail/ R&M Group	49%	22%	28%
2 March 2011	ITV Wales/ YouGov	61%	28%	12%

The concerns about a lack of information were not unfounded. As many as a quarter of those surveyed in opinion polls in the weeks leading up to the referendum responded that they didn't know how they would be voting (see table 6.2). This

⁵⁹ Osmond, J. 'Psychology of the No campaign' in *Click on Wales: The IWA news analysis magazine*, self-published, 31 January, 2011, at: <http://www.clickonwales.org/2011/01/psychology-of-the-no-campaign/>

⁶⁰ Trench, A. 'Saying "No" in Wales' in *Devolution Matters*, self-published, 23 January, 2011(b), at: <http://devolutionmatters.wordpress.com/2011/01/23/saying-no-in-wales/>

⁶¹ Powell, N. 'Welsh referendum – the final poll' in *ITV Wales Blog*, self-published, 2 March, 2011, at: <http://itvwalesblog.com/2011/03/02/welsh-referendum-the-final-poll/>; ICM, 'Poll for BBC Wales', December, 2010, at: http://www.icmresearch.com/pdfs/2010_december_bbcwales_poll.pdf; Withers, M. 'Wales Referendum: Voters to deliver a big Yes' in *Western Mail/ Wales Online*, 2 March, 2011, available at: <http://www.walesonline.co.uk/news/wales-news/2011/03/02/voters-to-deliver-a-big-yes-says-poll-on-more-powers-91466-28261054/>

provided clear evidence that neither side was particularly adept at getting their information across. An eve of poll survey conducted by ICM for the BBC saw 48% of respondents declare they did not have enough information to make an informed decision as to how to vote in the referendum itself.⁶² Nevertheless, polls remained positive for the Yes campaign, which continued to register a sizeable lead in polls right up to the referendum date itself. This was consistent with the experience of 1997.⁶³ The final outcome in 1997 – a victory margin of just 6,721 from over one million votes cast – meant that no one in the Yes for Wales team was taking victory for granted this time around, with leaders from all four of the parties involved in the campaign and the campaign chairman urging the electorate to go out and vote Yes.⁶⁴

Table 6.3: Wales Powers Referendum Result (2011)⁶⁵		
Do you want the Assembly now to be able to make laws on all matters in the 20 subject areas it has powers for?		
	Votes	Vote %
Yes	517,132	63.49%
No	297,380	36.51%
Turnout	814,512	35.6%

On the day itself, the polls proved accurate, if understating the strength of feeling in support of the proposals slightly. On the question of whether the Assembly should “now be able to make laws on all matters in the 20 subject areas it has powers for”, 517,132 voted in favour, equating to 63.5% of those voting (table 6.3). This provided a healthy margin of victory for the Yes for Wales campaign of 219,752 – a considerable

⁶² BBC News Wales, ‘Welsh Referendum: Gloom in No camp as count continues’ 4 March, 2011(a): <http://www.bbc.co.uk/news/uk-wales-politics-12641977>

⁶³ McAllister, L. 1998, *op cit.* p.160-1.

⁶⁴ Withers, M. 2011, *op cit.*

⁶⁵ Electoral Commission, ‘Referendum 2011 Results’, 4 March, 2011(c), at: <http://referendumresults.aboutmyvote.co.uk/en/Default.aspx>

increase on the 6,721 margin achieved in 1997. The turnout of 35.2% was not a ringing endorsement of the proposals. It was higher than many expected however, and with limited visibility of the respective campaigns (given the lack of lead organisations) it was regarded as a relatively strong showing.⁶⁶ However, with just 35% of the electorate bothering to vote, the result could “hardly be viewed as a triumph for democratic participation”.⁶⁷ Of considerable cheer for supporters of devolution was the regional breakdown of results. Unlike in 1997, when half of the 22 unitary authorities in Wales voted no, only one (Monmouthshire, on the English border) did so this time, and even that was by the small margin of 320 votes.

The implications of this were clear – even for True Wales, whose spokesperson Rachel Banner recognised that the referendum result was a “turning point in the history” of Wales. However, while she recognised that the referendum was a clear mandate for the extension of the powers of the National Assembly for Wales, she did question whether the current number of Assembly members could provide adequate scrutiny of legislation – a question AMs themselves had been asking since the Richard Commission reported in 2004.⁶⁸

Referendums in Wales

Putting the 2011 referendum result in historical context is important, and comparisons can be drawn between the three referendums where the pro- and anti-devolution

⁶⁶ Trench, A. ‘Referendum result: Wales said Yes’ in *Devolution Matters*, self-published 4 March, 2011(c) at: <http://devolutionmatters.wordpress.com/2011/03/04/referendum-result-wales-said-yes/>

⁶⁷ Wyn Jones, R. and Scully, R. 2012, *op cit.* p.111.

⁶⁸ BBC News Wales, ‘As it happened: Wales Referendum, 4 March, 2011(b): <http://news.bbc.co.uk/1/hi/wales/9413995.stm>

sides of Welsh public life were broadly represented. In 1979, voters in Wales rejected devolution by a margin of four-to-one, rendering the requirement that 40% of the eligible electorate vote for the measure unnecessary, and devolution was soundly defeated. In 1997, the Yes for Wales campaign managed to reverse that result, albeit with a slim margin of victory (winning 50.3% of the vote, on a 50% turnout). The 1997 result, however, did represent a swing of 15% from No to Yes, a sizeable shift in opinion, without which the Assembly could not have been established.⁶⁹ The 2011 result saw a further shift, with the Yes for Wales campaign securing 63.5% of the vote, continuing the trend in favour of devolution. While some did point to the low turnout in 2011 (just 35.6% of those eligible to vote on 3 March did so) to suggest that the mandate for further powers was not unquestionable, those voting Yes in the two referendums which delivered positive outcomes for devolution remained fairly consistent. In 1997, 559,413 people voted for devolution while in 2011, those voting to enact Part 4 of the Government of Wales Act 2006 numbered 517,132. Though this represented a reduction of some 42,000 votes in favour of the proposals, over half a million voters remained in favour of devolution and enhancing its role. Contrastingly, those voting No in 1997 numbered 552,698 while in 2011 that figure was 297,380 – a reduction in those voting against the proposals of over a quarter of a million voters. In a nation in which the electorate numbers just over 2.2 million, these are not inconsiderable changes, and represent a clear body of opinion that devolution is now an accepted part of the Welsh political landscape, and that it should be enhanced to better serve the Welsh public.

⁶⁹ Balsom, D. 'The referendum result' in Barry Jones, J. and Balsom, D. *The Road to the National Assembly for Wales*, Cardiff, University of Wales Press, 2000, p.159.

This progression of Welsh attitudes – from anti-devolution through (narrow) support for devolution to support for enhanced devolution – is important for devolved politics in Wales, representing as it does, support for the Assembly and its maturation as a political institution. It also marks a clear change, not only in how politics is perceived in Wales, but how it operates. Transparency, accountability, access and engagement were clearly apparent in the structures of the new institution, and this was made clear in the consultative process which operated prior to the 2011 referendum. The lack of public engagement in consultations or debates about devolution in 1979 or 1997 meant that when the referendum came around in those cases, the subject was treated with suspicion, since the public were wary of something about which they knew little. Activists and politicians alike in 2011 had learned this lesson the hard way, and the Welsh Assembly Government's *All Wales Convention* was an attempt not only to engage the public in the debate but to educate and inform them about the subject of the referendum. When the referendum came around – a clear test of public engagement with the institution and the issue more specifically – the time spent on consultation appeared to bear fruit.

Of equal importance for the Welsh political landscape is the precedent set by this referendum. As noted above, several politicians⁷⁰ and commentators⁷¹ questioned the necessity of the referendum itself, arguing that the principle of legislative powers had already been passed and the changes which would derive from the 2011 referendum were not substantial enough to constitute the holding of a referendum on

⁷⁰ Interviews with Gareth Jones (Plaid Cymru AM), Mike German (then Lib Dem AM), Lord Elis-Thomas (then Presiding Officer of the National Assembly for Wales) and Alun Davies (Labour AM) (June/ July 2010).

⁷¹ Trench, A. 2011(a), *op cit*.

constitutional grounds. However, the referendum was a necessity from the point of view that the Government of Wales Act 2006 mandated public acceptance of the powers set out in Part 4 of the Act before they could be transferred to the Assembly. But this presents a difficult challenge for politicians in Wales, particularly those who are amenable to the National Assembly for Wales securing further devolved powers from Westminster – namely whether the precedent of this referendum has meant that any further devolution (for example, the fiscal powers outlined by the Holtham Commission) would require ratification by the public in further referendums.⁷² Certainly, the former Secretary of State for Wales (and architect of the Government of Wales Act 2006) Peter Hain suggested so in interviews on the day the results of the referendum were announced at the Senedd in Cardiff.⁷³ The Holtham Commission report itself suggested that if fiscal powers were to be devolved then a referendum would be required⁷⁴ and this view was confirmed in an interview with a Welsh Assembly Government Official. The suggestion here was clear: the 1997 referendum approved the principle of executive devolution and the 2011 referendum allowed for legislative powers to be devolved – if fiscal powers were also to be added, a third referendum would be required.⁷⁵

⁷² The Holtham Commission – formally, The Independent Commission on Funding and Finance for Wales – was established by the Welsh Assembly Government to examine the options for funding the National Assembly for Wales. Among the recommendations for change, the Commission suggested the Assembly should have, at the very least, the fiscal powers available to the Scottish Parliament through its sole tax-varying power.

⁷³ BBC News Wales, 2011(b), *op cit.*

⁷⁴ Holtham Commission, 'Fairness and accountability: a new funding settlement for Wales' *Final Report of the Independent Commission on Funding and Finance for Wales*, Cardiff, July, 2010.

⁷⁵ Interview with senior Welsh Assembly Government Official (July 2010).

Thus, the precedent set by the “unnecessary” referendum⁷⁶ in 2011 (and, to an extent, the use of the referendum as a device to ask the public’s consent for the establishment of devolved institutions in 1979 and 1997) has meant that any attempt to make further changes to the devolution settlement would almost certainly require some public consent. In evidence to the House of Lords Select Committee on the Constitution, Vernon Bogdanor made the case that direct democracy (that is, the use of referendums) should be used more often in the UK, arguing that “people now believe [...] that they have a right to be consulted on major changes”.⁷⁷ The previous (1997-2010 Labour) UK Government also provided evidence to the House of Lords Committee, suggesting that the “precedents set by previous referendums” should act as a guide to the issues which should be put to a public vote in the future.⁷⁸ Thus, while political actors did not welcome the necessity of this referendum, they may well have to go through the process again in the future should the National Assembly for Wales seek to add further – fiscal – powers to its remit.

