AN UNCERTAIN OUTCOME?
Determining Electors' Views on Scotland's Constitutional Future

James Gilmour
Electoral Reform Society Scotland

EPOP 2013

Constitutional Future - Proposals
Public Consultations

- **Scotland's Future: Draft Referendum (Scotland) Bill Consultation Paper**
  Scottish Government February – April 2010
  - **One ballot paper or two?**

- **Scotland's Constitutional Future**
  UK Government January – March 2012
  - **Single, straightforward question**

- **Your Scotland, Your Referendum**
  Scottish Government January – May 2010
  - **One question or two?**

Edinburgh Agreement on Referendum on Independence for Scotland
UK Government and Scottish Government
15 October 2012

- the date of the referendum

- the franchise

- the wording of THE QUESTION

- rules on campaign financing

- other rules for conduct of the referendum

Scottish Independence Referendum Bill
Schedule 1   Form of Ballot Paper

BALLOT PAPER

Vote (X) ONLY ONCE

Should Scotland be an independent country?

	YES	
	NO	

Determining Electors' Views on Scotland's Constitutional Future
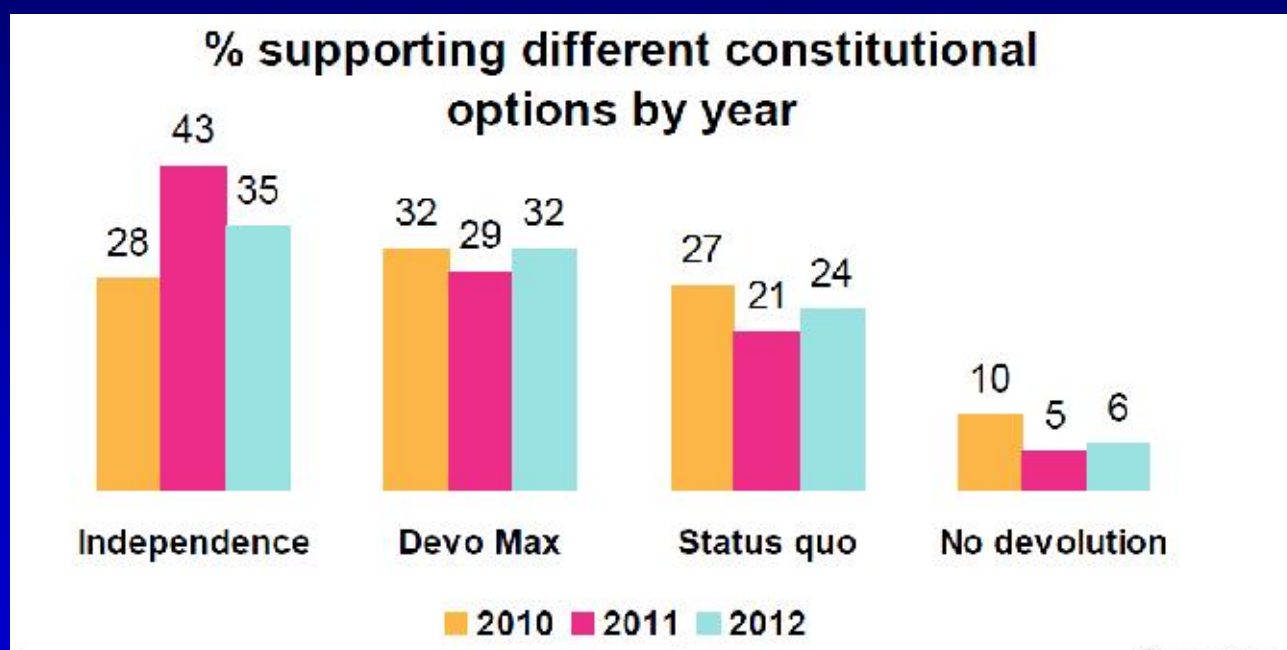
Should Scotland be an independent country?

"one straightforward question"

- Is the question "straightforward"?

"clear and decisive outcome"

- Can the outcome be "clear and decisive"?

