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Charting a New Political Notion: “Devolution Max” and its Circulation in Britain Since 2009

Nathalie Duclos

Introduction

- 1 The years 1997-99 saw the establishment of a system known as “devolution” in the UK, after years of campaigning for this on the part of the Labour Party, the Liberal Democrats, and a wide range of Scottish civil society organisations. This led (among other things) to the birth in 1999 of an autonomous Scottish Parliament, also called the Holyrood Parliament, and of an autonomous Scottish Executive, now known as the Scottish Government, in Edinburgh. Since then, the Edinburgh Parliament and Government have been responsible for most of Scotland’s domestic affairs, while the British Parliament and Government in London have mainly remained responsible for international, macro-economic, and constitutional affairs throughout the UK. To this date, there have been four elections to the Scottish Parliament: in 1999, 2003, 2007 and 2011. The first two elections brought to power Labour-Liberal Democrat coalition governments in Edinburgh. However, the last two elections were won by the Scottish National Party (SNP). After the 2007 election, which resulted in a hung parliament, the SNP was forced to form a minority government. Yet, at the 2011 election, the SNP won a total majority of seats in the Scottish Parliament (despite the fact that the electoral system makes such an outcome very unlikely) and it was thus able to form the first ever majority government in Scotland.
- 2 Ever since the SNP was elected to power for the first time in Edinburgh in 2007, new political notions such as “devolution max”, “devolution plus” or “independence lite” have been at the centre of a great political debate on Scotland’s constitutional future. This debate has taken place within Scotland, between the Scottish and British Governments, and between Scotland and the other British nations. This paper focuses

on the notion of “devolution max” (or “devo max”), whose circulation was first strictly limited to the Scottish political sphere, but which later reached political circles in London, thereby testifying to the mainstreaming of Scottish constitutional issues at the level of the UK. The first aim of this paper is to trace the origins and chart the circulation of this political concept within the UK. As will be seen, “devo max” is an SNP invention which dates back to the time when the party formed its first ever minority government, in 2007. However, “devo max” only became common political parlance after the SNP was elected to power for the second time, in 2011, when it obtained a total majority of seats in the Scottish Parliament. The second aim of this paper is to define “devolution max” by comparing and contrasting it with other constitutional reform proposals, in particular two other proposals for further devolution of powers to the Scottish Parliament: that embodied in the Scotland Act 2012 and the “devolution plus” proposal. Finally, two general conclusions will be drawn from the circulation and mainstreaming of the “devo max” notion and of the proposal of a multi-option referendum to which it is linked. Firstly, the SNP’s invention and promotion of the idea of “devolution max” and of a multi-option referendum have allowed it to carve out a new political space for itself. The main Unionist parties in Scotland (in other words, the Labour Party, the Conservative Party and the Liberal Democrats) have also been forced to redefine their place on the Unionist-independence continuum. Secondly, the UK-wide parties’ attitudes towards the “devolution max” concept has brought to light the difficulties that they have in adapting to the new multi-level politics in the UK, born of the introduction of devolution in 1999.

1. Charting the “devolution max” notion

- 3 The concept of “devolution max” (or “devo max”) is a very recent invention. It appeared in an official document for the first time in November 2009, when it was used in a Scottish Government White Paper entitled *Your Scotland, Your Voice*, at a time when the SNP was already in power in Scotland, but in a minority government. This White Paper came at the end of a consultation process on Scotland’s constitutional future known as the “National Conversation” and launched by the SNP a few months after being elected to power in the Scottish Parliament in 2007. The consultation process had taught the SNP that, although the appetite for total independence remained limited in Scotland, many Scots supported “further devolution” or “enhanced devolution”, in other words, an increase in the powers of the Scottish Parliament within the UK. Accordingly, the White Paper of November 2009 presented “further devolution”, now renamed “devolution max”, as one of four broad options for Scotland’s future, one that was defined as “full devolution of the maximum range of responsibilities to Scotland while remaining in the United Kingdom” (Scottish Government, 2009, 16). This, the Paper noted, could include “a whole range of proposals”, concerning for instance “the devolution of broadcasting, taxation and benefits” (Scottish Government, 2009, 138). The SNP Government also stressed that it did not favour this option and would not campaign for it, and that it was therefore for the opposition parties to give meaning to it. The SNP believed that the introduction of its planned Referendum Bill in the Scottish Parliament would present the opposition parties with an opportunity to define such a “devolution max” option. If they took this opportunity, then “the Scottish Government

would be prepared to consider it as a serious option for inclusion in a multi-option referendum” (Scottish Government, 2009, 138).¹

