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# Questions of Sovereignty: Redefining Politics in Scotland?

DAVID MCCRONE AND MICHAEL KEATING

## Abstract

The issue of sovereignty has never been resolved in Scotland. The 1998 Scotland Act, creating the Scottish Parliament affirmed that the Westminster Parliament is sovereign, but this is disputed. In practice, the issue was left largely in abeyance as sovereignty was seen as an outdated concept. The Scottish independence referendum of 2014 and the UK Brexit referendum of 2016 both brought back the question of sovereignty in stark terms. Analysis of data from the British Election Study of 2019 with regard to (a) the right of Scottish self-determination, and (b) the right of a UK-wide majority to take Scotland out of the EU, allows us to identify ‘sovereignists’ and ‘unionists’. Sovereignists, on both dimensions, now constitute a majority. A smaller group of unionists reject both positions. There remains a group of ‘semi-sovereignists’ who accept Scottish self-determination, but also that the UK as a whole should decide on Brexit. Controlling for the social and political factors, Scots are increasingly polarised around issues of sovereignty, which have become central to contemporary Scottish politics.

**Keywords:** sovereignty, UK, Scotland, self-determination, Brexit, nationalism

## The sovereignty conundrum

THE QUESTION of sovereignty has never been resolved in Scotland. On the one hand, there is the Westminster doctrine, that the Crown-in-Parliament is sovereign and subject to no higher or lower authority. On the other is the view that the United Kingdom is a union of nations created by successive instruments, which did not extinguish their historic rights. In a famous *obiter dicta* of 1953, Lord Cooper declared in the Court of Session that, as the old Scottish Parliament had never exercised untrammelled sovereignty, it could not have passed it onto the Parliament of Great Britain created by the Union of 1707.

The Scotland Act (1998), creating the new Scottish Parliament, affirmed the Westminster doctrine in clear terms. The courts have upheld this view, including the Supreme Court, called on to adjudicate in *Miller v Secretary of State for Exiting the European Union* (2017) and on the Scottish Continuity Bill (2018).<sup>1</sup> Yet the basis of this is merely an assertion by Parliament of its own prerogatives. Many scholars have argued that we must look beyond Westminster itself, to

broader epistemic theories of sovereignty and legitimacy, and to take conventions seriously.<sup>2</sup> Neil McCormick developed a theory of post-sovereignty, in which sovereignty is shared both within Europe and within the United Kingdom.<sup>3</sup> The 1989 Scottish Claim of Right, signed by all Scottish MPs bar the Conservatives and one Labour member, asserted that Scotland had the right to choose its own form of government. There is also the fact that even staunch unionist Prime Ministers Margaret Thatcher and John Major conceded that Scotland could, if it wished, become independent.<sup>4</sup> Whatever the wording of the Scotland Act, it would be accurate to say that the devolution settlement left these issues in abeyance.

Since the 1970s there have been numerous surveys about Scots’ constitutional preferences. These have consistently shown majority support for some form of self-government, with the largest number historically supporting devolution within the United Kingdom. Indeed, the findings are consistent with a post-sovereign conception of shared authority. After devolution, the most favoured option was a stronger Scottish Parliament.

Attitudes to the European Union in many ways mirrored this, with voters clustering in the middle of the europhile-eurosceptic scale. Taking the two scales together, a small minority supported Scottish independence outside the EU and an even smaller minority wanted to abolish the Scottish Parliament and leave the EU.<sup>5</sup> Although since the mid-1980s, the Scottish National Party (SNP) favoured independence within the European Union, the correlation between support for independence and support for European integration was rather loose. Scots were less eurosceptic than English voters, but this was not primarily connected to nationalism; it was true of supporters of all parties in Scotland, but especially Labour. Among political commentators, attention had moved away from the classic and abstract idea of sovereignty, to focus on the balance of political power in a complex and interdependent world.<sup>6</sup>