Electoral Reform Society

Constitutional Futures for Scotland
Electors' Views - SSA Surveys

% supporting different constitutional options by year

Option	2010	2011	2012
Independence	28	43	35
Devo Max	32	29	32
Status quo	27	21	24
No devolution	10	5	6

■ 2010 ■ 2011 ■ 2012

Scottish Social Attitudes

ScotCen
Social Research

Electoral Reform Society

Constitutional Futures for Scotland
Electors' Views - Public Opinion Polls

	% Independence	% Devo max	% Status quo
SSA 2012	35	32	24
TNS/BMRB (1/12)	26	30	32
ICM (1/12)	26	26	37
Panelbase (2/12)	31	26	28
YouGov (2/12)	24	36	33
MORI (6/12)	27	41	29
TNS (6-7/12)	23	37	29
Panelbase (7/12)	30	29	28
TNS/BMRB (9-12/12)	22	34	35
YouGov (10/12)	23	41	25
Average (Mean)	**27**	**33**	**30**

ScotCen
Social Research

Electoral Reform Society

Source: Rachel Ormston & John Curtice   SSA/IoG Seminar   Edinburgh 6 June 2013

Three Significant Opinion Clusters
How to Get a Clear and Decisive Outcome?

Single Multi-Option Question

Preferential voting: 1, 2, 3

Alternative vote (STV) counting

100 Votes for 3 Options

36: A, C   33: B, C   31: C

– **C has greatest support but is eliminated**

Electoral Reform Society

Three Significant Opinion Clusters
How to Get a Clear and Decisive Outcome?

Two Simple Questions in Two Referendums

First Referendum on larger change:

"Status quo" versus "Independence"

IF no majority for "Independence" hold Second Referendum on lesser change:

"Status quo" versus "More devolution"

Two Simple Questions in One Referendum

Q1: "Status quo" vs. "More devolution"

Q2: "Status quo" vs. "Independence"

Possible outcome 1

Q1: 40% vs. 60%   Q2: 70% vs. 30%

Result: majority for "More devolution"

Three Significant Opinion Clusters
How to Get a Clear and Decisive Outcome?

Two Simple Questions in One Referendum

Q1: "Status quo" vs. "More devolution"

Q2: "Status quo" vs. "Independence"

Possible outcome 2

Q1: 40% vs. 60%   Q2: 30% vs. 70%

Result: majority for "Independence"

Possible outcome 3

Q1: 40% vs. 60%   Q2: 45% vs. 55%

Result: ???????

Three Significant Opinion Clusters
How to Get a Clear and Decisive Outcome?

Two Questions in One Referendum
with a 'Gateway' Question

Q1: "Status quo" vs. "Change"

If a majority votes for "Change"
in response to Question 1

Q2: "More devolution" vs. "Independence"

Electoral Reform Society

Determining Electors' Views on
Scotland's Constitutional Future

Should Scotland be an independent country?

"one straightforward question"