The (lack of a) Scottish referendum 2007-11

For the SNP – prior to devolution – the principle of a referendum on independence was not one which carried much weight within the party. The understanding was that, should the SNP win a majority of Scottish seats in a UK General Election, they would thus have a mandate to negotiate the separation of Scotland from the Union. A referendum would follow only to approve a new Scottish constitution and bill of

⁷⁶ Wyn Jones, R. and Scully, R. 2012, *op cit.* p.163.

⁷⁷ House of Lords Select Committee on the Constitution, “Referendums in the United Kingdom”, *12th Report of Session 2009-10*, HL Paper 99, London, Her Majesty’s Stationery Office, 2010.

⁷⁸ *ibid.*

rights.⁷⁹ The institutional problem for the SNP, however, was the first past the post electoral system, which made such an outcome nearly impossible. Even at the height of the SNP's success – the two elections of 1974 – the party only polled 30% of the vote, and returned 7, and then 11, MPs. Subsequent elections to Westminster never succeeded in overcoming the former total, a far cry from half of Scotland's representation in the House of Commons. Furthermore, in a general election, many factors influence voters – they are never solely about one issue (though this was a lesson the SNP would use to its advantage in 2007 and 2011, reversing this strategy and telling voters that they could decide upon independence at a later date). So, while independence may have been a consideration for some voters, the recognition that the SNP would not form the government, or a preference for Labour or Conservative fiscal policy for example, may have proved a more significant influence on their vote. The SNP's strategy of using a General Election to provide a mandate for independence was not to prove successful.

Thus, from the 1990s on, under the leadership of Alex Salmond, the party looked to a much more gradualist approach, supporting devolution as a stepping stone to independence. And when devolution was delivered, the SNP's manifesto for the first devolved election in 1999 included a proposal to hold an independence referendum during the lifetime of the first parliamentary term.⁸⁰ The idea of a referendum – with multiple options for Scotland's constitutional future – had been part of the SNP's internal debates immediately prior to Alex Salmond's becoming leader in 1990, and,

⁷⁹ Scottish National Party, *Yes We Can win the best for Scotland: The SNP General Election Manifesto*, Edinburgh, SNP, 1997, p.6.

⁸⁰ Scottish National Party, *Scotland's Party, Scotland's Parliament: Manifesto for the 1999 elections*, Edinburgh, SNP, 1999, p.10.

after much internal debate, the principle found its way into the SNP's manifesto.⁸¹ The party had never before had the opportunity to compete electorally in a solely Scottish context previously and this gave the party an institutional advantage as the only major party solely based in Scotland.⁸² However, with 35 MSPs elected in 1999, and then just 27 in 2003, it was not until 2007 that this advantage became apparent. The SNP's manifesto in 2007 made clear the party's intention to work towards an independence referendum in the latter stages of their term in office should they enter government.⁸³ This proposal appeared alongside a raft of populist policies aimed at securing public support (opposition to the closure of accident and emergency units at local hospitals would prove to be one of the more successful of these policies) while at the same time playing down the threat of 'separation' that would follow should the party be victorious. Instead of opening negotiations straight away on the basis of winning an election, the party indicated that they would publish a consultation on the constitutional future of Scotland, with the end result being a referendum on Scottish independence. This provided the party with an opportunity to appeal to parts of the electorate who were resolutely opposed to independence and who had previously been reluctant to vote for the SNP. Effectively the party told them that they didn't have to decide upon independence during the election – that a vote for the SNP did not mean a vote for separation. They could still vote against independence in a referendum while voting for the policy platform the SNP were fighting the election on. As an electoral strategy, it worked – the SNP were able to penetrate Labour's electoral heartlands in west and central Scotland, winning seats and votes from Labour and the

⁸¹ Mitchell, J. 1996, *op. cit.* p.165.

⁸² Trench, A 'Introduction: The Second Phase of Devolution' in Trench, A. (ed) *The State of the Nations 2008*, Exeter, Imprint Academic, 2008, p.5.

⁸³ Scottish National Party, 2007, *op. cit.* p.8.

election with more votes than any other party and, crucially, one more seat than Labour.

SNP Referendum strategy 2007-10

The SNP's referendum strategy for the first half of their period in office had several facets, some of which proved successful (to a point) and others which were less so. The party sought to separate electoral support for the SNP as a party from support for their constitutional goal, which allowed them to appeal to voters who did not support independence. The party also sought to emphasise the democratic nature of their intention – thereby tying the principle of self-determination to a democratic principle: the right of the people to have a say on how they are governed.⁸⁴ Indeed, the principle of a referendum carries with it a connotation of self-determination: that this is an issue that the people are allowed to decide for themselves, a principle which, if carried, would be extended to the country itself as an independent sovereign state. However, the SNP's strategy also recognised the inherent risk they would be taking in inviting the public to have their say in a referendum on their constitutional goal. A referendum on the constitution is a once-in-a-generation event. The opportunity to deliver independence is one which the party was established for, and one which governing in the Scottish Parliament gave the party a chance to make good. However, leaving such a decision in the hands of the people is potentially dangerous for a party. This was why scheduling the referendum at the most opportune time was of critical importance to the SNP. If the party got it wrong – if the public were to reject independence in a referendum, as opinion polls throughout the SNP's term in office

⁸⁴ Interview with a senior Scottish Government Official (May 2010).

suggested – the party would have to wait a generation to hold another referendum on the subject if, indeed, they ever got the opportunity again.

The strategy then, was very much a long-term one. The SNP understood that their constitutional preference was not the constitutional preference of the majority. Thus, an instant referendum was not an option. Indeed, as Lijphart acknowledges, “when governments control the referendum, they will tend to use it only when they expect to win”.⁸⁵ The SNP recognised that they were unlikely to win such a referendum in the early years of their term in office and thus planned to put off the referendum until the latter part of the session. The focus of governing then became making every issue about building support for independence.⁸⁶ However, support for their constitutional preference remained static, and even dipped during the later stages of the consultation process. This meant a re-evaluation of the party’s referendum strategy. Patience, from activists and elected representatives alike, was very much the watchword.

Minority Government: major difficulties

The SNP released a list of achievements from their first 100 days in office, which suggested that their experience of minority government was a positive one, certainly in its early period.⁸⁷ But as their opposition reacted to the new political set-up (it was

⁸⁵ Lijphart, A. *Democracies: Patterns of majoritarian and consensus government in twenty-one countries*, New Haven, Yale University Press, 1984, p.203.

⁸⁶ Harvey M. and Lynch, P. ‘From National Conversation to Independence Referendum?: The SNP Government and the Politics of Independence’, paper prepared for the Annual Conference of the Political Studies Association, Edinburgh, March, 2010; Trench, A. 2008, *op cit*.

⁸⁷ Scottish Executive, *Reporting on 100 Days: Moving Scotland Forward*, Edinburgh, Scottish Executive, August, 2007, online-only publication at:
<http://www.scotland.gov.uk/Resource/Doc/196007/0052539.pdf>.

not only the SNP who had to react to the system of minority government) they began to use the parliamentary arithmetic to their advantage – to the detriment of the SNP's agenda. There were, of course, still times when they supported the government, when agreements were reached on parliamentary budgets (with the Conservatives, somewhat surprisingly, keen to work with the SNP and extract concessions in return for helping to pass the government's budget).⁸⁸ But the more substantive policy promises – the abolition of student debt and the replacement of the council tax with local income tax – were issues upon which agreement could not be found.

Local income tax in particular was a difficult issue for the party. Throughout the 2007 election campaign, the SNP had made clear that the council tax was unfair and needed reformed – and that, given the opportunity in office, the party would make it a priority. And while the party in office maintained that they wanted to reform the system of local taxation, there was no agreement with the other parties as to how that change could be made. Labour advised that while they sought change, it would not be as substantial as a complete overhaul of the system – it would more likely update the current model. The Liberal Democrats were in favour of a system of local income tax – the closest party to the SNP on this issue – but insisted that local authorities should be in control of the level of taxation, a distinct difference from the model the SNP were proposing. The Greens proposed a radical model which they called Land Value Tax, a model which they suggested would better support the low income families that the SNP proposed to help through LIT. The Conservatives, for their part, did not see a real

⁸⁸ BBC News Scotland 'SNP moves closer to Scottish budget deal', 8 February, 2011(a) at: www.bbc.co.uk/news/uk-scotland-12392990. The Scottish Conservatives supported the SNP's budget in each year of the parliamentary session from 2007-2011.

need for change.⁸⁹ For the first year and a half of the SNP administration, the party remained optimistic that a deal with the Liberal Democrats might be struck and continued to describe the freeze in council tax which had been agreed with all 32 of Scotland's local authorities as 'temporary'. However, Cabinet Secretary for Finance and Sustainable Growth John Swinney announced in February 2009 that the policy did not have enough support in parliament and it would not be pursued for the remainder of the parliamentary term.⁹⁰

This put the party in a difficult position. The end result of the episode was that the SNP had dropped a flagship policy (local income tax) from its government agenda due to lack of parliamentary support. However, the party continued to pursue its policy of holding a referendum on constitutional change – a second issue for which there was not a parliamentary majority for. Opposition parties pressed the point that this was a clear double standard from the Scottish Government – that they recognised a lack of parliamentary support as a reason to withdraw a policy in the instance of local income tax, but not in that of an independence referendum. This had the potential to become a major problem for the party in office.

2010-11 Referendum Strategy

Phase three of the consultation was launched in November 2009 with the publication of a second constitutional White Paper entitled *Your Scotland, Your Voice*. This phase – after the initial work done to promote independence through public events and

⁸⁹ Maddox, D. 'A simple plan fraught with complexities' in *The Scotsman*, 11 February, 2009, at: www.scotsman.com/news/snp_forced_to_drop_flagship_tax_policy_1_828947

⁹⁰ *ibid.*

publications – was intended to mark the beginning of the campaign for an independence referendum and stretch through to the referendum itself, tentatively planned for 2010. However, with parliamentary arithmetic still against them – and having made no progress on convincing opposition parties to support a referendum – the SNP were faced with major problems in keeping to their promise to hold a referendum. Instead of campaigning for independence, this phase of the consultation involved efforts simply to hold one.