Two critical events have changed this picture and created a new division around the issue of sovereignty. One was the arrival of the SNP in government in Scotland from 2007 and the consequent movement towards the independence referendum of 2014. The other was the growth over much the same period of the movement to withdraw from the European Union, culminating in the Brexit referendum of 2016. Neither followed a change in public opinion. It was, rather, the changed political supply of options that stimulated demand. Both referendums posed the question of sovereignty in stark terms after the period of abeyance or neglect. In fact, during the 2014 independence referendum campaign, both sides sought to move to the middle ground. The 'yes' side promised what critics called 'indy-lite', preserving much of the infrastructure of union, including the currency. The 'no' side promised further autonomy or 'devolution-max'.<sup>7</sup> Neither, however, was on the ballot paper. Brexit, similarly, was presented in 2016 as a stark choice, even though the leave campaign did not stipulate that it would entail leaving the European Single Market. The two campaigns thus polarised opinion and increased the numbers of people supportive of Scottish independence and of withdrawal from the EU beyond what had previously been registered in opinion surveys. In 2014,

Scottish electors voted 55 per cent to remain within the United Kingdom. In 2016, while voters in England and Wales voted narrowly (52 per cent) to leave the EU, Scotland voted by a larger margin (62 per cent) to remain. The relation between voting yes in 2014 and remain in 2016, however, was not obvious—see Table 1 below.

In the following years, however, this has changed and the two issues have become linked. Curtice and Montagu have shown a movement after 2016 towards independence among europhiles and a movement against among eurosceptics.<sup>9</sup> This was reflected in the pattern of SNP losses and Conservative gains in Scotland in the 2017 general election. By the 2019 general election, the vote had polarised between the SNP, supporting a second independence referendum and remaining in the EU, and the Conservatives, supporting Brexit and opposed to an independence referendum.<sup>10</sup> Issues of sovereignty appeared to have reshaped Scottish political space.

Surprisingly, there has been no direct survey evidence on what Scottish voters make of the arguments around sovereignty, as opposed to their views on devolution or independence. One reason is that sovereignty is such a slippery concept and difficult to operationalise. We see it as the ultimate source of legitimate authority. So, it is not about what powers or degree of autonomy Scotland should have, but about who should make that decision. It is not about competences, but what constitutional lawyers call *kompetenz-kompetenz*. The conjuncture of two referendums posing the issue gave us the option to probe attitudes in more detail.

**Table 1: Vote for EU and independence in Scotland 2014-16. Percentage**

	Yes independence	No independence	Total
Remain EU	27	34	61
Leave EU	17	21	37
Total	44	55	

Source: British Election Study<sup>8</sup>

## The survey

To explore issues of sovereignty in Scotland, we asked two questions in the British Election Study (BES 2019) survey, based around reactions to two statements. The first, relating to the right of self-determination was: 'People in Scotland should have the ultimate right to decide for themselves how they should be governed.' The second placed the constitutional onus on Scotland to accept the UK Brexit vote as a whole, as opposed to Scotland having the right to go its own way: 'Because a majority of people in the UK voted to leave the EU in the 2016 Referendum, people in Scotland should accept that decision.'

Following survey design best practice, one question is framed around the 'sovereignist' position, and the second, on Brexit, around a 'unionist' position (that is, it assumes that the UK is sovereign). Both questions adopt standard five-point Likert scales of responses: from 'strongly disagree', 'disagree', 'neither disagree or agree', 'agree' and 'strongly agree'. Because they were

**Table 2: 'People in Scotland should have the ultimate right to decide for themselves how they should be governed' (% in sample)**

Strongly disagree	7
Disagree	10
Neither disagree nor agree	18
Agree	22
Strongly agree	38
DK/NA	5
N	2791

**Table 3: 'Because a majority of people in the UK voted to leave the EU in the 2016 Referendum, people in Scotland should accept that decision' (% in sample)**

Strongly disagree	25
Disagree	18
Neither disagree nor agree	10
Agree	18
Strongly agree	23
DK/NA	6
N	2791

included in the BES 2019 survey, we have the added advantage of access to a suite of variables on political attitudes and behaviours, making it possible to tie views on sovereignty back to politics and sociology.

## Who has sovereignty?

Although the question of sovereignty is complex and multidimensional, the two referendums simplified the matter, and this is our starting point. We divide opinion into two groups. Sovereignists are those who think that ultimate authority belongs to the people of Scotland. Unionists are those who believe that the UK as a whole is where it lies. Later, we introduce a third category of semi-sovereignists. Let us start with the distribution of responses to the two questions:

There is undoubtedly strong support for the right of self-determination such that 60 per cent agree and 17 per cent disagree; a ratio of more than three to one.