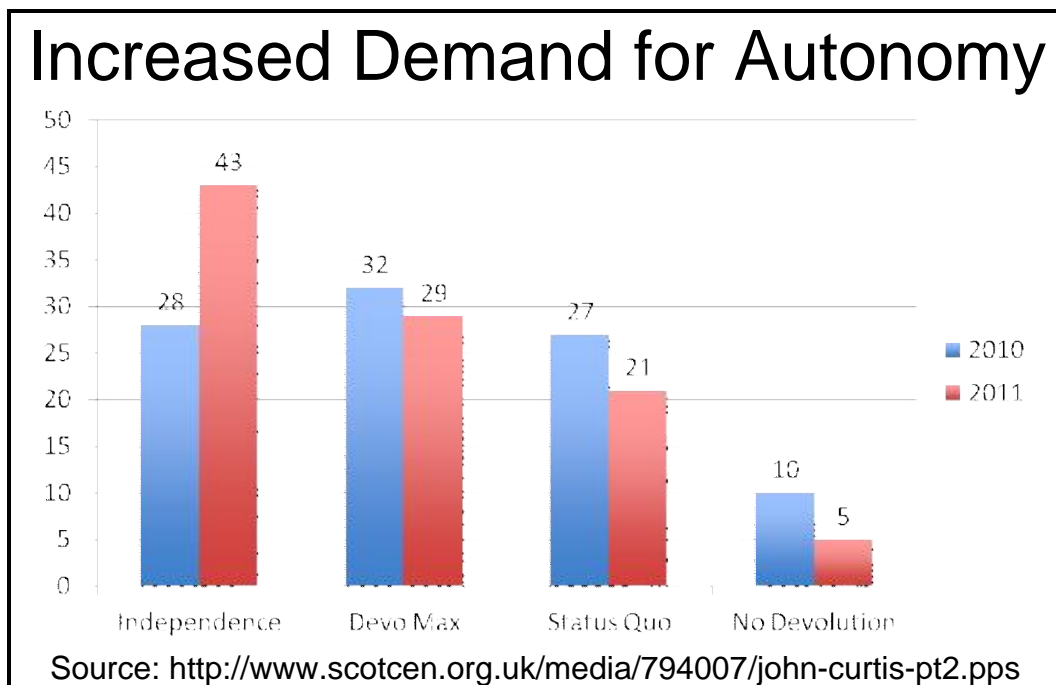• Is the question "straightforward"?

"clear and decisive outcome"

• Can the outcome be "clear and decisive"?

Electoral Reform Society

Three Positions Need Two Questions
Determining Electors' Views on Scotland's Constitutional Future

There have been understandable demands for "clarity" in the result of the proposed referendum on the future constitutional position of Scotland. But if there is to be "clarity" in the referendum result, that referendum must be rooted in reality. And the reality is that the views of the electors who would vote in the referendum are clustered around **four** distinct constitutional positions.

The four constitutional positions are: "No devolution", "Status quo", "More devolution" and "Independence". That the views of the electorate cluster around these four positions may be seen from the answers to a variety of questions asked in successive Scottish Social Attitudes Surveys (see example figure below) and from public opinion polls that have asked relevant questions in various ways.

Increased Demand for Autonomy

Source: http://www.scotcen.org.uk/media/794007/john-curtis-pt2.pps

Support for "No devolution" is so low that there would be no need to include it in any referendum to know that it would be rejected by the overwhelming majority of likely voters. But that leaves **three** distinct constitutional positions, all of which have significant support among the relevant electorate (actual levels of support fluctuate around those shown in the Scottish Social Attitudes Survey figure above).

This means, that whether we like it or not and no matter how difficult it may be, we are faced with making a multi-option decision. This paper addressed **only** issues relating to how, **in terms of the number and structure of the questions**, the voters' views can be determined with clarity when there are these three particular possible constitutional positions: "Status quo", "More devolution" and "Independence".

This paper does not address the detailed wording of the possible question or questions. Similarly, this paper does not attempt to define what each of the three possible positions might mean in terms of economic, fiscal, social and political policies and projected outcomes. It will, however, be essential for those advocating each

constitutional position to set out the relevant policies and projected outcomes as clearly as possible before any referendum is held.

It should be obvious that no **single simple question** can "with clarity" determine the views of the electors when there are three possible constitutional positions all with significant support.

Single multi-option question

One approach that has received a great deal of publicity is to ask a single multi-option question to which the voters would respond by indicating their preferences ("1, 2, 3") for the three possible constitutional positions: "Status quo", "More devolution", "Independence". No matter how the preferential votes might be counted, this approach is fundamentally flawed and it should never be used for this purpose.

Single multi-option question – Alternative Vote counting

If the preferential votes were counted by the well-established Alternative Vote rules, the referendum could easily produce a result which did not properly reflect the wishes of the majority of those who voted in the referendum. Specifically, the Alternative Vote could reject the option that was the first choice of many (but not a majority) and was the second choice of all the other voters. Such an option would have the highest level of overall support, but could be defeated by this inappropriate use of the Alternative Vote counting system.