And that intention was made more difficult in January 2010 when parliamentary manoeuvring by opposition parties meant that, if the SNP did introduce a referendum bill into the Scottish Parliament (as it intended to do) that bill would be considered by a Labour-chaired special committee of the Scottish Parliament.⁹¹ The SNP had waited until the rotation of party committee chairs had returned to them before the bill was to be announced, but a parliamentary intervention on the decision by Cabinet Secretary for Justice Kenny MacAskill to release from prison Abdelbaset Mohamed Ali al-Megrahi, the man convicted of the Lockerbie bombing in 1989, meant their opportunity to convene a special committee passed. This move put Labour in position to convene the special committee, a move which was likely to kill the referendum bill before it reached the Holyrood chamber.

Instead, the SNP published their intended referendum bill as a consultation paper with the intention of keeping the referendum issue alive through the UK General Election.⁹²

⁹¹ Harvey, M. and Lynch, P. 2010, *op cit*.

⁹² Scottish Government, *Scotland's Future: Draft Referendum (Scotland) bill consultation paper*, Edinburgh, Scottish Government, 2010.

This paper was split into two parts: a consultation paper, detailing options for referendum ballot papers and how the event itself might be organised, and a draft bill, with detail of how the legislation for such a referendum would appear before parliament.⁹³ This extended the public consultation on the constitution, keeping it on the political agenda – and bought the SNP time to consider their next move. With the UK election a matter of months away, political attention was once again focused on Westminster, meaning the SNP’s decision to postpone the referendum was less newsworthy than it might have been had the decision been made when media attention was more focused on Holyrood.

After the UK election in May 2010, which brought a Conservative-Liberal Democrat coalition to power at Westminster, the SNP reconsidered their options. The party had made several attempts at getting the Liberal Democrats on board with a referendum. This included consideration of a multi-option referendum, with “devo-max” joining independence and the status quo as options on the ballot paper. “Devo-max” was defined thereby that:

*the Scottish Parliament and Government would take on more responsibility for domestic matters and for raising, collecting and administering all (or the vast majority of) revenues in Scotland and the vast bulk of public spending. The UK Government and institutions would continue to have responsibility for matters such as macroeconomic policy and defence, but the Scottish Parliament and Government would have a greater range of measures available to them to support sustainable economic growth.*⁹⁴

⁹³ Harvey, M. and Lynch, P. 2012, *op cit*.

⁹⁴ Scottish Government, 2010, *op cit*, p.12.

The SNP perceived this to be the Liberal Democrats' preferred constitutional position, and indeed, at the 2007 Scottish Parliamentary election, it had been.⁹⁵ However, as noted previously, the Liberal Democrats would not co-operate on the issue – and their position against the referendum was further hardened on entering UK Government office in May 2010. Recognising that a referendum bill would be defeated, the party took the decision not to bring forward the legislation. The lack of parliamentary support – and the subsequent fear that the bill would be defeated – was cited as the key reason for the decision. Announcing the decision, the SNP were quick to point out that they remained eager to give the public their say on Scotland's constitutional future, but that it was unlikely the opposition parties would agree to their referendum. This was a further attempt to paint the opposition as an obstruction to democracy – and to tie the issue of independence, and the referendum itself, to principles of democracy. There was a consideration that the SNP's hand at the upcoming Scottish election in 2011 would have been strengthened considerably had they brought the referendum bill forward, in the knowledge that it would be defeated, making the charge that the opposition were the block to democracy more substantial. However, government sources⁹⁶ were keen to point out that, had the bill been introduced, opposition amendments could have been added – and, given the parliamentary arithmetic, passed comfortably – putting the SNP in a position where they would either have to accept amendments which were contrary to their referendum strategy or vote *against* their own referendum bill. When presented with these options, dropping the bill and hoping for a chance to introduce it after the election appeared the more attractive.

⁹⁵ Harvey, M. and Lynch, P. 2012, *op cit*.

⁹⁶ Interview with a senior Scottish Government official (May 2010).

In deciding not to bring forward the legislation on the referendum bill, Alex Salmond made clear that this was not an abandonment of SNP principle, merely a tactical decision aimed at improving the party's chances of securing an affirmative referendum result in the long run. While activists were disappointed that the party had not taken the opportunity to deliver a referendum, most recognised the weak position that minority government put the party in and accepted that the decision had been taken for the right reasons.⁹⁷ There was some internal discontent surrounding *how* the decision had been taken, with a lack of consultation among even elected members causing some disquiet, especially among party officials:

*Generally the party could accept the reasons for the decision, but some were furious about the lack of consultation or mention of it at several party events.*⁹⁸

However, most were of the opinion that it had been an electoral strategy delivered by Alex Salmond which had put the party into government in the first instance, and that he should be trusted on this decision also.⁹⁹ And indeed, even those who disagreed with the decision could see the logic behind it:

*I think the reason they gave – that they didn't want to go into an election campaign having lost a parliamentary vote on their core issue – made some sense.*¹⁰⁰

The decision then, was seen not as an abandonment of SNP principle, but as a strategic decision taken to assist in the forthcoming election campaign.¹⁰¹ This

⁹⁷ Interview with SNP activist (local councillor) (March 2011).

⁹⁸ Interview with Gareth Finn (member of the SNP National Executive Committee) (February 2011).

⁹⁹ Interviews with SNP activists (a councillor, a campaign manager and a constituency organiser) (February and March 2011).

¹⁰⁰ Interview with Gareth Finn (member of the SNP National Executive Committee) (February 2011).

viewpoint is consistent with the large-scale survey of SNP members undertaken in the immediate aftermath of the SNP's taking power at Holyrood in 2007. This research suggested that the SNP's membership had become more pragmatic, and that the fundamentalist-gradualist divisions on strategy of the 1980s and 1990s appeared to be less apparent.¹⁰² Indeed, evidence of this gradualist long-game was further provided with subsequent calls for a multi-option referendum, with enhanced devolution ("devo-max") providing a safety net should the public not yet be convinced of independence.¹⁰³ Just as the devolution referendum of 1997 had been supported as a means to an end, so too could enhanced devolution be seen by gradualists as a stepping stone to independence.¹⁰⁴

Even so, the decision not to proceed with the referendum bill when the party was in office for the first time – and had the opportunity to deliver its fundamental political ambition – was a gamble. The SNP had waited 73 years for an opportunity to govern Scotland, and there was no guarantee that they would not have to wait as long to win power again. Indeed, at the time the decision was made, Labour held a considerable lead over the SNP in opinion polls for the forthcoming Scottish Parliamentary election – a lead they maintained until ten weeks prior to polling day.¹⁰⁵ Granted, these opinion polls were conducted against the backdrop of the UK General Election in May

¹⁰¹ Interview with SNP activist (constituency organiser) (February 2011).

¹⁰² Mitchell, J., Bennie, L. and Johns, R. *The Scottish National Party: Transition to Power*, Oxford, Oxford University Press, 2011, p.1, 142.

¹⁰³ Harvey, M. 'SNP lessons from Quebec in decision to 'go long' on referendum' in *Herald Scotland*, 30 November, 2011(b), at: www.heraldscotland.com/politics/opinion/snps-lessons-from-quebec-in-decision-to-go-long-on-referendum.2011118234

¹⁰⁴ Mackay, C. 'The SNP and the Scottish Parliament: The Start of a New Sang?' in Hassan, G. (ed) *The Modern SNP: From Protest to Power*, Edinburgh, Edinburgh University Press, 2009, p.90.

¹⁰⁵ Torrance, D. *Salmond: Against the Odds*, Edinburgh, Birlinn Limited, 2011, p.13; Scott, K. 'SNP overtakes Labour in latest poll ahead of Scottish elections' in *The Guardian*, 16 February, 2011, at: www.guardian.co.uk/politics/2011/feb/16/snp-overtakes-labour-latest-poll-scottish-elections

2010, the ramifications of which were still being considered as late as early 2011, which perhaps explained the size of Labour leads in some of these polls.¹⁰⁶ However, the Scottish electorate have become increasingly shrewd at distinguishing between voting in elections at Scottish and UK level.¹⁰⁷ That distinction allowed the SNP an opportunity to portray itself as more “Scottish” than the other parties – in particular, the Unionist parties – which has helped to increase its share of the vote in Scottish elections considerably. Thus, the party could well believe that Labour’s lead was overstated, and considerably inflated by the focus on Westminster politics. Nevertheless, the party could not be sure that their decision not to legislate for a referendum would not come back to haunt them.

2011 Election

The 2011 Scottish Parliamentary election was held on 5 May. An eve of election opinion poll conducted for STV had put the SNP – who, by this point, had dramatically reversed the large Labour lead – on 61 seats, four short of an overall majority.¹⁰⁸ This was five more than the previous largest seat total in the Scottish Parliament – the 56 seats won by Labour in 1999 – which made several political commentators sceptical about the accuracy of the poll.¹⁰⁹ Indeed, that scepticism was indeed warranted – but for the wrong reason. Most commentators had believed that the poll overstated the SNP’s support, but in fact the opposite was true. The SNP went on to win 69 seats – an

¹⁰⁶ Harvey, M. and Lynch, P. 2010, *op cit*.

¹⁰⁷ Numerous authors have noted this pattern. See for example, Curtice, J. 2009, *op. cit.* p.61; and Mitchell, J. ‘A Catenaccio Game: the 2010 Election in Scotland’ in *Parliamentary Affairs*, Vol. 63, Issue. 4, 2010.

¹⁰⁸ STV News ‘SNP on course for landmark victory, according to exclusive STV poll’, 3 May, 2011, at: www.news.stv.tv/election-2011/246676-snp-on-course-for-major-victory-according-to-stv-poll/

¹⁰⁹ Torrance, D. 2011, *op cit.* p.24.

absolute majority in the chamber, and an increase of 22 seats on the 47 they had won in 2007 (see table 6.4).

Party	2007			2011		
	Constituency Seats	List Seats	Total Seats	Constituency Seats	List Seats	Total Seats
SNP	21	26	47	53	16	69
Labour	37	9	46	15	22	37
Conservative	4	13	17	3	12	15
Lib Dem	11	5	16	2	3	5
Green	0	2	2	-	2	2
Independent	0	1	1	0	1	1

With such a result, the SNP were in a much stronger position than they had been in 2007, establishing Holyrood's first single-party majority government. With a majority government, the party would have a mandate on the terms of the bill itself, avoiding the potential for amendments or defeat which the bill could potentially have faced in the previous term. With a majority both in the parliament itself and in each of Holyrood's committees, not to mention a Presiding Officer drawn from the party's own ranks, the referendum bill – whenever it was brought forward – would be in SNP hands throughout its passage through parliament. And while the party was quick to recognise that their election victory did not constitute a mandate for independence, opponents – both in the Scottish Parliament and at Westminster – conceded that it did provide the Scottish Government with a mandate to hold a referendum on the subject. Indeed, the day immediately following the SNP's election saw discussions between

¹¹⁰ Scottish Parliament Information Centre *SPICe Briefing: Election 2011*, 10 May, 2011, at: www.scottishparliament.uk/ResearchBriefingsAndFactsheets/S4/SB_11_29.pdf

Alex Salmond, UK Prime Minister David Cameron and Secretary of State for Scotland Michael Moore aimed at strengthening the conditions of the Scotland Bill to further empower the Scottish Parliament.¹¹¹ The outcome of the SNP's second Scottish Parliamentary victory then, resulted in further powers being devolved to the Scottish Parliament – and, a long-anticipated referendum on independence.