- 4 A few months later, in February 2010, the SNP issued another consultation paper, this time on its Draft Referendum (Scotland) Bill. In this document, the SNP confirmed that it might agree to a multi-option referendum which would include a question “about an extension of the powers and responsibilities of the Scottish Parliament, short of independence” (Scottish Government, Feb. 2010, 5). It underlined that this question might take two forms: either a limited extension of the Scottish Parliament’s powers in the form recommended by the Calman Commission (on which more will be said later), or “devolution max”, defined as “full devolution including fiscal autonomy” and giving “the Scottish Parliament and Government responsibility for almost all domestic matters and most revenues and public spending in Scotland”, while “the UK Parliament and Government would continue to have responsibility for defence, foreign affairs, financial regulation, monetary policy and the currency” (Scottish Government, Feb. 2010, 5). The aim of this consultation was to seek the Scottish people’s preference on this “other” constitutional option: did they prefer “devolution max” or the more limited extension of autonomy recommended by the Calman Commission? The responses to this consultation, which were made public in June 2010, led the Scottish Government to conclude that there was “now wide agreement that Scotland [needed] more financial responsibility than proposed by the Calman Commission” (Scottish Government, News Release), in other words, that Scotland needed either “devo max”, or full independence. However, in the end, the Scottish Government never introduced its planned Referendum Bill in the Scottish Parliament: at the time, the SNP did not have an overall majority in the Parliament, and the other parties represented in Edinburgh had made it clear that they would unite in their opposition to such a bill. What this meant was that there was no opportunity for Scottish elected representatives to debate the “devolution max” option or the possibility of having a multi-option referendum in Parliament. As a consequence, in the years 2009-11 when the SNP was in a minority government, the circulation of the “devo max” concept remained limited. For instance, the phrase “devolution max” was not used once in the Scottish Parliament in those years (as shows an analysis of Scottish Parliament debates), despite it being used in official Scottish Government publications, while in the British Parliament it was only used once².
- 5 The turning point in the circulation of the idea of “devolution max” was the SNP’s landslide victory at the May 2011 Scottish Parliament election, which allowed it to form a majority government³. This made it certain that there would be an independence referendum in the near future, and the SNP duly announced that it would take place in the second half of the Scottish parliamentary term; in the very first days of 2012, the intended time slot for the referendum was narrowed down to autumn 2014. Immediately after the 2011 election, the concept of “devo max” became a central part of political debate in Scotland; soon after, in early 2012, it took central stage on a UK-wide basis. It entered the British political vocabulary in early January when British Prime Minister David Cameron spoke out on Scottish independence on British television and called on Scottish First Minister and SNP leader Alex Salmond to hold an independence referendum sooner than in 2014. He also insisted that the question asked in the referendum should be “fair, legal and decisive” (BBC, 2012). A few days later, the British Government developed its views on what this might mean in a consultation

document on the referendum. The document stated that for the referendum to be decisive, "there must be a single, straightforward question". Further devolution and independence were:

two different issues, and should be considered separately. If these two questions were asked together, there would be four possible outcomes, and potentially four different campaigns, each arguing for a different result. [...] Having four different campaigns would not help to generate clarity (Scotland Office, January 2012, 19).

- 6 From David Cameron's intervention in January 2012, until October 2012, when an agreement on the referendum (known as the Edinburgh Agreement) was signed by the Scottish and British Governments, the "devolution max" notion and the possibility of a multi-option referendum were in the political spotlight and at the centre of a huge strategic chess game between the two Governments, and between the four major parties involved, namely the Conservatives, Labour, the Liberal Democrats (the main Unionist parties in Scotland) and the SNP (the main pro-independence party in Scotland). The three Unionist parties strongly opposed including a question on "devo max" in the independence referendum. The SNP, for its part, repeatedly asserted that it would prefer a straight yes-no question on independence, but that it was open to a question on "devo max" as this option seemed to have the support of a majority of Scots. The desirability of such a question was therefore considered as part of the SNP's three-month consultation exercise on the independence referendum, which began on 25 January. In a speech made in the Scottish Parliament on the day that the consultation was launched, Alex Salmond said that the option should remain open if the consultation showed that the public wished for it be included :

If there is an alternative of maximum devolution which would command wide support in Scotland then it is only fair and democratic that option should be among the choices open to the people. (Scottish Parliament, 25 January 2012)

- 7 At the time, the SNP's claim that "devo max" was the preferred option of many people in Scotland was supported both by poll results, which have consistently shown Scots to choose any form of further devolution over independence or the *status quo*⁴, and by declarations made by several prominent representatives of civic Scotland (from the voluntary sector, trade unions and the Churches). For instance, Canon Kenyon Wright, a retired Episcopalian clergyman who was one of the leading architects of devolution in the 1990s, argued that not having a second question would "disenfranchise" many Scots (though he dismissed the phrase "devo max" and wished to promote the alternative phrase "secure autonomy") (*Scotsman*, 27 January 2012). John Downie, of the Scottish Council for Voluntary Organisations, similarly declared that :

for this discussion [on the future of Scotland] or the referendum itself to be shackled by an overly simplistic yes/no approach would be a travesty of democracy. The referendum must include all the options (Downie, 2012).

