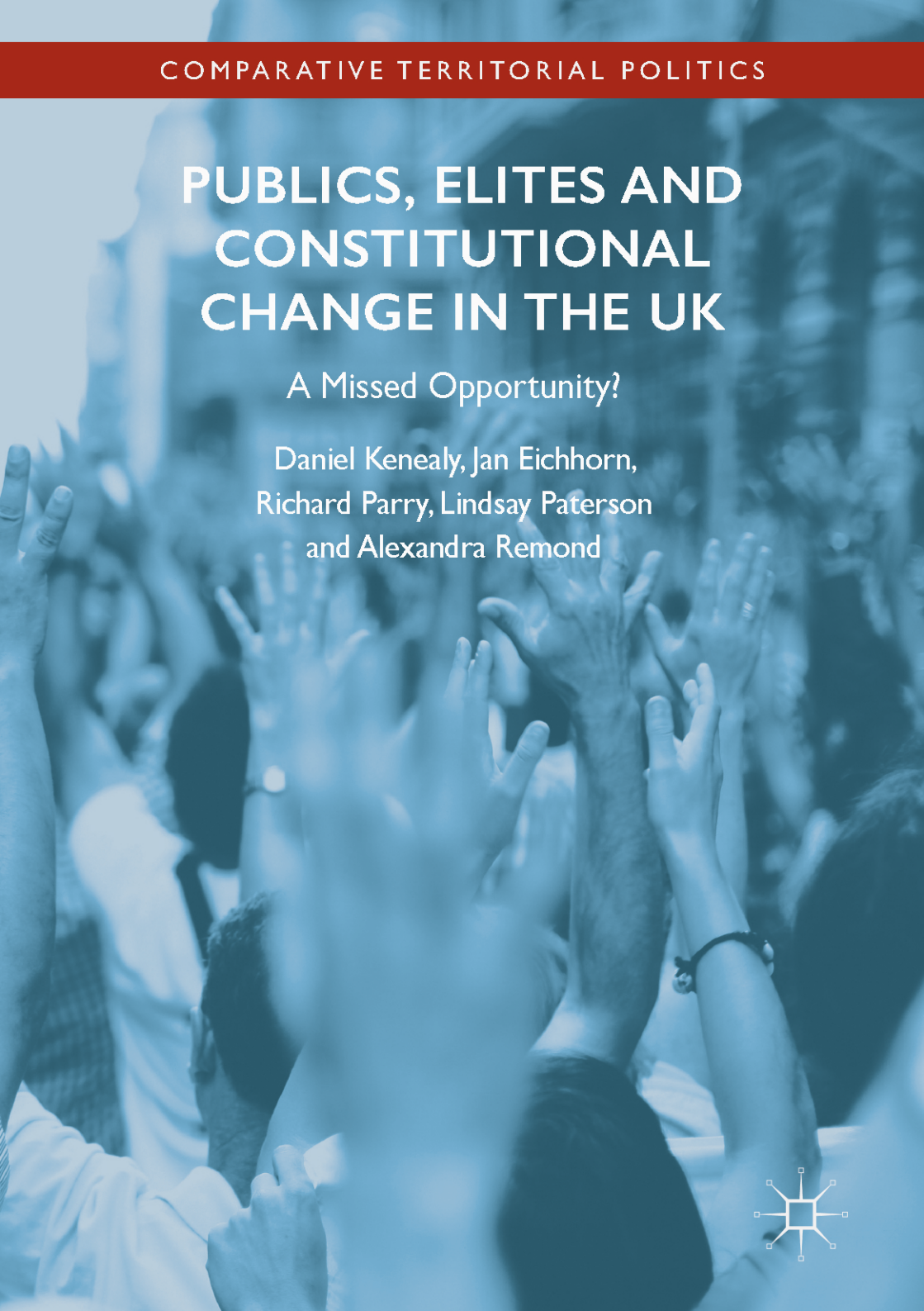
COMPARATIVE TERRITORIAL POLITICS

PUBLICS, ELITES AND CONSTITUTIONAL CHANGE IN THE UK

A Missed Opportunity?

