

A Constitutional Convention now looks like the safest way out of the constitutional shambles

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Following a closer than expected outcome in the Scottish independence referendum, many are criticising David Cameron for his negotiation of the Edinburgh Agreement which paved the way for the referendum. [Nat le Roux](#) thinks is more concerned about Cameron and other party leaders having precipitated a slow-motion constitutional train crash. It represents a peculiar type of collective folly for the party leaders to approach major constitutional reform, which would be effectively irreversible, in the same spirit of short-term political improvisation, he writes.



Much of the media commentary on the Scottish referendum and its aftermath has focused on the apparent poor judgement of the Westminster elite – the prime minister in particular – in the negotiation of the [Edinburgh Agreement](#) and the subsequent referendum campaign. There are three principal accusations:

- *The UK government should not have conceded a referendum in the first place.* Cameron's apologists argue that he had no choice after the SNP won an outright majority of seats in the Scottish Parliament in the 2011 election (despite the headwind of a proportional voting system). However, there is no compelling evidence to suggest that this result reflected any increase in popular support for independence, which had been running at around 30 per cent for several years. Certainly there were no mass pro-independence demonstrations, Catalan style, on the streets of Glasgow or Edinburgh. And in the 2010 UK general election the SNP won only 6 out of 59 Scottish seats.
- *The terms of the referendum were loaded in the Nationalists' favour.* Cameron was determined to structure the referendum as a simple yes/no to full independence, without a third 'devo max' option. As a quid pro quo for a binary question, he made significant concessions to Alex Salmond, leader of the SNP, on other issues: the framing of the question (so that 'Yes' meant 'Independence' not 'Union'); an electoral qualification which included 16-year olds but excluded native Scots resident in England; and – most important of all – a deferred polling date which gave the Nationalists two years to build support.
- *The UK party leaders' 'vow' in the final week of the campaign was panicky and ill-considered.* After the YouGov poll showing a narrow 'Yes' lead on September 7th, the Westminster elite were apparently thrown into blind panic; for the first time in the campaign, a 'Yes' result seemed a real possibility. The three party leaders published a joint declaration promising substantial fiscal devolution without any variation in the [Barnett formula](#) in the event of a 'No' vote. This is a very generous promise which allows the Scottish electorate to have their cake and eat it. It goes beyond any likely 'third option', which Cameron was so determined to keep off the ballot paper. And it was arguably entirely unnecessary: in the days after the YouGov poll, the betting market – the most reliable indicator of electoral outcomes – never showed more than a 30% likelihood of a 'Yes' vote.

These accusations seem to have considerable force, but they are retrospective: if things had turned out otherwise, Cameron's critics would be singing a different tune. The Edinburgh Agreement and the referendum campaign were driven by politicians, and most political judgements are made under pressure, with limited information, and against the clock. In the ebb and flow of normal party politics that does not matter very much: most foolish decisions are of limited consequence and are in any event reversible by subsequent governments. However it represents a peculiar type of collective folly for the party leaders to approach major constitutional reform, which in this case would be effectively irreversible, in the same spirit of short-term political improvisation.

Janan Ganesh [put the point](#) eloquently in the *Financial Times* recently:

“It is hard to avoid the image of Mr Cameron and his peers scrawling a new constitution on the back of a panini wrapper as their trains hurtle north for a jaunty last-minute campaign stop they never expected to have to make. There must be a point at which the British traditions of amateurism and muddling through become indistinguishable from the chaotic caprice of a banana republic”

The referendum has settled nothing. Indeed the party leaders’ reckless ‘vow’ may have precipitated a slow-motion constitutional train crash whose essential elements are already becoming apparent:

- In Scotland, ‘[the 45%](#)’ have not accepted that the question of independence is settled ‘for a generation’. Salmond’s successor will work assiduously for a second referendum within five years. She will shout ‘betrayal’ from the rooftops if Westminster does not pass new and far-reaching devolution legislation ahead of the UK general election.
- Cameron did not consult his party before committing the government to a promise which most backbenchers believe is grotesquely over-generous to Scots. He has tried to buy them off with a promise of ‘English votes for English laws’ on the same timetable as Scottish devolution. This proposal has, true to form, been introduced at very short notice and without proper consideration. It is difficult to see how it could work in practice without creating legislative deadlock. (Imagine a future Labour government, elected on a platform of Health and Education reforms, with an absolute parliamentary majority but a minority of English seats. It would be unable to implement its manifesto commitments, or indeed to pass any legislation at all in these areas, without opposition support.)
- However the ‘English votes’ gambit has set an effective electoral trap for Labour: opposition will appear self-interested and anti-democratic, and will suggest that Mr Miliband is not confident it can win a majority of English seats in 2015.
- The government’s timetable for implementing any of these proposals is extremely tight. It is difficult to see how measures put before the Commons in January can be passed into law before Parliament rises for the general election at the end of March, especially if the Lords are uncooperative.

A year ago, *The Constitution Society* [argued that](#), if Scotland voted ‘No’ in the referendum, a Constitutional Convention should be held to agree proposals for devolved government in the UK as a whole. The long-term future of the Union cannot be satisfactorily settled by the normal processes of electoral politics. Mature reflection is required, in a forum which includes citizens who are not professional politicians. [Alan Renwick has argued](#) that the most appropriate model is the Irish Constitutional Convention of 2012, where members of the public sat alongside representatives of the political parties.

Within the past few days, Labour has taken up the idea of a UK Constitutional Convention, to be held in the autumn of 2015. Inevitably, the government will paint this as a cynical expedient intended to postpone Labour’s day of reckoning on the ‘English votes’ question. That is a matter for regret: for all the Westminster parties, a Constitutional Convention now looks like the safest way out of the constitutional shambles which their leaders have created.

Note: This article gives the views of the author, and not the position of the British Politics and Policy blog, nor of the London School of Economics. Please read our [comments policy](#) before posting. Featured image credit: [Surian Soosay](#) CC BY 2.0

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