- 8 Finally, Grahame Smith, the general secretary of the Scottish Trades Union Congress, said that he wanted the body set up to run a referendum to consider "whether a credible third option has emerged and, whether, and in what way that additional option might be put to the Scottish people" (Carrell, 2012).
- 9 However, the responses given to the Scottish Government's consultation on the referendum, which were made public on 23 October 2012, suggested that Scottish support for the idea of "devolution max" did not necessarily translate into support for a multi-option referendum. According to the Scottish Government, only 32 % of respondents declared themselves to be in favour of including a second question on

“devo max” in the referendum, while 62 % were against the proposal (Scottish Government, Oct. 2012, 26). Hence, by the SNP’s own standards, since there was no clear demand for a multi-option referendum, there was no need to organise one. Moreover, the Scottish Government’s legitimacy to organise such a referendum was clearly questioned by the British Parliament. In July 2012, the Scottish Affairs Committee, which is a House of Commons select committee, published a report on a “multi-option question” as part of its (still ongoing) enquiry on “the referendum on separation for Scotland”. After hearing many witnesses on further devolution, the meaning of “devo max”, and the possibility of a multi-option referendum, its main conclusion was the following:

The Scottish Government does not have a mandate to hold a referendum on greater devolution. What it promised was a referendum on separation, and we agree they should be enabled to hold that. It is for those political parties and organisations which genuinely support devolution to make proposals for developing it, and propose how to put those plans before the electorate (Great Britain House of Commons, Scottish Affairs Committee 22).

- 10 After more than a year of debate on the referendum and on the form it might take, on 15 October 2012, the British and Scottish Governments, represented on the one hand by British Prime Minister David Cameron and Secretary of State for Scotland Michael Moore, and on the other hand by Scottish First Minister Alex Salmond and Deputy First Minister Nicola Sturgeon, signed an agreement on the referendum. This agreement effectively put an end to the possibility that the referendum might include multiple options, as it clearly states that there will be only “one question on independence” (HM Government & Scottish Government 5). It can therefore be argued that the Edinburgh Agreement has closed the debate on “devolution max”, unless it is reopened by the results of the 2014 independence referendum.
- 11 Charting the circulation of the “devolution max” concept teaches us that this concept is an SNP invention first promoted during the years 2009-11, at a time when the three main Unionist parties in Scotland were coming up with their own scheme for further devolution in the form of the Calman Commission recommendations. It could thus be argued that introducing and promoting the concept of “devolution max” was a way for the SNP to try and have the upper hand in the constitutional debate by associating itself not just with the option of full independence, but also with that of “full devolution”. Originally, the SNP had invited the other Scottish parties to give their own definition of “devolution max”. This invitation was turned down by the other parties, who chose instead to stick to the more limited Calman proposals for extending devolution, to attack “devo max” as an “SNP construct”⁵ and to mock it as a form of “independence lite”⁶. “Devo max” came under even greater attack from all the Unionist parties in 2012, when the debate became a British-wide one and turned around the possibility of a multi-option referendum on Scotland’s future. As the invitation to elaborate a “devo max” scheme was turned down by the Unionist parties, how can we make sense of this political notion and what precise meaning, if any, can be given to it?

2. Defining “devolution max”

- 12 Much of the debate on “devolution max” has centred on what that notion actually means. Everyone agrees that on a basic level, it means further devolution of powers from London to Edinburgh within a UK framework. Yet, when non-SNP members use

this phrase, they generally qualify it with a sentence explaining how ill-defined and vague it is. Labour Member of the Scottish Parliament (MSP) Richard Baker, for instance, ironically noted during a parliamentary debate in Edinburgh that he was “tempted to ask what would happen if we went into the street and asked somebody what devo-max was — even if that person was the First Minister” (Scottish Parliament, Scotland Bill Committee, 2011). Scottish Labour MP Tom Harris declared during a parliamentary debate in London that:

however long it will be before the referendum, it is unlikely that this option — whatever we call it, whether it is ‘Devo Max’, Independent [sic] Lite’ or ‘I Can’t Believe It’s Not Independence’ — is likely to be any better defined than it is today; it will still mean whatever one wants it to mean, which undoubtedly explains why it is consistently the most popular option in the opinion polls. (Great Britain House of Commons, 2011)

- 13 Moreover, the House of Commons’ Scottish Affairs Committee underlined in its report on a “multi-option question” that:

the idea of ‘devolution max’ is no more than a phrase in search of content. No plans exist, and none are in prospect which could properly be put forward to the voters in any referendum. (Great Britain House of Commons, Scottish Affairs Committee 3)

- 14 The same report quoted Owen Kelly of Scottish Financial Enterprise who, in his evidence to the committee, had said that “Devo-Max can be all things to all people”, as well as several other witnesses who had noted that “devo max” had not been properly defined, after which it had concluded that “none of [its] witnesses was able to point to any such [devo max] scheme, or indeed to anyone developing such a set of proposals” (Great Britain House of Commons, Scottish Affairs Committee 3, 10). Even the Scottish Government’s report on its consultation on the referendum drew the following conclusions from its analysis of the responses to the question “What are your views on the inclusion of a second question in the referendum and the voting system that could be used?”:

A recurring theme in the responses to this question (both among those who were in favour of a second question and those who were not) was that respondents were often not sure what devo max meant. It was common for people to qualify their agreement to a second question by saying, ‘... but it needs to be defined’, while some of those who were opposed to the inclusion of a second question made the point that the electorate could not be expected to vote on something that was so ill-defined. (Scottish Government, October 2012, 31)