Consider the following example, where there are three options ("A", "B" and "C") and, for simplicity, 100 voters. The numbers of voters marking combinations of preferences might be as follows (with irrelevant preferences omitted):
> 36: A, C
> 33: B, C
> 31: C.

None of the three options A, B or C has a majority of the first preference votes, so under the Alternative Vote counting rules, the option with the fewest votes, C, would be eliminated. But it is perfectly obvious that C is the option that has the greatest level of overall support among the voters.

There are other counting systems that could be applied to such preferential ballots to overcome this particular problem, but there are major issues with all of them and none of them should be used in such a referendum.

Single multi-option question – Borda counting

The de Borda Institute of Northern Ireland has recommended that either Borda counting or modified Borda counting should be used to summarise the voters' preferences. In Borda counting the preferences ("1", "2", "3") are typically given scores in reverse order ("3", "2", "1") which are counted simultaneously, when the winner is the option with the highest aggregate score. One flaw in this system of counting is that an option that obtains an overall majority of first preferences can be defeated – an outcome most voters would consider perverse.

Another flaw in Borda counting is that unless all voters mark all possible preferences, the voters make unequal contributions to the determination of the result and thus the method fails to meet the requirement for "one person, one vote".

In an attempt to encourage all voters to mark all preferences, the scores in the modified Borda count are weighted according to the numbers of preference that have actually been marked. Thus the first preference on a ballot paper marked "1, 2, 3" would be given a score of "3" while the first preference on a ballot paper marked only "1" would be given a score of "1". This may be an inducement to encourage voters to mark all possible preferences, but it would penalise those voters who, for whatever reason, did not actually mark all possible preferences. Thus this modified method would also fail to meet the requirement for "one person, one vote".

Single multi-option question – Condorcet counting
Another approach that has been suggested where Alternative Vote counting might eliminate the option with the greatest overall support is Condorcet counting. In this method the options would be considered in pairs (A versus B; A versus C; B versus C) with the first preference votes for the excluded option in each case being transferred in accordance with the second preferences marked on the relevant ballot papers. The option preferred in the greatest number of pair-wise comparisons would be the winner.

One long-established technical problem with this method of counting is the possible occurrence of a "Condorcet cycle" when the preferences show that the voters prefer A over B, B over C, and C over A; so there is no clear winner. Various ways of breaking such a Condorcet cycle have been proposed, but there is no agreement among Condorcet proponents as to which method is "best". And all the methods are complicated, to the extent that it is doubtful if any would be accepted for use in a public ballot.

There is also a potential "political" problem with Condorcet counting that would arise if the Condorcet winner had very little first preference support. In the example above, the three options ("A", "B", "C") all had similar levels of first preference support (100 votes, ignoring irrelevant preferences):
      36: A, C
      33: B, C
      31: C.

Here "C" is the Condorcet winner and such a result might well be politically acceptable.

But suppose the votes had been (again ignoring irrelevant preferences):
      48 A, C
      47 B, C
       5 C

The Condorcet winner is still "C" – there is no question about that - but it is very doubtful if such a result would be accepted by the electorate, especially in a referendum on such an important issue.

Two questions
To determine the voters' views "with clarity" when there are three constitutional options, **it is essential to ask two questions** – or at least to be prepared to ask two questions and to acknowledge this from the start when determining the legislative basis for the whole referendum process.

The two questions could be asked at the same time (on one ballot paper in one referendum) or they could be asked sequentially, one at a time (in two referendums separated by some months). The decision on whether the two questions should be asked simultaneously or sequentially will have a direct bearing on how the questions would best be structured, in particular, whether the first question should be a "gateway question".

Two simple questions in two separate referendums
If the sequential approach (two time-separated referendums) were adopted, it would be logical to ask the "Status quo" versus "Independence" question first - because that would be the larger change from the "Status quo". There would be no point in asking first about the lesser step, "Status quo" versus "More devolution", if that could be overtaken by greater support for "Independence" when the second referendum was held.