This time, opinion is split evenly, with 43 per cent for the 'sovereignist' position against 41 per cent for the 'unionist' one. There is also polarisation, with the strong responses outnumbering the weaker ones.

We label the first question as sovereignty 1, and the second as sovereignty 2. Table 4 cross-tabulates these, collapsing for each of the categories 'strongly disagree' and 'disagree', and 'strongly agree' and 'agree', and excluding DK/NA in the above.

In our analysis below we focus on three main blocs (in bold in Table 4): sovereignists (bottom left cell) who represent 41 per cent of the sample; unionists (top right cell) who are 15 per cent; and semi-sovereignists (bottom right cell), 16 per cent. Sovereignists are those who agree or strongly agree with the proposition that 'People in Scotland should have the ultimate right to decide for themselves how they should be governed', and who also disagree or strongly disagree with the proposition that 'Because a majority of people in the UK voted to leave the EU in the 2016 referendum, people in Scotland should accept that decision'. Unionists take the opposite position on both questions, while semi-sovereignists support Scottish self-government but accept that Scotland is bound by the Brexit referendum result.

**Table 4: Cross-tabulating measures of sovereignty (% in sample)**

		Strongly disagree, or disagree	Sovereignty 2 (Brexit) neither	Strongly agree, or agree	N
Sovereignty 1 (Sc Gvt)	Strongly disagree, or disagree	3	1	15	482
	neither	2	5	12	478
	Strongly agree, or agree	41	5	16	1617
	N	1184	287	1106	2577

## Characterising sovereigntists and unionists

Let us begin with the political and social characteristics of sovereigntists and unionists. These are compared in Table 5, including, for comparison, those described as semi-soverigntists (pluralities are in bold).

It is clear that sovereigntists are far more likely to vote SNP, to vote yes in past and future Scottish independence referendums, to be dissatisfied with UK democracy, Westminster government, and the result of the 2016 Brexit referendum. Unionists, on the other hand, are virtually their mirror-image: Conservative voters and supporters, dissatisfied with Scottish democracy and Holyrood government, and satisfied with the outcome of the 2016 Brexit referendum. Here we have evidence that views on Brexit are now closely aligned with those on Scottish self-determination. We find sovereigntists heavily grouped on the left—as many as 96 per cent; with the overwhelming proportion of unionists, 85 per cent, on the right, with semi-soverigntists more on the right than the left.

This confirms our earlier suggestion that Scottish voters are increasingly divided between a sovereigntist SNP and a unionist Conservative Party. Yet, Labour and the Liberal Democrat voters' attitudes to sovereignty are more evenly spread, although sovereigntists outnumber unionists in each case, and in the case of Labour by almost 3 to 1. Taking those who voted in the 2019 general election, we can characterise each party's vote on measures of sovereignty as shown in Table 6:

Analysing what happened to the Labour 2015 vote in subsequent general elections reveals the extent to which its fortunes depended on its constitutional appeal, or lack of it. Overall, only half of those who voted Labour in 2015 did so again in 2019. Of those who switched, about one quarter (23 per cent) moved to the Conservatives, and fewer, 16 per cent, to the SNP. In 2017, Labour managed to hold on to two thirds of its 2015 voters (reflected in its upsurge of vote share in 2017), but of the rest of its vote, 22 per cent voted Tory that year, and only 5 per cent SNP. By 2019, on the other hand, it was retaining three quarters of its 2017 vote, much like the SNP and Conservative vote, but the attrition damage had been done at the earlier period (recall that the independence vote took place in 2014 and the Brexit vote in 2016: arguably Labour's attrition relates to the aftermath of these referendums).