The SNP's Referendum Strategy 2011 onwards

With a single-party majority government in place in Holyrood for the first time, the SNP's strategy on the referendum changed once again. Whereas in the previous parliamentary session the party had focussed on trying to build a parliamentary majority to pass a referendum bill, their position as a majority negated the need for such a tactic. Instead, the party, in the early part of the session, focused their energies on the electorate. For while the party itself secured 45% of the constituency vote in the 2011 Scottish Parliamentary election, opinion polls subsequently indicated that, though the party remained popular, their constitutional preference for independence was not a preference shared by a majority of the Scottish electorate. And their strategy in office changed to reflect this reality.

During the 2011 election campaign, Alex Salmond announced that it was the SNP's intention to hold the referendum in the second half of the parliamentary term – a timeframe which mirrored that of the 2007-10 strategy.¹¹² This timeframe was intended to give the party the opportunity to build upon their electoral support by

¹¹¹ Carrell, S. 'Scottish independence: Cameron gives green light to referendum' in *The Observer*, 8 May, 2011, at: www.guardian.co.uk/politics/2011/may/08/cameron-green-light-scottish-referendum

¹¹² Torrance, D. 2011 *op cit.* p.23.

delivering popular policies in government while retaining the public's perception of the party as competent in government. In this respect, the SNP's new strategy did not differ greatly from that of the 2007-10 period. However, this new strategy brought with it a clear advantage for the SNP – on this occasion they were working with a parliamentary majority rather than the minority government of the previous session. This meant that SNP government policies were not subject to the same difficulties experienced in the previous parliamentary term. It also meant that the party could continue to link their actions in office to independence. Crucially however, it meant that parliamentary opposition – in the Scottish Parliament at least – could not get in the way of a referendum bill, if and when the party decided to introduce it.

What was also clear was that the party had decided upon an “all things to all people” strategy, meaning discussion of potential policy decisions post-independence (such as what currency an independent Scotland would use or whether to retain the monarchy) was limited. The party did not want issues such as these to dilute the campaign for independence, and thus wanted to keep decisions upon them until independence itself had been delivered. Indeed, while the SNP indicated their preferences – Alex Salmond had suggested, prior to the economic collapse, that the Euro would be his preference – they were keen to point out that any decision upon issues of this nature would be taken in a referendum, allowing the Scottish electorate not only to decide whether they wanted to be independent, but the form that independence would take. This was a clear attempt to address concerns that Scotland would automatically join the Euro or lose the Queen as Head of State – a recognition that the independence campaign would need to be as broad as possible.

Conclusion: Direct Democracy and Democratic Engagement

As with many elements of deliberative democracy, public consultation in this case was held with a distinct goal in mind – it was a prelude to a vote on the issue at hand.¹¹³ Fearon notes six distinct reasons there can be value in public discussion prior to decision-making, several of which are relevant to the Welsh powers referendum. He suggests that the discussions – which could potentially reveal information or opinions which are not necessarily widely held or known – may help to “render the end choice legitimate”.¹¹⁴ This was very clearly part of the motivation behind both the consultation and the referendum process in Wales. There was a clear effort made on behalf of politicians in Cardiff Bay – who had agreed that the course of action leading to a legislative Assembly was required – to use consultation as a way of informing the public about devolution and the issues which would be at stake in the referendum. The *All Wales Convention* – though scrupulously neutral in its operation and conclusion – was designed to build awareness, and through that, support, for devolution and a recognition that it could function better with the powers ascribed to it through Part 4 of the Government of Wales Act 2006. The referendum would then seek to reach consensus on the issue itself through the process of argument and voting.¹¹⁵ However, the lack of designated lead campaigns – due to the relative weakness of the No campaign compared to the Yes campaign, and the former’s decision not to apply for designation – constrained the public’s ability to access information on the issue, leaving many confused and unsure of how to vote in the

¹¹³ Dryzek, J. S. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*, Oxford, Oxford University Press, 2000, p.7.

¹¹⁴ Fearon, J. D. ‘Deliberation as Discussion’ in Elster, J. (ed) (1998) *Deliberative Democracy*, Cambridge, Cambridge University Press, 1998, p.45.

¹¹⁵ Elster, J. ‘Introduction’ in Elster, J. (ed) *Deliberative Democracy*, Cambridge, Cambridge University Press, 1998(a), p.5.

referendum. Thus, while the result of the referendum was hailed by proponents of devolution as indicating the support of the Welsh public for devolution, with a turnout of just 35% and many voters complaining of a lack of information on the issue,¹¹⁶ the process could hardly be described as a successful engagement in deliberative democracy. However, as David Melding pointed out, while the process matters, the result matters more than the process itself – a majority of one is enough to pass legislation.¹¹⁷ Thus the One Wales Agreement achieved its twin objective of engaging the public in consultation about devolution, as far as might be expected to be possible; and bringing forward and winning a referendum which would deliver the legislative powers which had been earmarked for the National Assembly for Wales.

To put the SNP's referendum strategy in context with regard to the elements of direct and deliberative democracy with which this thesis is concerned requires consideration of the historical debates surrounding devolution in Scotland. For the SNP, the necessity of public consultation is to build consensus – which is not yet apparent – for their constitutional preference. The necessity of the referendum is to take from that consensus a mandate to begin discussions leading to Scottish independence. This fits with Dryzek's notion that deliberative democracy can involve two related aspects – an orientation towards building a consensus on an issue and a prelude to voting upon the same issue – although the presence of a vote at the end of the process makes the emergence of a consensus more unlikely.¹¹⁸ This is an important element of the constitutional debate in Scotland – and indeed, any deliberative discussion – since the

¹¹⁶ BBC News Wales, 2011(a), *op cit*.

¹¹⁷ Interview with David Melding (Conservative AM) (July 2010).

¹¹⁸ Dryzek, J. S. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*, Oxford, Oxford University Press, 2000, p.7.

need for a decision to be made at the end of the debate means that positions during the debate are always likely to be entrenched, and any shift in those positions is unlikely. The nature of the debate thus lacks a deliberative character, since each side already has in mind that their position is the one which should be followed at the time of the decision, meaning opinion forms around two poles which seem to get further apart, rather than converge around any form of consensus. Dryzek himself defines consensus as “unanimous agreement... on a course of action... but also on the reasons for it,” though he recognises that, in a contemporary world, agreement on a course of action for different reasons would be acceptable, since it is unlikely that everyone would share the same motivations for the outcomes agreed upon, however persuasive the debate.¹¹⁹ Further, Dryzek rhetorically asks:

*Should deliberation be constrained by constitutional specifications that rule out in advance particular outcomes of deliberation?*¹²⁰

Returning to the question later in his book, his response is clear: that “constitution-making *itself* can be a deliberative process”.¹²¹ In relating this to Scotland, it is clear that the SNP have followed a path of deliberative thinking with regard to the constitutional question. They have utilised their time in office to engage with the public through a wide-ranging consultation, providing information and accepting options which did not fit with their own constitutional goals – allowing the process to widen the debate away from the independence-union dichotomy within which the election campaign (in both 2007 and 2011) had been framed. The SNP are not seeking

¹¹⁹ *ibid.* p.170.

¹²⁰ *ibid.* p.7.

¹²¹ *ibid.* p.171.

unanimous agreement – a simple majority of the Scottish electorate in a vote on the issue would be sufficient – nor are they seeking unanimity in the electorate’s reasoning for their support. The party are simply working to build the optimum “winning conditions” for a referendum. And while this, on the surface, does not appear to be consistent with the ethos of deliberative democracy, the methods employed in working towards these conditions are clearly related to this field.

Putting the case in historic context shows this more clearly. The Scottish Constitutional Convention of the late 1980s and early 1990s – of which the SNP was not a part – is a prime example of deliberative democracy in action in Scotland. The political conditions in Scotland at the time – an electorate which was increasingly left-leaning but governed from London by a centre-right Conservative government with little support in Scotland – led to more urgent consideration of self-government and devolution, with the cross-party Scottish Constitutional Convention the result. Cross-party as a descriptor does the campaign a disservice, since the Convention drew membership from across civic society in Scotland, building consensus around the “claim of right” for a devolved elected assembly to run Scotland’s affairs. The Scottish Constitutional Convention was an important development in the campaign for a Scottish Parliament, building consensus towards Labour’s decision to include a commitment to devolution in their 1997 manifesto and momentum into the successful referendum later that same year. Though the Scottish Constitutional Convention was a bottom-up campaign for devolved governance, its basic premise was very similar to what the SNP are currently attempting to do: build a consensus around an issue which would put pressure on the UK Government to make concessions to the campaign.

While the SNP's attempts at building consensus around the idea of constitutional change (especially through *A National Conversation*) clearly do display elements of deliberative democracy, waiting for "winning conditions" prior to the scheduling of a referendum is not consistent with the deliberative theories of democracy – or at least, not consistent with the democratic element of the theory. Engaging the electorate in a discussion of the constitutional future of Scotland and subsequently holding a vote on the issue is, of course, a deliberative act. Indeed, as Gambetta argues, the very definition of deliberation is "a conversation whereby individuals speak and listen sequentially before making a collective decision".¹²² The nature of the process – consultation then referendum – is deliberative. However, as both John Rawls and Jurgen Habermas argue, the legitimacy of political decision-making rests upon "the outcome of deliberation about ends among free, equal and rational agents".¹²³ If one of those agents – in this case, the SNP – withholds the decision-making element of the process (the referendum) until it is convinced its desired outcome will be the result, then the agents are no longer equal. While this is to be expected – governments will only conduct referendums on matters which hold some import for them if they expect to win¹²⁴ – it does bring into question whether the SNP's proclamations that they are the party who are defending the democratic right of the Scottish people to have a say in their own affairs. Given their victory in the 2011 Scottish Parliament election, the party apparently made considerable political capital by painting opposition to a referendum as undemocratic, yet there is an argument to be made that withholding

¹²² Gambetta, D. "Claro!" – An Essay on Discursive Machismo' in Elster, J. (ed) *Deliberative Democracy*, Cambridge, Cambridge University Press, 1998, cited Elster, J. 'Introduction' in Elster, J. (ed) *Deliberative Democracy*, Cambridge, Cambridge University Press, 1998(a), p.8.