- 15 What was then at stake in the definition — or lack of definition — of “devolution max” was its possible inclusion as an option in the 2014 referendum, and as noted by Tom Harris, “it is of the utmost importance that the result of any referendum cannot be second-guessed, misinterpreted, reinterpreted or undermined. It must not be ambiguous” (Great Britain House of Commons, 2011).
- 16 In its White Paper of 2009, the SNP had recognised that “devolution max” could refer to a whole range of proposals for further devolution within the UK. Yet, it was always clear that “devolution max” did not include *the* whole range of proposals for further devolution. One way of establishing what “devo max” could mean is to contrast this notion with the other schemes for further devolution that it has been defined against. Three schemes in particular must be mentioned: the proposals made by the Calman Commission, the Scotland Act based on these proposals, and the “devolution plus” proposals made by Scottish think tank Reform Scotland. Such a comparison reveals that the main difference between “devo max” and other proposals for furthering

devolution lies in the level of fiscal autonomy which would be granted to Scotland. "Devolution max" is essentially a form of what is diversely known as "fiscal devolution", "fiscal autonomy", "tax devolution" or "devolution of taxation", and it is a fuller form of fiscal devolution than those on offer in the other schemes. The three schemes for further devolution that "devo max" has been contrasted with will now be considered.

- 17 The Commission on Scottish Devolution, better known as the Calman Commission, began work in April 2008 and published its final report in June 2009. Its remit was to:

recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, improve the financial accountability of the Scottish Parliament, and continue to secure the position of Scotland within the United Kingdom. (Commission on Scottish Devolution, "Remit")

- 18 In other words, it was to make proposals that would lead to a reform of the devolution settlement, especially in the field of finance, in view of strengthening Scotland's Unionism and keeping at bay the separatist threat. This remit explains why of the four big Scottish parties, only the three Unionist parties accepted to be represented in the Calman Commission. The Calman report noted that:

The UK is an economic Union with a very integrated economy, with goods and services traded within it all the time. We are absolutely clear that this economic Union is to Scotland's advantage and in considering how devolution should develop we have been very careful not to make recommendations that will undermine it [...] the Scottish Parliament and Government cannot run a separate macro-economic policy without threatening the benefits of this economic Union. This is also important for taxation, because the scope to have different rates of tax inside a single economy is limited. (Commission on Scottish Devolution 6)

- 19 The Commission's main recommendation was therefore for a limited system of fiscal autonomy, in which Scotland would continue to receive a block grant from the UK but which would allow one third of devolved spending to be funded by taxes decided and raised in Scotland. To the Calman Commission, the advantages of this system were twofold: the devolution of certain fiscal powers to the Scottish Parliament would increase its financial accountability, while the maintenance of the grant from the UK Parliament would reflect "the principle of the social Union, that taxes are pooled together and shared out in the form of a grant according to need" (Commission on Scottish Devolution 8).

- 20 The Scotland Bill was introduced in the British Parliament in November 2010 to deliver the recommendations of the Calman Commission. It passed its third reading unopposed in the House of Commons on 21 June 2011, and became the Scotland Act after receiving the Royal Assent on 1 May 2012. This Act, which is expected to apply from 2015 or 2016 (depending on the taxes concerned)⁷, plans for the transfer of some fiscal powers from the Westminster Parliament to the Scottish Parliament, but it will still leave most tax decisions in Westminster's hands. Scotland's budget will continue to be largely based on a block grant from the UK Treasury, but the block grant will be cut, and the Scottish Parliament will be given the power to set separate rates of income tax for Scottish taxpayers (it will be able to vary the rates of income tax by up to 10 pence in the pound).⁸ Certain minor taxes (such as stamp duty land tax, or "SDLT") will be devolved to Scotland, and the Act makes provision for new devolved taxes, but none of the

welfare benefits will be devolved. All in all, it is estimated that the Scottish Parliament will be responsible for raising around a third of the Scottish budget.⁹