To what extent can Labour's attrition be explained by the constitutional attitudes of its voters, given its spread across the three options? Is there evidence that Labour's vote was squeezed differentially between sovereigntists and unionists? We can test this by partitioning the vote for each party into sovereigntists, unionists, and semi-soverigntists. Recall that semi-soverigntists are defined as those who believe in the right of people in Scotland to choose their own government, but concede that Westminster has the right to over-rule Scotland's Brexit vote. Between 2015 and 2019, Labour retained only half its sovereigntist vote, the rest going to the SNP. The damage had in fact been done between 2015 and 2017. While it retained

**Table 5: Political views (% in cell total)**

Political characteristics & attitudes	Sovereigntists (N=1065)	Unionists (N=388)	Semi-sovereigntists (N=414)
Party identification	<b>SNP 74</b> ; Lab 17; LD 8; Cons 1.	<b>Cons 70</b> ; Lab 16; LD 8; SNP 5.	<b>Cons 32</b> , Lab 22, LD 7, <b>SNP 39</b> .
General election vote 2019	<b>SNP 79</b> ; Lab 14; LD 6; Cons 1.	<b>Cons 69</b> ; Lab 13; LD 13; SNP 4.	<b>Cons 32</b> , Lab 24, LD 10, <b>SNP 34</b> .
ScIndyRefVote 2014	<b>Yes 71</b> ; No 29.	<b>No 89</b> ; Yes 11.	<b>No 51</b> , Yes 49.
ScIndyRef2 voting intention	<b>Yes 92</b> ; No 8.	<b>No 96</b> ; Yes 4.	<b>No 55</b> , Yes 45.
Satisfaction with UK democracy	<b>dissatisfied 91</b> ; satisfied 9.	dissatisfied 36; <b>satisfied 64</b> .	<b>dissatisfied 59</b> , satisfied 41.
Satisfaction with Scottish democracy	dissatisfied 37; <b>satisfied 63</b> .	<b>dissatisfied 74</b> ; satisfied 26.	<b>dissatisfied 50</b> satisfied 50.
Trust Westminster government to do right	<b>hardly ever 73</b> ; some of the time 26.	hardly ever 24; <b>some of time 41</b> ; <b>most/all of time 35</b> .	<b>hardly ever 46</b> ; <b>some of time 41</b> ; most/all time 13.
Trust Holyrood government to do right	hardly ever 4; some of time 31; <b>most/all of time 65</b> .	<b>hardly ever 69</b> ; some of time 27; most/all of time 4.	hardly ever 21; <b>some of time 58</b> ; most/all of time 21.
Sc election constituency future vote intention	<b>SNP 80</b> ; Lab 7; Green 7; LD 5; Cons <1.	<b>Cons 71</b> ; Lab 11; LD 13; SNP 4.	<b>Cons 28</b> ; Lab 16; LD 8; <b>SNP 44</b> , Green 3.
Sc election list future vote intention	<b>SNP 70</b> ; Green 16; Lab 8; LD 6; Cons <1.	<b>Cons 74</b> ; Lab 11; LD 9; SNP 4.	<b>Cons 29</b> ; Lab 16; LD 7; <b>SNP 42</b> ; Green 5.
EU referendum vote 2016	<b>Remain 86</b> ; Leave 14.	<b>Leave 60</b> ; Remain 40.	<b>Leave 61</b> ; Remain 39.
Satisfaction with EU 2016 referendum	<b>dissatisfied 97</b> ; satisfied 3.	dissatisfied 15; <b>satisfied 85</b> .	dissatisfied 25; <b>satisfied 75</b> .
Future EU vote	<b>Yes 96</b> ; No 4.	<b>No 71</b> ; Yes 29.	<b>No 57</b> ; Yes 43.
Left-right*	<b>96 Left</b> ; 4 Right	<b>85 Right</b> ; 15 Left	<b>61 Right</b> ; 39 Left

Note \*The 10-point left-right scale, where 0 is left and 10 is right, has been simplified so that points 0 to 3 are grouped as left, and points 7-10 as right.

**Table 6: Attitudes to sovereignty by 2019 general election vote (% by column)**

2019 GE vote	Cons	Lab	LibDem	SNP
Unionists	44	12	23	<1
Semi-sovereigntists	20	21	16	12
Sovereigntists	<1	34	27	74
Others*	35	33	34	13
N	522	366	190	929

Note: \*This includes those who accept UK on Brexit vote, and are neutral on Scottish self-government, as follows: Cons 30%; Lab 14%; LibDem 12%, and SNP <1%.

most of its vote between 2017 and 2019, it never recovered those who had voted SNP. What of Labour unionists? Once more, there

is Labour attrition taking 2015 as the base, this time towards the Tories. Of those who voted Labour and expressed unionist views as we have measured them, as many as 60 per cent of those who had voted Labour in 2015 had switched to the Conservatives in 2019. Furthermore, between 2015 and 2017, more of Labour's unionist vote in 2015 went Tory (49 per cent) than it was able to retain (45 per cent). Among semi-sovereigntists, unsurprisingly, the Labour vote is somewhere in-between. Indeed, Labour has more success in retaining its semi-sovereigntist 2015 vote share in 2017 (71 per cent), and 2019 (60 per cent), and overall, between 2015 and 2019 (59 per cent). Nevertheless, Labour lost around one quarter of its 2015 semi-sovereigntist vote to the Conservatives by 2019, most of that shift coming between 2015 and 2017.