¹²³ Elster, J. 'Introduction' in Elster, J. (ed) *Deliberative Democracy*, Cambridge, Cambridge University Press, 1998(b) p.5.

¹²⁴ Lijphart, A. 1984, *op cit.* p.203.

the referendum until their preferred result seems likely is just as undemocratic. However, the party will – quite fairly – argue that in order to educate the electorate about the potential ramifications of a positive or negative result in a referendum, a reasonable period of preparation is required. Indeed, given the case against independence has been made by now-opposition parties consistently since the SNP first put the issue on the political agenda in the 1960s, an argument could be made that, for reasons of fairness, the SNP should be able to take some time to make their case to the electorate and to use their institutional role as the Scottish Government to do so. Opinion polls have consistently shown that, while the Scottish electorate remain unconvinced by the party’s arguments for independence, they do wish to be consulted upon Scotland’s constitutional future in a referendum. Thus, as the SNP’s second term in office progresses, there is likely to be pressure from the electorate – and from opposition parties seeking to take advantage of the support for the Union in opinion polls – for a referendum to be held at the earliest opportunity. Indeed, in the wake of the SNP’s election victory in 2011, the UK Government were quick to announce a consultation document on how a referendum could be delivered legally.¹²⁵ However, this pressure is likely to be resisted as the SNP continue to adhere to a strategy of building “winning conditions” for the referendum itself.

¹²⁵ HM Government, *Scotland’s Constitutional Future: A Consultation on facilitating a legal, fair and decisive referendum on whether Scotland should leave the United Kingdom*, CM8203, London, Her Majesty’s Stationery Office, January, 2012.

Conclusion

With the Labour party's devolution legislation of the 1990s, the UK began a gradual transition from unitary and centralised government to a more decentralised system.¹ The establishment of a devolved parliament in Scotland and an assembly in Wales provided a structural advantage for nationalist parties in each nation by creating an institution within which the issues and interests of their respective nations were the primary topic of discussion, and fundamentally altered the political dynamic and competition in Scotland and Wales.² The ascension of the SNP and Plaid Cymru to government office in their respective nations meant that the establishment of those devolved institutions in 1999 was but the beginning of, in Ron Davies' oft-quoted phrase, a process of devolution,³ with an end point which remains undetermined. This was a sentiment which the constitutional expert Vernon Bogdanor shared:

Constitutionally, devolution is a mere delegation of power from a superior political power to an inferior one. Politically, however, devolution places a powerful weapon in the hands of the Scots and the Welsh; and, just as one cannot be sure that a weapon will always be used only for the specified purpose for which it may have been intended, so also one cannot predict the use which the Scots and the Welsh will make of devolution.⁴

Contemporary political debates surrounding the constitutional settlement, the powers already and yet to be devolved to Scotland and Wales – and the place of each within

¹ Lijphart, A. *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, New Haven, CT, Yale University Press, 1999, p.17-8.

² Trench, A 'Introduction: The Second Phase of Devolution' in Trench, A. (ed) *The State of the Nations 2008*, Exeter, Imprint Academic, 2008, p.5.

³ Davies, R. 'Devolution: A Process not an Event' in *The Gregynog Papers*, Vol. 2, No. 2, Cardiff, Institute of Welsh Affairs, 1999, p.15.

⁴ Bogdanor, V. *Devolution in the United Kingdom*, Oxford, Oxford University Press, 1999, p.287.

the United Kingdom in the coming years – remains open-ended. Unionists proclaim the benefits of continued membership of the UK, the potential pitfalls of “separation” and oppose the extension of devolution if it will in any way advance the arguments in favour of secession. Nationalists in both Scotland and Wales argue that their respective institutions are weaker than they should be, that both could better serve the needs of their constituents with more substantial powers – be that as independent states or with an increased array of powers but remaining within the UK. The constitutional debate remains on the political agenda primarily because the devolution settlements afforded to Scotland and Wales in 1999 did not satisfy their respective electorates – they were not, in John Smith’s words, the “settled will” of the people.⁵ Of course, devolution was granted through 1997 referendums – in Wales’ case, with a wafer-thin margin of victory – giving credence to the view that some form of devolution was the express desire of those electorates. Nevertheless, debate has continued as to the form which that devolution should take – and the presence of Nationalist parties in government has only exacerbated the calls to extend the legislative reach of these institutions.

The opportunity afforded to the SNP and Plaid Cymru that government status brought was one that neither had experienced previously. Prior to devolution, the history of nationalist parties in Scotland and Wales was one of occasional influence and more frequent set-backs. The devolution process, with its roots in the 1970s debates provided an institutional setting within which the nationalist parties had the opportunity to flourish electorally. Pre-devolution, governing or blackmail potential

⁵ Jones, P. ‘A Start to a New Song: The 1997 Devolution Referendum Campaign’ in *Scottish Affairs*, No. 21, autumn, 1997.

was limited.⁶ Under devolution, however, the electorates of Scotland and Wales saw the nationalist parties in a different light, and in 2007 provided both with enough representatives to enter government. With no previous governing experience, and opportunities to influence the constitutional debate rare, it might be considered that entering government in this instance was an easy choice. However, the decision to take the step from opposition into government for the first time – for any party – is a hard one.⁷ The risks of accepting the responsibility of governing (blame for difficulties experienced by voters, leading to electoral defeat) are carefully balanced against the potential rewards – the pursuit of the party’s manifesto, progress towards policy goals and delivery in office of those objectives. Only when the rewards outweigh the potential risks do parties decide to take office – and even then, parties remain reluctant to stake their political reputation on a four-year term in office which could prove disastrous for their future existence.⁸ That decision was further complicated in the case of the SNP – and to a lesser extent, for Plaid Cymru – when the constitutional dimension is considered. The SNP’s *raison d’être* is to achieve independence for Scotland – with other policy concerns a secondary consideration.⁹ Plaid Cymru are also committed to independence, but their political platform was more short-term – with achieving legislative powers for the National Assembly for Wales their primary constitutional objective when taking office in 2007.¹⁰ With constitutional change the endgame for both parties, each recognised the risks of their entrance into regional

⁶ Sartori, G. *Parties and Party Systems: A Framework for Analysis (Volume 1)*, Cambridge: Cambridge University Press, 1976.

⁷ Müller, W. C. and Strøm, K. *Policy, Office or Votes? How Political Parties in Western Europe make hard decisions*, Cambridge, Cambridge University Press, 1999, p.1.

⁸ Deschouwer, K. *New Parties in Government: In power for the first time*, London, Routledge, 2008.

⁹ Scottish National Party, *Manifesto 2007 – It’s Time*, Edinburgh, SNP, 2007.

¹⁰ Plaid Cymru, *Make a Difference: Manifesto for the National Assembly for Wales*, Cardiff, Plaid Cymru – The Party of Wales, 2007, p.7-19.

level government – specifically, that if the parties demonstrated that the administrations they ran were competent and efficient then the electorate would question the need to alter the constitutional arrangements. However, both recognised the value of government office at the regional level as a means to an end, that they could influence the central government on the constitutional question better from a position of power, that they could determine the policy direction of their respective governments and set the political agenda on the issue of constitutional change.¹¹

Strategy

Recognising regional government as a means to an end meant utilising their position in office to build consensus around the need for constitutional change. For parties who do not have constitutional change as their *raison d'être*, the issue is generally seen as a distraction from the important business of governing – of delivering on manifesto commitments in key policy areas such as health, education and the economy. Not so for the SNP and Plaid Cymru, for whom constitutional change was just as – if not more important – than what could be described as “conventional governing”. This meant developing a governing strategy which combined the aspects of conventional governing expected of a typical government with a means of keeping the constitutional debate on the political agenda and convincing the public of the need for change.¹² For both the SNP (in minority government) and for Plaid Cymru (in coalition with Labour in the Welsh Assembly Government) this meant a dual-strategy of taking

¹¹ De Swaan, A. *Coalition theories and cabinet formation*, Amsterdam, Elsevier, 1973, cited in Müller, W. C. and Strøm, K. *op cit.* p.7.

¹² Interviews with a senior Scottish Government Official, and Kevin Pringle (Special Advisor to the Scottish Government) (May 2010).

the constitutional debate to the electorate in consultations as a prelude to their voting in a referendum on the issue. It was this dual-strategy which was the focus of investigation for this thesis.

To put the strategy in context required consideration of theories of deliberative democracy. The use of direct democracy (citizens' initiatives, citizen juries, "deliberation days" and of course, referendums) is much more widespread today.¹³ The urge for governments to consult their citizens on wide-ranging issues – from the constitution to the site of a new landfill facility – is also in vogue.¹⁴ Deliberative theory argues that modern variations of representative democracy have limited the contribution of citizens in the law-making process to the selection of their representatives every four or five years. Proponents (including Habermas¹⁵, Fishkin¹⁶, Barber¹⁷ and Dryzek¹⁸ to name but four) have experimented with different methods of citizen participation in the democratic process, arguing that deliberation helps to shape public opinion, leading to better-informed decision-making.¹⁹ Public engagement with the democratic process is also, for proponents of these theories, a means of legitimising not only the policy outcomes, but also the debates themselves. Thus, as applied to the strategies employed by the SNP and Plaid Cymru, deliberative

¹³ Setälä, M. 'Referendums in Western Europe: A Wave of Direct Democracy?' in *Scandinavian Political Studies*, Vol. 22, Iss. 4, December, 1999.

¹⁴ Baxter, G. 'The Best Laid Schemes? The Provision and Accessibility of Government Consultation Information in the UK' in *LIBRI – International Journal of Libraries and Information Services*, Vol. 6, No. 3, 2010, p.253.

¹⁵ Habermas, J. *Theory and Practise*, Boston, Beacon, 1973.

¹⁶ Fishkin, J. S. *When the People Speak: Deliberative Democracy and Public Consultation*, Oxford, Oxford University Press, 2009.

¹⁷ Barber, B. R. *Strong Democracy: Participatory Democracy for a New Age*, Berkeley, University of California Press, 1984.

¹⁸ Dryzek, J. S. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*, Oxford, Oxford University Press, 2000.

¹⁹ Fishkin, J. S. and Ackerman, B. *Deliberation Day*, New Haven, Yale University Press, 2004.

methods appear to substantially help the parties not only to promulgate their own constitutional preferences but to actively engage the public on the issue – and to give the impression of an open, accessible and transparent government, one which is ready to react and respond to the concerns of its electorate.