- 21 The “devolution plus” option advocated by think tank Reform Scotland is also largely concerned with fiscal autonomy, but it goes much further than the Scotland Act. In a context where it was still likely that “any referendum on independence [would] offer three choices to the Scottish electorate; independence, the *status quo* and some middle option”, Reform Scotland claimed that their “devolution plus” proposals represented “the first major attempt since the [2011 Scottish] election to set out exactly what this third option could look like”.¹⁰ As Jeremy Purvis, a former Liberal Democrat MSP, explained to the Scottish Affairs Committee, the Devolution Plus group, set up by Reform Scotland and headed by Purvis, aims at dividing taxes into “those which should be Scottish, those which could be shared between the Scottish and UK levels, and those which should be wholly retained by the UK”. Moreover, the group hopes “to move towards a situation where the Scottish Parliament [is] responsible *for more or even most* of the revenue it need[s]” [emphasis mine] (Great Britain House of Commons, Scottish Affairs Committee 11). To that aim, Reform Scotland proposes to remove the block grant completely, to “leave Westminster primarily with VAT and National Insurance” and to devolve most other taxes to the Scottish Parliament (Reform Scotland 5). The Holyrood Parliament would also be given responsibility for a number of welfare benefits.
- 22 Compared to these different schemes, a “devolution max” settlement would see the devolution to the Scottish Parliament of not “more or even most” revenue-raising powers (in the words of Jeremy Purvis), but *most or all* fiscal powers. The greatest form of fiscal autonomy would be a settlement in which Scottish institutions would be responsible for setting and collecting *all* taxes in Scotland, and would retain the revenues except for a contribution to common UK services. The Scottish Affairs Committee claimed that this system corresponds to what the Scottish First Minister calls “full fiscal autonomy” (Great Britain House of Commons, Scottish Affairs Committee 11). However, the Scottish Government has never sought to tie the concept of “devolution max” to *full* fiscal autonomy *only*, as the consultation paper on its Draft Referendum Bill made clear:
- Under full devolution, 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 [emphasis mine]. (Scottish Government, 2010, 12)
- 23 In conclusion, “devolution max” refers to a form of autonomy according to which Scotland would be responsible for most or all of its domestic affairs, and for raising most or all of its taxes, while Westminster would remain responsible for foreign affairs and defence, and possibly social security. What remains to be seen is why the SNP has found itself in the awkward position of defending a constitutional scheme short of independence, and more generally, what political significance can be given to the debate on the notion of “devo max”.

3. The political significance of the debate on "devolution max"

- 24 "Devolution max" has essentially been interpreted by opposition parties in Scotland as a nationalist ploy both to save face and to keep the door open for further constitutional change in the event of a No vote on independence. For instance, Anas Sarwar, deputy leader of Scottish Labour, declared in January 2012 that:

The problem you have with a devolution-max question is that it's undefined. What does it mean? It's all things to all people, which is exactly what the First Minister wants it to be because it's in his interest. What we don't need is something put on the ballot paper as a political fix for Alex Salmond and the SNP so that they look like they've won even when they've lost. We can't allow that to happen. (Herald, 18 January 2012)

- 25 Here, the fact that "devolution max" remained to be clearly defined led Scottish Labour to accuse the SNP of political manipulation. Similarly, in July 2012, Michael Moore, the Liberal Democrat Secretary of State for Scotland, wrote in *Scotland on Sunday* that:

The ongoing effort by the SNP leadership to promote a second question on further devolution seems like an admission that the party cannot win the arguments for independence. [...] This process of further devolution [...] must be designed to meet the needs of people in Scotland, not to serve as a get-out clause for a Nationalist cause that has lost its nerve. (Peterkin)

- 26 Even the House of Commons' Scottish Affairs Committee noted in its report on a multi-option referendum that:

It is hard to avoid the conclusion that there are some in the SNP and the Scottish Government looking for schemes of further devolution to be added to the referendum on separation, as an insurance policy against the verdict of the Scottish electorate. (Great Britain House of Commons, Scottish Affairs Committee 11)

- 27 These accusations of political opportunism stem from the fact that "the Nationalists are all too aware that a single question returning a No vote would put independence to bed for perhaps a generation" (*Herald*, 26 January 2012).

- 28 However, it should also be pointed out that the SNP's support for greater Scottish autonomy is far from new and that it is not tied to the planned referendum on Scotland's future (though the precise notion of "devo max" is). Hence, the SNP's promotion of the "devo max" option can be seen as just a "further step in the SNP's embracing a 'gradualist' strategy" (Trench), in other words, as confirmation of its long-term strategy of gaining independence through a gradual widening of Scottish autonomy. From this perspective, SNP support for "devo max" looks like a logical development, which:

combines a desire to maximise Scottish autonomy with a recognition that there are huge practical obstacles to achieving independence, including only limited support for outright independence among the public at large. (Trench, 1 December 2009)

- 29 In summary, it is argued here that the SNP's promotion of the "devo max" notion for much of the year 2012 had both long-term and short-term aims. It was part of a long-term strategy of campaigning jointly for independence and for greater autonomy. It was also a short-term tactic designed to avoid a straight defeat in the referendum.

- 30 For their part, why have the Unionist parties chosen to reject the option of maximal devolution and to oppose having a multi-option referendum? It could seem surprising that even the strongly devolutionist Liberal Democrats have consistently opposed the

inclusion in the referendum of a second question on further devolution. Moreover, their new plan for further devolution, entitled *Federalism: The Best Future for Scotland* and made public in October 2012, has been described as falling "far short of devo max" and possibly as not "far reaching enough to persuade devo max supporters to vote No on the basis of the Lib Dem promise" to demand further devolution in the event of a No vote in the referendum (*Newsnet Scotland*, Oct. 2012). As for Labour, it has insisted that "devo max" cannot be an option in the (Scottish-only) referendum of 2014 because a "decision on the devolution of further powers to Scotland would have to be put to the whole of the UK" (*Holyrood Magazine*, 24 September 2012). Labour leader Ed Miliband has suggested that "a single question referendum would not preclude any future change to devolution" and that "Labour, as the party of devolution, will continue to make the case to develop devolution" (*Holyrood Magazine*, 24 September 2012). Yet, the Labour Party, like the Liberal Democrats, has failed to explain why it supports further devolution in general, but not in the form known as "devo max".