Daniel Kenealy, Jan Eichhorn,
Richard Parry, Lindsay Paterson
and Alexandra Remond



Comparative Territorial Politics

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CHAPTER 1

Introduction

Downing Street. 7 a.m. on the morning of 19 September 2014. David Cameron emerged from behind the black door of Number 10, walked to a lectern and delivered what was, to all intents and purposes, a victory speech. In the early hours of the morning, it had become clear that the people of Scotland had rejected independence, voting by 55.3% to 44.7% to remain part of the UK. Cameron began: 'The people of Scotland have spoken. It is a clear result. They have kept our country of four nations together. Like millions of other people, I am delighted'. Cameron began by calling for the UK to 'come together' but quickly went on to say that 'a vital part of that will be a balanced settlement – fair to people in Scotland and importantly to everyone in England, Wales and Northern Ireland as well'.

> We now have a chance – a great opportunity – to change the way the British people are governed, and change it for the better . . . The three pro-union parties have made commitments, clear commitments, on further powers for the Scottish Parliament. We will ensure that they are honoured in full. And I can announce today that Lord Smith of Kelvin – who so successfully led Glasgow's Commonwealth Games – has agreed to oversee the process to take forward the devolution commitments with powers over tax, spending and welfare all agreed by November and draft legislation published by January.[1]

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Cameron was, with this, politically operationalising 'the Vow' – a commitment by the three unionist parties (Labour, Conservatives and Liberal Democrats) in the final days of the referendum campaign that a 'No' vote would not be a vote for the status quo but rather would be a vote for a further round of devolution and more powers for the Scottish Parliament.[2] In calling for an agreement on further powers for the Scottish Parliament by the end of November, and for legislation to be drafted by the end of January, Cameron was sticking to a timetable set out by the former Prime Minister, Gordon Brown, earlier in September. Announcing Lord Smith was meant to give credibility to the process and convey the seriousness with which the UK government was treating 'the Vow'.

Within moments of committing to delivering on the promises made to Scotland during the referendum, Cameron linked the issue to the governance of other parts of the UK, and specifically to the West Lothian Question.[3] Cameron went on:

> It is absolutely right that a new and fair settlement for Scotland should be accompanied by a new and fair settlement to all parts of our United Kingdom. In Wales, there are proposals to give the Welsh Government and Assembly more powers . . . In Northern Ireland, we must work to ensure that the devolved institutions function effectively. I have long believed that a crucial part missing from this national discussion is England. We have heard the voice of Scotland – and now the millions of voices of England must also be heard. The question of English votes for English laws – the so-called West Lothian question – requires a decisive answer.[4]

Cameron announced that William Hague, the Leader of the House of Commons and First Secretary of State in the UK government, would be charged with drawing up plans to implement English Votes for English Laws (or EVEL as it has been termed) in the House of Commons. Cameron expressed a wish that the approach to EVEL could be cross-party in nature. Just hours before delivering the speech, Cameron had a phone call with Alistair Darling, Chancellor of the Exchequer during Gordon Brown's premiership and the man who had headed the cross-party Better Together campaign to keep Scotland in the UK. At 5 a.m., Darling was called and congratulated by Cameron. Darling 'reportedly sa[id] that the heady post-referendum atmosphere [wa]s not the moment to sort out' EVEL.[5] Darling feared that

bringing up EVEL only hours after the referendum result 'would let Alex Salmond [then still Scotland's First Minister and leader of the Scottish National Party] back in the front door'.[6]

Cameron, concerned about the effect on English voters of promises made to Scotland in the closing days of the referendum, decided to go ahead with the speech as planned. Darling's opposition was echoed by Nick Clegg, the Liberal Democrat leader and Deputy Prime Minister in the UK's coalition government, who made it clear to Cameron that he would not be speaking only for the Conservative party on the issue of EVEL and not for the coalition.[7] The Conservative party had committed to delivering EVEL in each of their general election manifestoes since 2001. Some form of EVEL had been endorsed by the McKay Commission, convened in 2012 to examine and come up with an answer to the West Lothian Question.[8] A combination of electoral pressure from the UK Independence Party and a vocal group of Conservative MPs determined to secure EVEL nudged Cameron towards explicitly linking the Scottish and English questions in his 19 September speech.

In closing his speech, Cameron stressed the importance of 'wider civic engagement about how to improve governance in our United Kingdom, including how to empower our great cities'.[9] Just a few weeks later, on 3 November 2014, George Osborne – Chancellor of the Exchequer in the UK government – signed a devolution deal with the Greater Manchester city-region, committing to devolving a range of powers and budgets from Whitehall to the ten local authorities in Greater Manchester.[10] The deal – termed 'Devo Manc' by many – has been replicated in other cities and city-regions and represents a major change in the governance of England.