That consultation was part of both parties' strategy for constitutional change is not a surprise – consultations have become a key aspect of transparent and accountable governance – but the choice of referendum perhaps is. The role of the referendum in the UK – prior to the Welsh Powers Referendum of 2011 – has been strictly consultative. There is no mechanism in the UK's unwritten constitution to require a referendum on any issue. The Welsh Powers Referendum is unique in this regard as the UK's only example of a legally required referendum. The referendum itself was not the choice of Plaid Cymru – it was a politically prudent addition to the Act by then-Secretary of State for Wales Peter Hain, included to ensure parliamentary passage of the legislation. The necessity of the referendum in this case owed more to pragmatic politics – internal Labour party debates and the need for the support of their MPs – than any principle of democratic accountability. Nevertheless, Plaid Cymru did want the powers on offer devolved to the National Assembly for Wales and campaigning for the referendum thus became a key part of their electoral and governing strategies. For the SNP, an independence referendum had not always been party policy (prior to devolution, a majority of Scottish MPs elected to the House of Commons was seen as sufficient to begin independence negotiations²⁰) and, indeed, such a referendum is not constitutionally required (though in matters of substantive constitutional reform,

²⁰ Scottish National Party, *Yes We Can win the best for Scotland: The SNP General Election Manifesto*, Edinburgh, SNP, 1997, p.6.

including secession, a referendum has been accepted as standard procedure).²¹ However, political prudence – and electoral strategy – saw the party adopt a referendum as part of their strategy to deliver upon their constitutional goal. It is those consultative processes which this thesis examined in detail.

A National Conversation

The opportunity to engage in government consultation provided the SNP with an opportunity unique in its history – the ability to open a national dialogue on the constitutional issue with its constituents and to provide that electorate with an undiluted and unfiltered view of the party’s vision for Scottish independence.²² The vehicle for this citizen engagement was *A National Conversation*, the three year consultation process examined in chapter two of this thesis. The consultation had four broad aims – to build public and parliamentary support for the referendum bill (which was, at the time, intended to be forthcoming); to educate the public about their vision of independence; to prepare the civil service for what independence would mean for government; and to keep the constitutional debate on the political agenda for the entirety of their period of minority government.²³ This thesis examined the three-stage process of *A National Conversation*, arguing that in each of the intended aims outlined above, the SNP achieved varying levels of success. On objective one, the party saw opinion polls suggest the public would like to see a referendum on Scotland’s constitutional future – however, they failed to convince their opposition in

²¹ House of Lords Select Committee on the Constitution, ‘Referendums in the United Kingdom’ 12th Report of Session 2009-10, HL Paper 99, 2010, p.7.

²² Harvey M. and Lynch, P. ‘From National Conversation to Independence Referendum?: The SNP Government and the Politics of Independence’, paper prepared for the Annual Conference of the Political Studies Association, Edinburgh, March, 2010.

²³ Interview with a senior Scottish Government Official (May 2010).

parliament of the argument for a constitutional referendum, and the bill was subsequently dropped. On objective two, the party could claim relative success in educating the public about independence and its potential impact, though this success was tempered by a lack of opinion poll support for independence. On objective three, the civil service were actively engaged in the consultation process, as well as in researching and drafting the many publications related to *A National Conversation* in various different policy areas. This had the effect of institutionalising the debate and ensuring that those working within the government of Scotland would have a full understanding of how Scotland might function if it were independent.²⁴ Finally, on objective four, the presence of the SNP in government for a four year term – as well as their re-election in May 2011 – and the use of the institutional set-up to promote their constitutional preference meant that the party forced the opposition parties to discuss the constitution, firstly in a general sense (as the media began to report the SNP's position more readily) and subsequently through the Calman Commission. This was an attempt by the opposition – Unionist – parties to try and re-define the terms of the constitutional debate. The presence in government office of a party whose desire it was to break up the Union forced those defending the status quo – that is, Scotland as a constituent nation of the UK – into a pragmatic position, establishing a commission with a remit to review the workings of devolution and report recommending how the settlement could be strengthened enough to maintain its usefulness as an institution while retaining Scotland as part of the UK.²⁵

²⁴ Harvey, M. and Lynch, P. 2010, *op cit*.

²⁵ Commission on Scottish Devolution, 'Serving Scotland Better: Scotland and the United Kingdom in the 21st Century' *Final Report*, Edinburgh, Commission on Scottish Devolution, June, 2009.

This thesis contends that *A National Conversation* was an exercise in deliberative democracy which was aimed at engaging the public in consideration of the constitutional future of Scotland, and to do so with the end point – a referendum to determine what that constitutional future should be – intended to bring a logical end to that discussion. It argues that *A National Conversation* played a key role in shaping the constitutional debate in Scotland from the arrival in office of the SNP in 2007, influencing the establishment of the Calman Commission (which led to the UK legislation on the Scotland Bill) and laying the foundations for the party’s intended campaign for a Yes vote at an independence, subsequently scheduled (post re-election of an SNP government) for autumn 2014.

The *All Wales Convention*

While *A National Conversation* was ongoing in Scotland, a similar constitutional discussion – albeit with widely differing parameters – was underway in Wales. Plaid Cymru, after their impressive showing in the 2007 elections to the National Assembly for Wales, agreed to enter coalition government with Labour. The cost of doing business was an agreement between the two parties to proceed to a referendum on Part 4 of the Government of Wales Act 2006 before the end of the Assembly term in 2011, by way of a constitutional convention to measure the support of the Welsh electorate for this change.²⁶ The *All Wales Convention* was intended to address the lack of constitutional debate in Wales by taking on the role that the Scottish Constitutional Convention had prior to the establishment of devolution in the late

²⁶ Labour Party Wales and Plaid Cymru, ‘One Wales: a progressive agenda for the government of Wales: an agreement between the Labour and Plaid Cymru Groups in the National Assembly’, Cardiff, Welsh Assembly Government, 2007, p.6.

1990s,²⁷ though it was recognised as a “different process to do a different thing at a different time”.²⁸

The *All Wales Convention* had several objectives laid out in its remit. Firstly, it was designed to have an informative and educative role – to make the Welsh public aware of the devolution settlement granted in 1999 and how it had been altered through the Government of Wales Act 2006. This was particularly important given the provisions of Part 3 of the Act which established (limited) legislative powers for the Assembly, to be delivered through a complex and gradual process involving Legislative Competence Orders (LCOs). The LCO system was intended as a bridge to Part 4 of the Act, which would devolve powers in 20 areas without the need for the Assembly to apply for each power individually. In light of the potential for extending the Assembly’s powers, the second objective of the *All Wales Convention* was to stimulate a public discussion on the merits of increasing the role of the National Assembly for Wales to that of a legislative body. Finally, the Welsh Assembly Government asked the *All Wales Convention* to analyse the views it encountered, and to recommend to the Assembly as to whether a referendum to move to Part 4 of the Government of Wales Act 2006 was desired, and whether a successful outcome could be achieved.²⁹

In examining the success of the *All Wales Convention*, this thesis contends that the process was hampered by factors outwith its control. The geography of Wales, the difficulties in travelling from north to south and the absence of a distinctly “Welsh”

²⁷ Interview with Bethan Jenkins (Plaid Cymru AM) (June 2010).

²⁸ Interview with Alun Davies (Labour AM; All Wales Convention Establishing Committee) (July 2010).

²⁹ All Wales Convention, *Report of the Establishing Committee of the All Wales Convention*, Cardiff, National Assembly for Wales, 2008, p.xx.

media – with only one daily newspaper published in Wales, and many in south and east Wales getting their television signal from England – provided several problems which the executive Committee found difficult to overcome.³⁰ Nevertheless, what the *All Wales Convention* discovered was a very mixed picture. There was general confusion as to the powers of the National Assembly for Wales, and the distinctive role the Welsh Assembly Government played – not to mention the merits of devolution – which were lost in the public’s difficulties in understanding the system. The addition of the LCO system further complicated matters. Thus, what the *All Wales Convention* encountered was a Welsh electorate which was uneducated about devolution, and on that aspect of its remit, the Convention largely failed to alter that situation. That being the case, the *All Wales Convention* largely failed in its second objective – to stimulate widespread public discussion of devolution. Recognising this failure – and that such a discussion would be required if a referendum on the extension of the Assembly’s powers was to be won – the Convention recommended the continuation of a wide-ranging public debate on Welsh devolution.³¹ Finally, given the evidence at its disposal, the *All Wales Convention* suggested that a move to Part 4 of the Government of Wales Act 2006 offered a “substantial advantage” to the LCO system. The Convention thus recommended that a referendum should be undertaken – which fulfilled the final objective of their remit – but that a Yes vote could not be guaranteed.³²

³⁰ Interviews with Sally Hyman and Rob Humphrey (All Wales Convention Executive Committee) (June/July 2010).

³¹ All Wales Convention, *Report of the All Wales Convention*, Cardiff, National Assembly for Wales, 2009.

³² *ibid.*

This thesis argues that the *All Wales Convention* played a considerable role in shaping the debate on devolution in Wales in four distinct ways – as a key aspect of the One-Wales Agreement, it maintained the governing coalition between Labour and Plaid Cymru; it helped to maintain the momentum for legislative powers for the National Assembly for Wales as one of several initiatives with this ambition; it played a role in preparing the ground for a referendum on extending the powers of the Assembly by engaging the public in debate about devolution; and it played a role in convincing the public of the need for change. However, as noted above, this role was also marked by a failure to engage the public in the debate about devolution and, in particular, an inability to communicate more widely across Wales.

The Welsh Powers Referendum 2011

While there was a widely held view among politicians in the National Assembly for Wales and Welsh political commentators that the referendum held in Wales in 2011 to enact Part 4 of the Government of Wales Act 2006 was unnecessary from a constitutional perspective,³³ the fact that it was a requirement in the Act itself meant that if the Assembly desired the powers on offer, then a referendum would have to be undertaken. The precedents of 1979 and 1997 suggested that such a path would lead to some nervousness on the part of those campaigning for the powers to be devolved – the substantial defeat in 1979 followed by the narrow victory achieved in 1997 led proponents of devolution to resent the notion of a referendum to enact the powers. As with many referendums, the timing of this one would be crucial. A wrongly-timed referendum would see the momentum towards a legislative National Assembly for

³³ Interviews with Mike German (then-Liberal Democrat AM), Nick Bourne (then-Conservative AM and party leader) and Alun Davies (Labour AM) (June/July 2010).