- 31 It is argued here that the main reason for the Unionist parties' opposition to "devo max" is a refusal to be associated with an SNP proposal. This strategy is not without its risks. Since the Edinburgh Agreement of 15 October 2012, it has been established that Scottish people will have a straight alternative between independence and the *status quo* in the referendum. This means that many people could vote in favour of independence mainly out of a desire to reject the *status quo*. Several business leaders in Scotland have already stated that they will support independence now that "devo max" has been "taken off the table" (*Scottish Television*). Even more importantly, by rejecting "devo max", Labour and the Liberal Democrats, the two parties which have usually been associated with the constitutional option of devolution, run the risk of appearing as if they are rejecting all schemes involving a *substantial* devolution of powers to the Scottish Parliament.
- 32 As a consequence, by associating itself with the option of substantial devolution (as opposed to more limited forms of devolution), the SNP has forced Labour and the Liberal Democrats to realign on the Unionism-independence continuum. This could be a key development as this continuum is the major way in which people make sense of the difference between parties in Scotland. The SNP can now be seen as occupying not just the independence end of the continuum, but the whole space that goes from substantial devolution to independence, while Labour and the Liberal Democrats, the traditionally devolutionist parties which used to occupy the whole space going from the middle ground to the independence end of the continuum, are being pushed towards the Unionist end. What could be even more damaging for these two parties is that the three big Unionist parties' official position on "devo max" is the same. The Conservatives, Labour and the Liberal Democrats therefore appear to be occupying the same political ground, whereas they had until now held distinctive constitutional positions corresponding to different places on the continuum. This could be particularly catastrophic for the Liberal Democrats, which have consistently argued for the introduction of federalism in the UK, in other words, of enhanced devolution in a form similar to that which could now be embodied by the SNP.
- 33 The other consequence of this political realignment is that it brings to light the strains that managing multi-level politics within Britain puts on the UK-wide parties. On an official level, there is no difference between the position and the strategy of these parties UK-wide and within Scotland. For instance, Scottish Labour leader Johann

Lamont is open to a debate on how to reform the current devolution settlement, but she has not supported going much further than the Calman proposals and she is clearly opposed to having a multi-option referendum :

I will not hesitate to put Scottish Labour at the forefront of the debate about how we refresh and invigorate devolution for decades to come, but I want the people of Scotland to settle the choice we face – whether or not to separate – decisively.
(*Herald*, 17 January 2012)

- 34 As for Willie Rennie, leader of the Liberal Democrats in the Scottish Parliament, he agrees that any ballot on further devolution must be held after the 2014 referendum (Ponsonby). Yet, many dissident voices within the Scottish branches of the British-wide parties have made themselves heard over the year and have warned of the dangers of opposing further devolution of a more substantial nature than is currently being offered in the Scotland Act. Senior members of Scottish Labour and of the Scottish Tories have come out in favour of substantial devolution, in the form of either “devolution plus” or “devolution max”. They note that a substantial devolution of powers to Scotland is what the majority of Scottish voters currently want, and therefore that their parties should seek to promote this option. Within Scottish Labour, former First Minister Henry McLeish and MSP Malcolm Chisholm have been at the forefront of a campaign to convince Labour to support going much further than what is contained in the Scotland Act. On 19 January 2012, McLeish argued on Scottish Television (STV) that devolution max should be an option offered to the Scottish people in the 2014 referendum and he even declared that he would consider leading a “devo max” campaign (*Newsnet Scotland*, January 2012). He had also noted during a parliamentary debate on 8 November 2011:

Without becoming party political, or political at all, there is no doubt in my mind that the Scottish Parliament will have far more powers and responsibilities in the years that lie ahead. Whether there is independence, devolution max or the *status quo plus* Calman, there will be far more for this Parliament to do. (Scottish Parliament, 8 November 2011)

- 35 For his part, Chisholm argued in the *Edinburgh Evening News* that Labour should advocate some form of “devo max” as opposed to the proposals of the Calman commission, and that “devo max” should be an option in the independence referendum. His argument was that some Labour supporters could opt for independence if the limited Calman proposals were the only alternative on offer. Senior Scottish Conservative Murdo Fraser, who was a defeated Scottish Conservative leadership candidate, has also urged his party and the Unionist camp to consider the option of further devolution. In a political blog, he noted:

Opinion surveys suggest that views split roughly three way – one-third back the *status quo*, one-third back more powers (however ill-defined), one third back independence. The swing votes of the middle group are crucial, and to maximise the pro-Union poll we need them on board. If we have a straight yes/no vote, on which side of the fence do they fall? That is why we cannot close our minds to further devolution at this stage. [...] By being prepared to discuss more powers within the Union, we have more chance of winning the referendum than if we simply say ‘No’ to any further change. (Fraser)

- 36 These dissident voices seem to indicate that the Scottish branches of British parties are divided over whether to follow the British line on “devo max” and a multi-option referendum, or whether to follow a distinctive Scottish line.