The Conservatives retained their 2015 vote share among semi-sovereignists between 2015 and 2109 at around or above 75 per cent. The SNP, on the other hand, managed to retain around two thirds of its 2015 vote share among semi-sovereignists; between 2015 and 2017, 20 per cent went to Labour, and 12 per cent to the Tories, while between 2015 and 2019, 15 per cent went to the Tories and 10 per cent to Labour. It is this middle constitutional ground which is most contested in current Scottish politics.

Note too that semi-sovereignists are closer to the unionist profile (see Table 4): Conservative voting (though the SNP has some success among semi-sovereignists, especially at Scottish Parliament elections), dissatisfied with both UK and Scottish democracy, and willing to trust both Westminster and Holyrood only 'some of the time'. Their views on Brexit are much closer to those of unionists, with a high proportion of supporters of leave, and expressing satisfaction with the 2016 Brexit referendum result. Broadly, their political views are on the right, not on the left.

As regards socioeconomic characteristics, sovereignists are more likely to be younger (under 45), less likely to be older (over 65), with 'middle-aged' groups (45–65) virtually identical. Gender differences are minimal, with sovereignists splitting 52 per cent male and 47 per cent female, and unionists 55 per cent and 45 per cent respectively. The figures for semi-sovereignists are 52 per cent and 48 per cent respectively.

Social class differences are more nuanced: sovereignists are more likely to come from professional and managerial classes than unionists (48 per cent, compared with 36 per cent), and concomitant lower proportions are found among intermediate and lower supervisory and technical staff (25 per cent compared with 39 per cent), with some difference among the manual working class (respectively, 19 per cent and 27 per cent). On measures of subjective social class (which class, if any, people feel they belong to) there are proportionally fewer claiming to be working class (19 per cent of sovereignists compared with 27 per cent among unionists), but marginally more say that they do not belong to *any* class (respectively, 43 per cent and 39 per cent).

The effects of household income are also nuanced, with proportionally more at the

lower end (under £15,000 annually) but fewer in intermediate income groups. Education is a major discriminator, with as many as 53 per cent of sovereignists having a university degree, especially at postgraduate level, compared with less than half (39 per cent) of unionists who have a higher proportion with minimal educational qualifications (35 per cent compared with 22 per cent).

The broad picture which emerges, then, is one in which sovereignists are better educated, likely to belong to higher social classes, yet likely to consider themselves as belonging to no social class, and to be younger. Household income is less clear-cut such that sovereignists are to be found among the lowest income group, but comparable at the upper levels.

What does stand out is the significance of 'national identity', in many ways not surprising, but noteworthy all the same. Thus, 85 per cent of sovereignists say they are only or mainly Scottish (compared with only 21 per cent of unionists), while unionists appeal to people who consider their British identity the most salient (30 per cent compared with 3 per cent of sovereignists). On the other hand, half of unionists (49 per cent) consider themselves to be equally Scottish and British.

How do semi-sovereignists fit into this picture? They are older than sovereignists (46 per cent are over 56 years of age), fewer are 'professional' workers, but a higher proportion than either sovereignists or unionists are manual workers, both in occupational measurement, and self-identification. They are less well educated than sovereignists with fewer having a university degree, and roughly on a par with unionists. Around 60 per cent give priority to being Scottish, but one in five give priority to being British, and in that respect they resemble unionists rather than sovereignists.

We can see from the data that there is much overlap and consistency in attitudes. Thus, sovereignists are more likely to have voted SNP in the 2019 general election, intend to do so at a forthcoming Scottish election, voted yes in the Scottish independence referendum in 2014, and remain in the EU referendum in 2016. Furthermore, they place themselves on the left of the ideological spectrum. What we cannot tell from these descriptive figures is which, if any, matter

more than others. It may be, for example, that what appears as a relationship is spuriously related to something else; that, for example, age or education, lies behind vote and national identity. Modelling these data, using binary logistic regression, identifies which of the suite of factors predisposing people to vote in a particular way are the most significant ones, for it is possible that some are simply proxies for others.