The closing months of 2014 and the early months of 2015 were thus a moment in which the UK underwent a period of intense debate about governance arrangements and constitutional change. The debate affected parts of the UK distinctively, as well as the whole. In the context of an impending UK general election in May 2015, much of the process progressed at a very high speed. In the research project which has led to this book, we were interested to find out to what extent members of the public felt that they had a stake in this process and to what extent elites involved in shaping the process knew about these public attitudes. Through funding from the UK Economic and Social Research Council,[11] we have been able to undertake research to empirically examine the question of to what extent the attitudes of elites and masses in the constitutional change process in the UK ahead of the 2015 general election matched or differed.

In this chapter, we set out the approach that we adopted, which combined a survey of public attitudes across the UK with elite interviews, and then detail our findings and argument, and outline the structure of the book. Before that, however, we briefly situate the work in the timeframe of our research, which stretched from late 2014 to the UK general election of May 2015.

Context

Although Scotland was, perhaps understandably, the focal point of much constitutional debate in late 2014, there were developments in other parts of the UK. Most of those developments arose before 18 September and continued thereafter. The developments are all, in some sense, interconnected; similar themes – such as the mechanisms of financing devolved governments and the implications of the UK government's welfare policies – appear in numerous geographical areas. Nevertheless, the constituent parts of the UK have their own internal dynamics when it comes to devolution. Whilst the Scottish referendum might have had a catalytic effect in some places, it is important to understand each place on its own terms.

Scotland had not finished its latest round of constitutional development before the referendum on 18 September 2014. Many of the provisions of the Scotland Act 2012 – the first major revision of the Scottish devolution settlement since 1999 – had not yet come into effect as the nation voted on whether to become independent or remain as part of the UK.[12] The Scotland Act 2012 was the product of the Calman Commission, established in December 2007 by the Labour Party with the support of the Conservatives and Liberal Democrats.[13] It was established following the formation of an SNP minority government in Scotland as a result of the Scottish Parliament elections of May 2007, and was designed, in part, to counter the SNP's *National Conversation*, a similar exercise in exploring constitutional options for Scotland's future that, unlike Calman, specifically included the option of independence. Scotland was thus engaged in two formal parallel conversations about its constitutional future from late 2007 until mid-2009.[14]

Calman's recommendations – which included the devolution of some taxation powers – formed the basis of the Scotland Act 2012, which received Royal Assent on 1 May 2012. As part of the Act, a new Scottish Rate of Income Tax (SRIT) was to be introduced from April 2016. The powers over income tax that were devolved through the 2012 Act were restrictive.

The basic, higher and additional rates of income tax paid by Scottish taxpayers were to be reduced by 10 pence in the pound. The SRIT would then be set annually by the Scottish Parliament at any value from zero pence upwards. Crucially, the rate could not be varied. In other words, it had to apply equally at all tax bands, severely restricting the ability to create a more progressive (or regressive) system of Scottish income tax. Even before these new taxation powers could be transferred to the Scottish Parliament, however, political events had overtaken them. One of the key questions for the Smith Commission was what further taxation powers could be devolved to Scotland (with the other area for debate being what further welfare powers could be devolved)?

A similar situation of politics overtaking process can be seen in Wales. As has become standard practice, in Wales too a Commission was given the task of considering further devolution. The Silk Commission was established by the UK government in 2011 to consider the financial powers, and the legislative powers, of the National Assembly for Wales. The first part of the Commission's work – on financial powers – was concluded in November 2012, with the report on legislative powers published in March 2014.[15] The first Silk report formed the basis of the Wales Act 2014, which was introduced to the House of Commons in March 2014 and received Royal Assent on 17 December 2014. That Act, amongst other things, devolved a range of smaller taxes to the National Assembly (stamp duty, business rates and landfill tax) and created a mechanism to devolve an element of income tax if Welsh voters expressed such a desire in a referendum. Following the Smith Commission's final report on 27 November 2014, Carwyn Jones – the Labour First Minister of Wales – criticised the UK government's 'piecemeal approach' to devolution and called for Wales to be offered the same powers as Scotland.[16]

Overnight, the Smith Commission thus became 'the yardstick by which any proposals for Wales' were measured.[17] In early 2015, the Wales Act 2014 was quickly supplemented by the St. David's Day Agreement, which focused more on the legislative powers of the National Assembly and sought to implement many of the recommendations of the second Silk report.[18] Following the announcement of the agreement on 27 February 2015, both Jones and Plaid Cymru leader Leanne Wood voiced their criticism.[19] Both argued that the package of powers on offer to Wales remained less than that being offered to Scotland. And both drew attention to the long-running problem of Wales receiving lower funding through the existing devolution finance mechanisms than it would receive

via a needs-based assessment. Once again, the linkages between devolution in Scotland and Wales were apparent.