Conclusion

- 37 The circulation of the notion of “devolution max” bears testimony to the mainstreaming of Scottish constitutional and political debates in the UK, in a context where the very future of the British State is at stake. What was originally an SNP invention went from being discussed in purely Scottish political circles to being a bone of contention between the Scottish and British Governments in their negotiations on the upcoming referendum on Scottish independence. Debate on “devolution max” has mainly centred on two things: firstly, the desirability of a multi-option referendum, and secondly, the need to define more precisely the very notion of “devo max”. Yet, what is particularly significant about this debate so far is that it has revealed the extent to which the UK-wide parties are struggling to adapt to the new political landscape in Scotland. In a context where the Scottish party system has become very different from the British one, Scottish Labour, the Scottish Liberal Democrats and the Scottish Conservatives need to find their own voices independently from the lines followed by their British executives if they are to compete against the SNP, both in the independence referendum and in all Scottish elections. However, the united front that the Unionist parties have presented on the (limited) Calman proposals (which have been enacted in the form of the Scotland Act 2012), and these parties’ refusal to consider the option of “devolution max”, at least in the near future, has blurred the traditional constitutional differences between them.
- 38 As for the “devo max” notion itself, its future is now unsure. The signing in October 2012 of the Edinburgh Agreement, which guarantees that the Scottish referendum will not include the option of “devo max”, might have killed the concept. The inclusion or not of a question on “devo max” was arguably the main unknown in the final stages of the inter-governmental negotiations on the referendum. For that reason, the mention in the Edinburgh Agreement that there will be only one question in the referendum was widely seen as a victory for David Cameron. It was even interpreted as the only concession that Cameron managed to gain from Salmond, while all the other parts of the agreement were viewed as largely advantageous to the Scottish Government. However, rather than kill the notion of “devo max”, the Edinburgh Agreement might have just put it on the back burner until the post-referendum period. It could then be revived, on the one hand, by a Scottish rejection of independence in 2014, and on the other hand, by dissatisfaction with the more limited form of further devolution that will come into being in 2015 with the application of the latest Scotland Act. The three main Unionist parties have all promised that in the event of a “No” vote in 2014, they will reopen the debate on the Scottish Parliament’s powers within a UK framework. Moreover, this promise was made by some of these parties’ senior British representatives (such as David Cameron and former Labour Chancellor Alistair Darling). For instance, David Cameron announced in a speech given in Edinburgh in February 2012: “When the referendum on independence is over, I am open to looking at how the devolved settlement can be improved further. And yes, that means considering what further powers could be devolved” (Cameron). This proposal, often used as an argument to vote “No” in the 2014 referendum, is now “being promoted as the new *status quo*” by Unionist parties (MacWhirter). Originally, David Cameron’s announcement of February 2012 had come as a surprise, all the more so as the current leader of the Scottish Conservatives, Ruth Davidson, had clearly opposed the reopening

of the devolution debate at the time when she was campaigning for the leadership of the Scottish Conservatives, in September 2011. She had then declared: "The Scotland Bill currently going through Westminster is the line in the sand. The time for arguing about the powers the people want is over. It's time now to use the powers that we have" (Johnson). Since then, however, she has been forced to change her position, and she has recently set up a working group that will examine the case for increased devolved powers (*Holyrood Magazine*, 26 March 2013). One could therefore argue that this "new *status quo*", with both Labour and the Conservatives agreeing that further devolution will be considered after the referendum, is yet another "testament to how Mr Salmond has changed the landscape of Scottish and British politics" since 2011 (MacWhirter).

- 39 The reopening of the debate on devolution after the independence referendum might therefore lead to a reexamination of the notion of "devolution max". It was suggested in March 2013 that a Constitutional Convention (in the form of the Scottish Constitutional Convention that had devised a precise devolution scheme in the early 1990s) could be set up to consider the different forms of further devolution that could be implemented after 2014. (*Herald*, 30 March 2013) However, even if "devolution max", or full fiscal autonomy for Scotland, was introduced in the near future, this might not be the end of the constitutional road for Scotland. As a Scottish academic noted in 2009 in an article on "devolution plus":

the idea of expanding devolution has been current at least since it was enacted in 1998. Public opinion polling has indicated a strong desire for 'more powers' even before the Scottish Parliament (and devolved assemblies elsewhere) were able to start using the powers they were initially to have". (Trench, summer 2009, 57)

- 40 There is no reason why this desire would be definitely quenched by the adoption of a "devolution max" type of scheme. The adoption of "devo max" would also give birth to a new set of constitutional questions, and in particular, it might reopen the debate on the so-called "West Lothian Question" (now often known as the "English Question"), as Scottish MPs would find themselves in the situation where they could now vote in Westminster on financial matters that only had a direct impact on England and Wales, even though Scotland itself would be financially autonomous from the rest of the United Kingdom.