Taking sovereigntists first, the most predictive variables are, in terms of statistical significance (\*sig at .05, \*\* at .01, and \*\*\* at .001 levels) and Wald scores (to measure strength of relationship, in square brackets);

- being on the left: .012\* [6.320];
- being dissatisfied with British democracy: .015\* [5.888];
- voting SNP at the British general election 2019: .020\* [5.450];
- thinking of oneself as strongly Scottish: .039\* [4.269].

What of unionists? The key variables are:

- voting leave in the 2016 EU referendum: .002\* [9.583],
- intending to vote Tory at the next Scottish election: .011\* [6.492],
- and having voted Tory at the 2019 British general election: .034\* [4.479].

Finally, what of semi-sovereigntists? They are defined by

- satisfaction with UK democracy: .002\*\* [9.390],
- voting leave in the 2016 EU referendum: .004\* [8076],
- and being British: .012\* [6.281].

So why are they not more like unionists? Because they do not share the same levels of commitment to the Union, are less likely to vote Tory, and above all, believe in the Scottish right of self-determination when it comes to government.

## Discussion

What are we to make of such findings? It may seem 'obvious' that the data partition in

ways such that sovereigntists are strongly Scottish, on the left, are SNP supporters, dissatisfied with UK democracy, and voted yes in the Scottish independence referendum in 2014; unionists are more likely to say they are British, vote Tory, be satisfied with UK democracy, and to have voted leave in 2016 and no in the 2014 independence referendum; and semi-sovereigntists are defined largely by their views on Brexit, are satisfied with how British democracy operates, and are disproportionately British.

There is a good case, however, for concluding that these findings are unexpected. The creation of a Scottish Parliament over twenty years ago was meant to create a constitutional halfway house, and on that basis we might have expected far fewer sovereigntists. The devolution of powers was meant to reflect the 'settled will' of the Scottish people and to marginalise both the SNP and hitherto anti-devolution Conservatives. It has not worked out that way, as these data show. Issues of sovereignty and legitimacy now dominate the political agenda, reflected in the fact that the key battles are now between sovereigntists and unionists, crystallised and catalysed by the SNP and Tories, both of whom have come in from the cold. Why do Labour and Lib Dem positions seem to play so little part in the analysis here? Labour in particular has been reduced to minority status because both Scottish and European issues present serious difficulties for them, and Liberal Democrats have been unable to capitalise on their longstanding support for the European Union. Why the change?

First of all, intransigent unionists like Tam Dalyell and Michael Forsyth long predicted that devolution would be the thin end of the sovereigntist wedge. That, however, is to read history backwards. Devolutionists were happy to ignore issues of sovereignty—most Labour MPs, for example, apart from Dalyell signed up to the Claim of Right, as if the 'settled will' conferred sovereignty on the proposed parliament, or that it did not matter anyway, being deemed to be ideological flummery unsuited to conditions of the late twentieth century. They were to be disabused formally of this notion when the UK Supreme Court stated unequivocally that the Scottish Parliament was the creation, and



hence the creature, of the British state at Westminster.

They could, however, be forgiven this constitutional error because, from the beginning of the Scottish Parliament, people in Scotland conferred primacy on the new institution. Thus, Scottish government (called an 'executive', in the parlance of the day until 2007) was credited with improvements in economic and social conditions, while the UK government was blamed for any deficiencies.<sup>11</sup> Scottish government and Parliament had far greater trust placed in them than their Westminster equivalents, even where devolved powers over the likes of the economy and social welfare were almost non-existent. While these findings related to the early years of the Parliament (1999–2003), and might be dismissed as rosy expectations not grounded in hard reality, they were replicated in 2015.<sup>12</sup> We labelled this the devolution conundrum, that while in legal-constitutional terms the Scottish Parliament was jurisdictionally subordinate to Westminster, people in Scotland conferred upon it prime legitimacy; plainly, they had not read the Scotland Act of 1998 carefully enough.