Wales, which had been building for several years at political elite level, thwarted.³⁴ Thus, work was required to be undertaken to prepare the public for the vote – work on educating the electorate about the devolution settlement had been undertaken by the *All Wales Convention* but there was still a consideration that confusion and misunderstanding surrounding devolution was widespread among the Welsh public. The timing of the referendum was in the hands of the UK Government, and though it was Assembly Members in Cardiff that were pushing for a referendum, the Secretary of State for Wales – both before and after the UK General Election in May 2010 – was sympathetic to the pro-devolutionists campaign. Thus, while the referendum was not quite delivered to a timescale hoped for by the National Assembly for Wales, it was scheduled before the end of the 2007-11 Assembly term, as laid out in the One-Wales Agreement.

The nature of the Welsh Powers Referendum – as a legally prescribed requirement to enact the provisions of Part 4 of the Government of Wales Act 2006 – meant that the role of the *All Wales Convention* and the campaign itself took on greater significance from a theoretical perspective. For deliberative theorists, deliberation through consultation and public debate – when citizens are subsequently invited to deliver their verdict through voting – helps to provide legitimacy for the decision.³⁵ This thesis contends that this was a clear motivating factor, not only for the architect of the second Government of Wales Act (then-Secretary of State for Wales, Peter Hain) but for politicians in Cardiff Bay, in seeking an extension of the Assembly's powers. Given

³⁴ Harvey, M. 'How to Lose a Referendum in Seven Ways: Thoughts on the Upcoming Welsh Powers Referendum' in *Regional and Federal Studies* Vol. 21 No. 1, March, 2011(a).

³⁵ Fearon, J. D. 'Deliberation as Discussion' in Elster, J. (ed) *Deliberative Democracy*, Cambridge, Cambridge University Press, 1998(b), p.45.

the slim mandate for devolution delivered in the 1997 referendum which established the Assembly, the legitimacy afforded to devolution through public debate and an affirmative vote in the 2011 referendum was an important milestone in Welsh devolved politics. However, the thesis argues that the methods of deliberative democracy employed by the Welsh Assembly Government in this process were employed not for their intrinsic merit (the democratic process in action through consultation, action legitimised by public debate) but for their ability to deliver the desired outcome: the devolution of power in the 20 fields set out in Part 4 of the Government of Wales Act 2006.

The Scottish Independence Referendum

The SNP's plans to hold a referendum on independence during the 2007-11 Scottish Parliamentary term were thwarted by their status as a minority government – and their inability to persuade parliamentary opposition to support the policy. The original intention of this thesis had been to compare the strategies in office of the SNP and Plaid Cymru in building towards, and the campaigns at, their respective referendums. However, the adaptation of the SNP's referendum strategy – postponing the bill when they recognised that it would be defeated in parliament – allowed for a slightly different analysis of strategy. Dropping the referendum bill was a difficult decision for the SNP, and one which, though understood, disappointed activists.³⁶ It was also a decision which empowered the opposition parties, allowing them to paint the Scottish Government as disingenuous and lacking the ability to bring forward key manifesto commitments. Indeed, while the SNP had previously sought to make political capital

³⁶ Interviews with SNP Activists (February/ March 2011).

out of the opposition's refusal to support the referendum bill, it now gave the Unionists an opportunity to portray the SNP as obstructionist in the aftermath of their decision not even to bring forward a referendum bill. This thesis argued that the decision not to advance the bill while the party were in minority government – for fear amendments would be introduced, considerably altering the contents of the bill, including the referendum question itself – was a risk.³⁷ There was no guarantee that the SNP would have another opportunity to present a referendum on Scottish independence to the electorate – and with polls at the time indicating that Labour were favoured to emerge from the 2011 Scottish Parliament election as the largest party, it looked like the party were heading for electoral defeat, lessening their chances of moving the constitutional debate forward. It was however, a risk that paid off, with the party returning as a majority government in the May 2011 election – providing new impetus for constitutional reform, and an announcement that an independence referendum would be held in the autumn of 2014.

Nevertheless, the SNP's referendum strategy could be assessed – and it did mirror that of pro-devolutionists in Wales in the sense that the party would not consider moving towards a bill until it considered that it would succeed in the public vote. This strategy was derived from that of the Parti Québécois (PQ) who, on two occasions, believed they had created the “winning conditions” for a sovereignty referendum and twice came up short. The PQ delivered warnings to the SNP that they should not bring forward a referendum until they were sure that they had built the necessary conditions for victory – and if these “winning conditions” were not apparent, then they

³⁷ Interview with Gareth Finn (SNP National Executive Committee) (February 2011).

should postpone the referendum, since defeat would set the campaign for independence back for at least a generation.³⁸ For the PQ, the absence of “winning conditions” was a sufficient reason not to hold a referendum. This thesis has argued that while the SNP’s consultation and referendum strategy was designed with elements of deliberative democracy in mind – specifically, the need to build a consensus on the issue of constitutional change among both politicians in the Scottish Parliament and the wider electorate – waiting to hold the referendum until they are sure of a positive outcome somewhat negates the democratic origins of the strategy. From a political point of view, the SNP did secure a mandate to hold a referendum by winning a majority of seats in the Scottish Parliament’s 2011-16 term – a mandate recognised by their opposition. However, proponents of deliberative theory would question the legitimacy of a process in which the timing of the referendum is fixed to maximise the chances of a positive outcome. The SNP argued that a lack of understanding of what independence means for Scotland meant that a later date for a referendum would be required to educate the electorate as to what a Yes and No vote would mean in a referendum, and how Scotland might look in the event of a positive result. And indeed, this is why a deliberative process incorporating a public consultation prior to a referendum is so important – a process in which the public are fully involved, so that when the referendum is scheduled they are fully aware what their vote will mean.

³⁸ Montpetit, J. “Parti Quebecois toasts success of Scottish separatists” in *The Star*, 15 May, 2011, at: <http://www.thestar.com/news/canada/article/991627--parti-quebecois-toasts-success-of-scottish-separatists>

Thesis Argument

This thesis has considered, with reference to theories of deliberative democracy, the strategy of two nationalist parties in government, who undertook to use their status as governing parties to advance their constitutional goals. It has argued that, though neither the SNP nor Plaid Cymru had experience of government office prior to their election to office in 2007, each utilised this position to promote their constitutional objectives through the use of deliberative methods of democracy – namely consultation and referendum. This thesis has examined the strategy of each party in detailed case studies of both the consultations undertaken by the parties and the referendum plans articulated (in the case of the SNP) and executed (in the case of Plaid Cymru). Through case study analysis of the methods of public participation employed by the respective parties to attempt to establish a consensus on the need for constitutional change, this thesis has argued that the parties have achieved some success with this strategy. For Plaid Cymru, though the *All Wales Convention* played a limited role in engaging the public in the constitutional debate and informing the electorate of the nature of devolution in Wales, the success of the strategy was implicit in the referendum, held in early 2011, which delivered a positive outcome, and the enactment of Part 4 of the Government of Wales Act 2006. This was achievement of the party's primary short-term goal: the transformation of the National Assembly for Wales into a legislature with primary law-making powers.³⁹ For the SNP, success cannot be measured by the result of a referendum, since that referendum has not yet occurred. Rather, the success of the SNP's strategy must be measured by its impact upon the devolution debate and the outcomes it has influenced. With the

³⁹ Plaid Cymru, 2007, *op cit*.

establishment of the Calman Commission as a direct response to the SNP's *National Conversation* and the subsequent legislation to extend the powers of the Scottish Parliament in the shape of the Scotland Bill, there can be no question that the SNP achieved some success in building consensus on the need to change the constitutional settlement.⁴⁰ Their primary, long-term aim – full independence for Scotland, in whatever form that concept now takes for the party – has not yet been achieved, and, if opinion polls in the wake of the SNP's election victory in May 2011 are to be believed, is unlikely without a substantial shift in public opinion. It is for this reason that the party delayed their ambition to hold a referendum and waited instead for the “winning conditions” to be apparent before undertaking such a public vote.

Comparing the two processes, it is clear that the public engagement strategies of the SNP and Plaid Cymru bear some similarities with one another. Both were top-down affairs, executed by nationalist parties in office for the first time. Both set out to engage the public in the constitutional debate, and both sought to build support for their party's preferred constitutional option. It is in the outcomes achieved through these strategies that the similarities end. In the Welsh case, the public – as in the 1997 devolution referendum campaign – remained disinterested in the process, did not participate in the *All Wales Convention* in large numbers, and the constitutional debate was largely ignored. It was, against its intentions, a consultation which engaged “the usual suspects” – the elite actors and organisations in Welsh political circles.⁴¹ However, somewhat paradoxically, the referendum campaign was a success for those who supported devolution, with almost two-thirds of those voting

⁴⁰ Crawford, B. ‘Ten Years of Devolution’ in *Parliamentary Affairs*, Vol.63, No. 1. 2010, p.95.

⁴¹ Interview with Rob Humphrey (All Wales Convention Executive Committee) (July 2010).

supporting the move to Part 4 of the Government of Wales Act 2006. Thus, Plaid Cymru's strategy, though lacking in public engagement with the consultation, delivered their desired outcome in the referendum.

Contrastingly, the Scottish case saw a different scenario unfold. A *National Conversation* was generally considered by those who engaged with it to be a good initiative, and allowed the Scottish Government to be seen as transparent and accessible.⁴² However, the lack of an endpoint (a referendum) meant that there was no tangible outcome to the SNP's public engagement strategy – at least, not in the short term. However, in terms of agenda-setting, this strategy spawned the Calman Commission, which led to the Scotland Bill and the devolution of further powers to the Scottish Parliament. It led – indirectly – to the re-election of the SNP in 2011, this time as a majority government, and to the likely delivery of an independence referendum in 2014. Crucially, however, it has also led to widespread public engagement with the constitutional debate, which has now become much more of a bottom-up process, with limited engagement for the Scottish Government.

In Wales, despite the formation of a further commission to study devolution (the Silk Commission)⁴³ in the wake of the successful 2011 referendum, the public remain disengaged in the debate, which continues to be elite-level and government-led. In Scotland, and in the absence of any short-term success for the SNP *vis-à-vis* their constitutional objective, there now exists a constitutional debate which has become

⁴² Email interviews with Christian Allard (Westhill and Elrick Community Council) and Isabel Page (Meldrum, Bourtie and Daviot Community Council) (January 2010).

⁴³ Silk Commission website, available at: <http://commissionondevolutioninwales.independent.gov.uk/>

multi-lateral. Civic society, politicians, media outlets and the wider public are all engaged in consideration at varying levels in a constitutional debate in which the Scottish Government is no longer the main actor. This is the primary difference in outcomes between the consultation processes in Scotland and Wales, and the key finding of this thesis.