The 'Vow' that had been made to Scotland contained a commitment to retain the Barnett Formula as a key determinant of the levels of public expenditure in Scotland, Wales and Northern Ireland. According to Richard Wyn Jones, this was an indication of 'how little Wales – and its leading politicians – matter'.[20] Wyn Jones was alluding to the evidence, most clearly presented in the Holtham Commission's 2009 report, that the existing funding arrangements, underpinned by the Barnett Formula, did not take account of the funding needs of the devolved nations.[21] The ability of Welsh politicians to press for a needs-based funding mechanism had been compromised by a commitment made by UK politicians to Scotland in the heat of the referendum campaign. Although Carwyn Jones refrained for some months from offering support for these latest steps in devolution to Wales, he finally accepted them and the Wales Act 2017 received its Royal assent on 31 January 2017. The Act was based on the St. David's Day proposals, extended the powers of the National Assembly for Wales, and dropped the requirement for a referendum to be held before devolving powers over income tax.

At the time we commenced our research in late 2014, Northern Ireland was moving towards signing and implementing the Stormont House Agreement.[22] That Agreement was intended to resolve a number of outstanding issues in Northern Ireland, some very place specific such as flags and parades, and others addressing more general devolution concerns such as financing, welfare and taxation. Tied up with the Stormont House Agreement was the UK government's commitment to devolve corporation tax to Northern Ireland, an ad-hoc tax-devolution decision not on offer to Scotland or Wales. The talks that led to the Stormont House Agreement derived from disagreements between the Democratic Unionist Party (DUP) and Sinn Féin – the two largest parties in the power-sharing executive – over the introduction of the UK government's welfare reforms and their financial implications for Northern Ireland.

Although seemingly resolved on 23 December 2014, the Agreement fell apart through the course of 2015 when Sinn Féin, and the Social Democratic and Labour Party, refused to pass a welfare reform bill that was crucial to implementing the Agreement.[23] A few months later, two murders in Belfast were linked, by the Chief Constable of the Police Service of Northern Ireland, to the Provisional IRA, driving a further wedge between Northern Ireland's governing parties.[24] After ten weeks of talks

involving the Northern Ireland parties, and both the UK and Irish governments, a Fresh Start Agreement was reached in November 2015.[25] That Agreement largely restated the Stormont House Agreement, with a few alterations, and seemed to bring the Northern Ireland Assembly back from the brink of being suspended, a development that would have seen the return of direct rule from London. The developments are a reminder that whilst Northern Ireland has many distinct issues that need to be resolved in the context of devolution, there are similar arguments with the UK government about finance and welfare reforms that occur in Scotland and Wales.

In England, whilst the UK Treasury was busy negotiating a devolution deal with Greater Manchester, EVEL had been put on the backburner by the coalition government. Although the McKay Commission had been convened by the coalition government and given the task of coming up with a solution to the West Lothian Question, its recommendations were not implemented. Michael Moore, the Liberal Democrat MP and Secretary of State for Scotland for a period during the coalition government, led the opposition within government to implementing McKay's recommendations.[26] As Evans has noted 'there has . . . been a self-confessed tendency for the Liberal Democrats to avoid firm policy solutions to the English Question, favouring instead the stance of referring the matter to a future constitutional convention'.[27]

What is apparent, from the above, is the ad-hoc and piecemeal nature of these developments across the UK. Carwyn Jones, quoted above, following the publication of the Smith Commission report, called for

> A proper conversation that treats all four nations [England, Scotland, Wales, and Northern Ireland] as equals, and which develops a long-term view on what the new UK should look like. This stuttering, ever-changing series of offers is confusing to people, and ultimately extremely damaging to the prospects of the union staying together in the long-term.[28]