Bear in mind, too, that the early years were dominated by Labour and Liberal Democrat control of Parliament and government; the SNP only emerged as a (minority) government in 2007, and the Conservatives only became the second biggest party, and hence the main challenger, in 2016, when they won thirty-one seats to Labour's twenty-four, having an almost identical vote share (22 per cent and 22.6 per cent respectively) in the constituency vote, but did better on the list/region vote (22.9 per cent to 19.1 per cent).

The politics of the 2010s drew the erstwhile marginalised parties, nationalists, and Tories, into the mainstream. The devolution conundrum, we can see with hindsight, was based on popular understandings of sovereignty and legitimacy which Labour and Lib Dems were happy to surf, but not properly comprehend. These understandings were given expression and validation by two key events in the second decade of the century: the Scottish independence referendum of 2014, and the EU referendum of 2016.

Referendums can take on a life of their own and outgrow their original purpose.

The 2014 independence referendum generated the cliché that the winners lost, and the losers won; that it marked the beginnings of a new constitutional battle with sovereignty at its heart. The Brexit referendum also generated a fresh conundrum: that Scotland voted to remain in the EU by a significant margin, but at a UK level, lost the battle, because England, ten times its population size, held sway. So, issues of sovereignty and legitimacy were crystallised by those two referendums, which realigned politics as a struggle between the SNP and Conservatives, the latter seeing their opportunity to come in from the margins and try to harness the twin horses of unionism and Brexit, even though most of their Scottish supporters had voted remain (55 per cent).

Issues of trust and blame—features of pre-SNP government when the ostensibly unionist parties were in power at Holyrood—became the ideological basis for a different kind of political question: 'who are you [at Westminster] to tell us what to do?'. This focussed on the refusal to countenance a second independence referendum and the insistence that because the UK as a whole (mainly England) had voted for Brexit, that provided a sufficient mandate. This helped to highlight the underlying feature of post-war politics in Scotland, that most of the time it got a Westminster government it had not elected. Between 1945 and 2019, Scotland had been governed by a political party it had not elected at ten of the twenty elections, which represented more than three quarters of the period. Between 1945 and 2019, England had been governed by a political party it had not supported for only two brief periods: between 1964 and 1966, and between February and October 1974. The election of a Conservative government at Westminster in December 2019 confirmed that pattern. Although the Conservative vote in Scotland had recovered, it was still only 25 per cent, little more than half the Conservative vote south of the border, which delivered a sizeable majority for Boris Johnson.

Is a struggle between sovereigntists and unionists the inevitable new politics? Not necessarily. Just as the presumed 'settled will' had helped to create and shape a Scottish Parliament and government in 1999, the new 'will' is not necessarily settled either.

We should resist the assumption that current political and constitutional outcomes are inevitable. Much depends on how deftly, or not, political parties play their hands. ‘Shared sovereignty’ is not off the table, whether in the UK or in the EU; an accommodation which recognises the right of self-government or managing EU relations post-Brexit (as in Northern Ireland). The omens are not especially good. Like it or not, devolution did raise the issue as to which institution, Westminster or Holyrood, has the most influence over how Scotland is governed, and, importantly, who people thought *ought* to have the most influence. By 2015, 42 per cent of people in Scotland thought that the Scottish Parliament had most influence over how Scotland is governed, but three quarters thought that it ought to have most influence. We can see with hindsight that debates and arguments about where sovereignty and legitimacy were embedded in the bedrock of devolution, but they have become more salient as politics has been played out in the past decade. In 2019, one of us observed: ‘Simply asserting that in legal terms the Scottish Parliament is a creature of Westminster ignores the politics. Almost everything these days passes through the filter of self-government’.<sup>13</sup> That filter is unlikely to disappear anytime soon.

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## Notes

- 1 UK Supreme Court, Judgment (on the application of Miller and another) (Respondents) *vs.* Secretary of State for Exiting the European Union (Appellant). Reference by the Attorney General for Northern Ireland in the Matter of an Application by Agnew and Others for Judicial Review. Reference by the Court of Appeal (Northern Ireland)—in the Matter of an Application by Raymond McCord for Judicial Review, UKSC 5, 2017. UK Supreme Court, Judgment. The European Union (Legal Continuity) Scotland Bill, UKSC 64, 2018.
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