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NOTES

1. However, the possibility of a multiple-option referendum had already been mentioned in the 2007 document which had initiated the “National Conversation”: Scottish Government, *Choosing Scotland’s Future: A National Conversation*, Edinburgh, August 2007, §5.8.
 2. This was in March 2010, just after the SNP initiated a consultation process on its Draft Referendum Bill.
 3. This was the first time any party had obtained an overall majority in the Scottish Parliament.
 4. See the following polling report for the results of several polls on the issue: <http://ukpollingreport.co.uk/scottish-independence>.
 5. In the words of the only Scottish Conservative MP, David Mundell (Great Britain House of Commons, 25 October 2011).
 6. This notion was born at the same time as “devo max”, when the SNP’s 2009 White Paper on independence was issued.
 7. Read the explanations by HM Revenue and Customs: <http://www.hmrc.gov.uk/news/news-calman.htm>.
 8. This is how it will operate: “the rates of income tax set annually by the United Kingdom Government will be reduced for Scotland by 10p in the pound. The Scottish Parliament will then levy a single rate of income tax which will apply in Scotland in addition to the UK rate. The Scottish Parliament could choose a 10% Scottish rate (which would restore the overall rate of income tax back to the levels for the rest of the UK) or it could choose a higher or a lower rate.” (Great Britain House of Lords, Select Committee on the Constitution).
 9. Read the declaration on the Scotland Act by Scottish Secretary Michael Moore on the Scotland Office’s website: <http://www.scotlandoffice.gov.uk/scotlandoffice/16981.html>.
 10. See the Reform Scotland website: <http://reformscotland.com/index.php/publications/details/1148>.
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ABSTRACTS

This paper focuses on a recently invented British political notion: that of “devolution max” (or “devo max”). The first aim of this paper is to trace the origin and chart the circulation of this political concept within the UK. “Devo max” dates back to the time when the Scottish National Party (SNP) formed its first ever minority government, in 2007, but it only became common political parlance after the SNP was elected to power for the second time, in 2011; it then took centre stage throughout the UK in the year 2012. However, the Edinburgh Agreement signed by the British and Scottish Governments on 15 October 2012 might have temporarily put an end to the debate on “devolution max”, at least until the results of the 2014 independence referendum.

The second aim of this paper is to offer a definition of the “devolution max” notion by comparing and contrasting it with other constitutional reform proposals. Two other proposals for further devolution of powers to the Scottish Parliament will be examined: that embodied in the Scotland Act 2012, which will apply from 2015, and the “devolution plus” proposal put forward by a Scottish think tank. Such a comparison reveals that the main difference between “devo max” and other proposals for furthering devolution lies in the level of fiscal autonomy which would be granted to Scotland. Finally, two general conclusions will be drawn from the circulation and mainstreaming of the “devo max” notion and of the idea of a multi-option referendum to which it is linked. Firstly, the SNP’s invention and promotion of the idea of “devolution max” has allowed it to carve out a new political space for itself and has forced the Unionist parties to redefine their place on the Unionist-independence continuum. Secondly, the British-wide parties’ attitudes towards the “devolution max” concept has brought to light the difficulties that they have in adapting to the new multi-level politics in the UK.

Cet article porte sur une notion politique britannique d’invention récente : celle de *devolution max* (ou *devo max*). Le premier objectif de cet article est de retracer l’origine et d’explorer la diffusion de ce concept politique au sein du Royaume-Uni. La notion de *devolution max* date de la période où le Parti nationaliste écossais, ou *Scottish National Party* (SNP), forma son premier gouvernement minoritaire, en 2007, mais ce concept n’entra dans la langue politique courante qu’après la réélection du SNP en 2011 ; il fut ensuite au cœur des débats dans l’ensemble du Royaume-Uni pendant l’année 2012. Toutefois, l’accord d’Edimbourg signé par les gouvernements britannique et écossais le 15 octobre 2012 pourrait avoir pour un temps mis fin au débat sur la *devolution max*, au moins jusqu’à ce que soient connus les résultats du référendum sur l’indépendance de 2014. Le second objectif de cet article est de proposer une définition de la notion de *devolution max* en la comparant et en la contrastant avec d’autres propositions de réforme constitutionnelle. Deux autres propositions d’accroissement des pouvoirs dévolus au Parlement écossais seront étudiées : celle incarnée par la loi sur l’Ecosse (ou *Scotland Act*) de 2012, qui s’appliquera à partir de 2015, et le projet de *devolution plus* mis en avant par un *think tank* écossais. Une telle comparaison révèle que la principale différence entre la *devolution max* et les autres projets de dévolution envisagés réside dans le niveau d’autonomie fiscale qui serait accordée à l’Ecosse. Enfin, nous tirerons deux conclusions générales de la diffusion et de la banalisation de la notion de *devolution max* et de l’idée de référendum à options multiples qui lui est liée. Premièrement, l’invention et la promotion de cette notion par le SNP lui a permis de se créer un nouvel espace politique et a contraint les partis unionistes à redéfinir la place qu’ils occupent sur le continuum politique qui va de l’indépendantisme à l’Unionisme. Deuxièmement, l’attitude des partis britanniques vis-à-vis du concept de *devo max* a révélé leurs difficultés à s’adapter au récent système politique à niveaux multiples du Royaume-Uni.

INDEX

Mots-clés: dévolution, dévolution max, devo max, dévolution plus, indépendance écossaise, référendum, référendum à options multiples, Parti national écossais, autonomie fiscale, gouvernance à niveaux multiples

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