Jones, a Labour politician, could be viewed here as simply being 'on message'. The UK Labour leader, Ed Miliband, had staked out very different ground from David Cameron on the morning after the Scottish referendum. As Cameron announced the Smith Commission and empowered William Hague to take forward proposals for EVEL, Miliband called for a constitutional convention, observing that 'the passion in this referendum campaign on both sides has shown that politics can still galvanise people, engage the young, bring people out

to vote in record turnouts'. He called for 'more of that energy, not less' and promised that Labour would not 'sit back and put up a "business as usual" sign over Westminster'.[29]

Miliband was clear that any such process should 'not be led just by a Westminster elite but be open to every citizen so that they can have their say'. The outline of what Miliband envisaged was a series of dialogues in every nation and region of the UK, bringing together MPs, councillors and ordinary citizens, to start before the May 2015 general election. Each region would produce a report outlining a series of recommendations. Following that, and assuming Miliband was PM, the commitment was to establish a constitutional convention in the autumn of 2015 to bring the recommendations together. They would then be debated by Parliament.[30] Ultimately, Miliband's was a road not taken. Labour lost the 2015 UK general election, which saw – contrary to most expectations and all polling – David Cameron returned as Prime Minister at the head of a Conservative majority government. As a result, the proposals for EVEL were introduced following a vote in the House of Commons on 22 October 2015. And the Conservative government delivered new devolution bills for Scotland and Wales, as well as helping to broker the Fresh Start Agreement in Northern Ireland.

Approach

In the charged atmosphere following the Scottish independence referendum leading up to the 2015 General Election, with a heightened attention to debates about how the UK should be governed, we wanted to investigate to what extent the views of elite decision-makers corresponded to the attitudes of publics across the UK. While many assumptions seemed to underpin the approaches suggested and taken by political actors, such as the desire of people for particular reforms or involvement through particular mechanisms, little empirical evidence was presented to verify those assumptions. In our project, we therefore wanted to capture attitudes of decision-makers and influencers in key positions as well as the wider public during this very distinctive point in time, allowing for comparisons between the two.

In order to develop insights into both elite and mass attitudes, we combined a series of elite interviews with a representative survey of public views. Daniel Kenealy and Richard Parry conducted the majority of the interviews between December 2014 and May 2015. Kenealy has continued to conduct interviews since then, in connection with continuing work

on devolution to Scotland and to the cities and city-regions of England, interviews that are also drawn on in this book. In total, 47 interviews have been conducted in connection with this project and we draw on 41 directly in this book. Those 47 interviews comprise: seven of the ten appointees to the Smith Commission; eight senior civil servants who were closely involved with the Commission, either as part of its secretariat or in senior roles supporting the process in Whitehall or the Scottish Government; six representatives of Scottish civic organisations; ten senior local politicians from Greater Manchester and Merseyside; ten local government officials from Greater Manchester and Merseyside; four senior Whitehall civil servants involved in city or city-region devolution deals; one senior civil servant in the Welsh Government; and one senior civil servant in the Northern Ireland Executive.

All of the interviews have been suitably anonymised to conceal the exact identities of the sources. For example, many of the interviews with people closely associated with the Smith Commission were conducted at a period of time – early 2015 – where the recommendations of the Commission, and the development of those recommendations into draft legislation, remained highly politically sensitive. Similarly, in Greater Manchester and Merseyside, many of the interviewees were involved in negotiating or implementing devolution deals during the period of study and a similar sensitivity thus applied. It is fairly standard convention, when interviewing senior civil servants, for their identities to be concealed and we follow that practice here. Given that the civil servants who were closely connected with the Smith Commission represent a fairly small pool, we have not been able to identify them by government department or agency, as this would potentially reveal their identity. Finally, Kenealy was able to return to two interviewees closely involved with the Smith Commission process to check some contested points and to clarify some of the more complicated aspects of the process. These two follow-up interviews were not for direct citation and were conducted, to use a journalistic term, 'on background'. They inform some of the content of Chapter 4.

We sought permission from all of our interviewees to audio-record the interviews and, with few exceptions, all agreed. Kenealy transcribed the interviews, from the audio recordings, during the course of 2015 and early 2016 to allow for easier searching for key terms and references within the interviews. Our aim is to reference our interview material as exhaustively as possible. For example, when we state 'several interviewees stated' or 'a number of the elites we spoke to shared the view that', we will footnote all