Limits of research

The research for this thesis was undertaken between autumn 2008 and June 2011. To put this timeframe in the context of the UK's political calendar, it began sixteen months into the third terms of Scottish and Welsh devolution and came to its conclusion one month after the devolved elections in May 2011. This end point was consciously chosen to allow consideration of the election results and their repercussions – and as a natural end point to the discussion of the governing strategies of the SNP and Plaid Cymru in their first terms in office. The research is thus limited to consideration of this timeframe and the actions of the respective governing parties during their period in office. While actions of other parties in relation to the constitution are considered – in particular, the Calman Commission (and the resultant Scotland Bill), the Richard Commission and the Government of Wales Act 2006 – these actions are considered as supplementary to the central topic of the thesis. And while the overall framework of devolution delivered in 1999 is key to how nationalist parties now have the opportunity to govern within their respective territorial institutions, the focus of this thesis specifically on the public engagement strategies of these parties means that wider consideration of devolution – in particular, the absence of a

devolved English legislature and the impact of Northern Irish devolution on the UK's political structure – was not included.

With regard to methodology, research was limited by the fact that the events examined were of a contemporary nature, subject to frequent adaptation and revision. As such, little in the way of academic publication on the topic under consideration was released during this period. This meant that the data compiled for analysis fell into two categories. For the consideration of the theoretical elements of deliberative democracy which the thesis drew upon – as well historical accounts of the devolution debates – secondary sources were fully utilised. In examining the actions of the parties in government, academic publications were limited, which necessitated a considerable undertaking of primary research – interviews with key actors, consulting government and party publications, and close examination of the consultation processes. Where necessary for up to date information, less conventional sources – newspaper articles, online news sources and blogs – were utilised. Thus, the thesis is heavily reliant upon journalistic rather than academic sources for this portion of the research. There is recognition that the use of these more journalistic sources does necessarily limit the academic input into the research. It is hoped, however, that the nature of the argument and the topic under consideration provide adequate in the way of academic standard to offset the use of non-academic sources.

Direction of future research

As noted above, the timeframe this thesis considered was the first term in office of the SNP and Plaid Cymru in their respective institutions, and within that, the actions undertaken to promote their own constitutional goals. The elections of May 2011 provided a fitting endpoint for the research, delivering as they did the end of Plaid Cymru's spell in office as well as the end of the SNP's minority administration in Scotland. Fitting too, because they marked the end of a distinct period of constitutional debate in both Scotland and Wales. The SNP's *National Conversation* had been completed without a real conclusion while in Wales the successful referendum in March 2011 ushered in a new era of legislative devolution. The constitutional debate in Wales has moved on towards fiscal matters, with consideration of the Holtham Commission⁴⁴ report intertwined with demands for financial powers for the National Assembly for Wales, in line with those proposed for Scotland through the Scotland Bill.⁴⁵ In Scotland itself, agreement has been reached between the UK and Scottish Governments to hold an independence referendum in autumn 2014.

The constitution debate in Scotland and Wales progressed substantially while the SNP and Plaid Cymru occupied government office. However, those debates are no closer to reaching a conclusion, if indeed a constitutional debate has a conclusion. Research in Scotland will inevitably centre around the SNP's plans to hold a referendum on

⁴⁴ Holtham Commission, 'Fairness and accountability: a new funding settlement for Wales' *Final Report of the Independent Commission on Funding and Finance for Wales*, Cardiff, July, 2010.

⁴⁵ Williamson, D. 'Welsh Secretary names commission to study the devolution of new fiscal powers to the Assembly' in *Western Mail*, 12 October, 2011, at: <http://www.walesonline.co.uk/news/welsh-politics/welsh-politics-news/2011/10/12/welsh-secretary-names-commission-to-study-the-devolution-of-new-fiscal-powers-to-the-assembly-91466-29580482/>

independence, on what independence in a twenty-first century world would actually look like for Scotland and the impact such a constitutional change would have on the Scottish people. Research too, will likely focus on the Scottish electorate, their attitudes towards independence, the rest of the United Kingdom, and to the wider world – with perhaps particular interest in the European dimension. An independent Scotland's membership of the European Union is by no means certain (Spain's concerns over similar moves by some of its own constituent autonomous communities – not to mention tensions regarding fishing rights for Spanish vessels – make a potential Spanish veto of Scottish membership a real possibility) and how that dynamic plays out in a referendum campaign will be of interest to politicians and academics alike. In Wales, political research will now move towards the financial settlement of devolution. On the morning the referendum result was announced in March 2011, former Secretary of State for Wales Peter Hain put the concept of fiscal devolution upon the radar of political journalists in an interview for the BBC's referendum programme. However, he was at pains to establish that, if politicians in Wales desired financial powers for the National Assembly for Wales, the Welsh electorate would have to assent to such a change in a further referendum.⁴⁶ This point of view was shared with several of the interviewees for this thesis, indicating that the Welsh public's role in devolution deliberations may be far from over.⁴⁷ The prospect of a further referendum in Wales may well provide academics with a substantial area of research – although this thesis suggests that the lack of public

⁴⁶ BBC News Wales, 'As it happened: Wales Referendum, 4 March, 2011(b) at: <http://news.bbc.co.uk/1/hi/wales/9413995.stm>

⁴⁷ Interview with Welsh Assembly Government Senior Official (June 2010).

engagement with constitutional issues in Wales may prove problematic if these plans for fiscal powers are to be put to a referendum in the future.

Conclusion

By constructing a case study analysis of the constitutional policy of the SNP and Plaid Cymru as governing parties, this thesis has argued that constitutional debate in Scotland and Wales is one in which the electorate have a key role to play. For both parties, the strategy of using consultations and referendums to engage the public in the constitutional debate is fundamental to their ability to deliver upon their respective party platforms. This thesis has considered the two constitutional consultations – the Scottish Government’s *National Conversation* and the Welsh Assembly Government’s *All Wales Convention* – to have achieved varying levels of success with regard to their primary objectives. However, as each contributed to, and had considerable influence upon, the constitutional debates within their respective territories, their secondary objectives appear to have largely delivered success. The thesis moved on to consider the referendum strategies of Plaid Cymru and the SNP, arguing that, by waiting for the “winning conditions” to be apparent, each had provided themselves with the best opportunity to deliver a positive outcome in the referendum itself. However, this finding was tempered by the argument that this strategy – awaiting the electorate to be convinced of the need for change – calls into question the deliberative nature of the strategy. What is clear from the research is that the nature of the constitutional debate in Scotland and Wales was dramatically affected by the election of nationalist parties to government in their respective institutions, an outcome which was considered unlikely by those who believed

devolution would kill nationalism “stone dead”.⁴⁸ Instead, nationalism has moved forward the scope of and appetite for constitutional change in the UK’s constituent nations, making the extension of the powers of the Scottish Parliament and the National Assembly for Wales an inevitability; the subsequent break-up of the United Kingdom a real possibility. Future research in this area – including on the arguments for fiscal powers in Wales and on the campaign for and at an independence referendum in Scotland – will, it seems certain, be the subject of much academic interest in the coming years. This research emphasises that the election of the SNP and Plaid Cymru into government office for the first time in 2007, and the constitutional strategy of each, has moved the constitutional debate on considerably and opened up the field of constitutional research to a much wider audience, particularly in Scotland. That is one outcome of the public engagement and governing strategies of the SNP and Plaid Cymru – a more substantial outcome may be just around the corner.

⁴⁸ McEwen, N. ‘From Devolution to Independence? Scots elect their first nationalist government’ in *Policy Options*, June, 2007, p.57.

Appendix 1: Scottish Interviewees

Dr Alasdair Allan	SNP MSP March 2010
Christian Allard	Westhill and Elrick Community Council January 2010 (email interview)
Keith Brown	SNP MSP Minister for Schools and Skills April 2010
Allan Clarke	Broomhill Community Council January 2010 (email interview)
Bruce Crawford	SNP MSP Minister for Parliamentary Business May 2010
John Deighan	Roman Catholic Church Parliamentary Liaison Officer Assistant to Cardinal Keith O'Brien January 2010 (email interview)
Gareth Finn	SNP National Executive Committee February 2011
Fiaz Khan	Scottish Council for Ethnic Minority Voluntary Organisations January 2009 (email interview)
Richard Lochhead	SNP MSP Cabinet Secretary for Rural Affairs and the Environment May 2010
Dr Ian McKee	SNP MSP March 2010
Stuart McMillan	SNP MSP March 2010
Isabel Page	Meldrum, Bourtie and Daviot Community Council January 2010 (email interview)
Kevin Pringle	Scottish Government Special Advisor May 2010
Dr William Reid	Connexional Liaison Officer for Scotland, Methodist Church January 2010

Scottish Government Senior Official	Involved with Constitutional Strategy May 2010
SNP Activist	Constituency Campaign Manager February 2011
SNP Activist	Constituency Organiser February 2011
SNP Activist	Local Councillor March 2011 (email interview)
J. Smith	Turriff and District Community Council January 2010 (email interview)
R. Thomson	Floors, Makerstoun, Nenthorn and Smailholm Community Council January 2010 (email interview)

Appendix 2: Welsh Interviewees

Nick Ainger	Labour MP March 2010 (telephone interview)
Nick Bourne	Conservative AM Leader of Welsh Conservatives June 2010
Alan Davies	Labour AM July 2010
Lord Dafydd Elis-Thomas	Plaid Cymru AM Presiding Officer, National Assembly for Wales June 2010
Mike German	Liberal Democrat AM June 2010
Rob Humphrey	All Wales Convention Executive Committee July 2010
Sally Hyman	All Wales Convention Executive Committee June 2010
Bethan Jenkins	Plaid Cymru AM June 2010
Gareth Jones	Plaid Cymru AM June 2010
Sir Emyr Jones Parry	All Wales Convention Executive Committee Chairman (Non-attributable interview) June 2010
Dr Gwenllian Lansdown	Plaid Cymru Chief Executive June 2010
Harry Ludgate	All Wales Convention Executive Committee June 2010
Michelle Matheron	Welsh Council of Voluntary Associations Voices for Change Cymru June 2010
David Melding	Conservative AM July 2010

Most Reverend Dr Barry Morgan	Archbishop of Wales <i>Cymru Yfory/ Tomorrow's Wales Chair</i> June 2010
Jenny Randerson	Liberal Democrat AM June 2010
Huw Rhys Thomas	NFU Cymru Assembly Advisor July 2010
Janet Ryder	Plaid Cymru AM June 2010
Rhydian Thomas	Electoral Commission Wales June 2010
Welsh Assembly Government Senior Official	Department of the First Minister July 2010

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