If "Independence" were to secure a majority in the first referendum, there would be a clear mandate to initiate the process of negotiating "Independence". If "Independence" failed to secure a majority in the first referendum, the second referendum on "Status quo" versus "More devolution" would be held after a suitable interval. If "More devolution" were to secure a majority in the second referendum, there would then be a clear mandate to initiate the process of negotiating "More devolution".

Some have argued strongly for this approach because it would, on each occasion, present the voters with a simple binary choice. It has also been claimed that such a binary approach is necessary if the referendum campaigns ("for" and "against") are to be well focused and are to be given effective coverage by print and broadcast media.

A very real problem with this approach is that the electorate already recognises that there is significant support for the three different constitutional positions: "Status quo", "More devolution" and "Independence". It would not be possible in the campaigning for the first binary referendum to ignore the third option. Indeed, several leading politicians who are opposed to "Independence" and who have advocated asking only "one simple question" on "Status quo" versus "Independence", have already indicated that if "Independence" were defeated in the first referendum they would then campaign for "More devolution". In these circumstances, the third option would be a major determinant of the voters' responses to the first referendum question – it would be the unavoidable "elephant in the room".

Two simple questions in one referendum
An alternative would be to ask both simple questions at the same time in one referendum, preferable on the same ballot sheet, so that the two questions would always be presented in the correct order. Such an approach was suggested in the Scottish Government's 2010 consultation paper, where the questions were (using the descriptions as above):
> Question 1: "Status quo" versus "More devolution"
> Question 2: "Status quo" versus "Independence".

This approach could produce clear cut answers (leaving close votes aside), but it could also produce highly ambiguous answers.

Examples of clear-cut answers would include:
     Example 1: Question 1: "Status quo" 40%; "More devolution" 60%.
                     Question 2: "Status quo" 70%, "Independence" 30%
     Result: the majority decision is for "More devolution".

     Example 2: Question 1: "Status quo" 40%; "More devolution" 60%.
                     Question 2: "Status quo" 30%, "Independence" 70%
     Result: the majority decision is for the greater step of "Independence".

But it would be extremely difficult to interpret a result like this:
     Example 3: Question 1: "Status quo" 40%; "More devolution" 60%.
                     Question 2: "Status quo" 45%, "Independence" 55%
There is a majority for "Independence", but there is a larger majority for the lesser step of "More devolution".

There is no certainty of obtaining a decision "with clarity" if the two questions are asked in this way and so this approach should not be used.

Two questions in one referendum with a 'gateway' question
The possible confusions outlined immediately above can be avoided if the two questions asked are structured so that the first question is a 'gateway' question, to determine first whether the voters want any change from the "Status quo". The two options for "Change" in the second question would be "More devolution" and "Independence". The two questions should be printed on one ballot sheet, so that the two questions would always be presented in the correct order. All voters would be free to answer both questions, no matter what their answer to Question 1.

       Question 1: "Status quo" versus "Change".
       Question 2: If a majority vote for "Change" in response to Question 1
               "More devolution" versus "Independence".

With this 'gateway' structure for the two questions there could be no doubt about the wishes of the voters because (tied votes aside) there would be clear, simple majorities for both parts of the decision. If a majority voted for the "Status quo" in response to Question 1, the answers to Question 2 would be interesting but irrelevant to the decision-making process.

The 'gateway' approach of a single two-question referendum means that there would be three simultaneous referendum campaigns: for "Status quo", for "More devolution", and for "Independence". Some have argued that this reflects an unavoidable reality – the "elephant in the room" should not be ignored because it cannot be ignored and it will not be ignored by the electors. However, a single two-question referendum would certainly present a greater challenge to the campaigners and to the media who would be more comfortable with single binary choices.

Two questions in two referendums with a 'gateway' question
It would be possible to ask these two questions in two separate referendums, so that each decision would be a simple binary choice. The second referendum ("More devolution" versus "Independence") would be held only if a majority voted for "Change" in the first referendum.

That might help to produce referendum campaigns ("for" and "against") that were better focused and were given more effective coverage by print and broadcast media. It would, however, require the proponents of "More devolution" and of "Independence" to agree to work together in a common campaign for "Change" in the first referendum.

This advantage of the strictly binary approach must be set against the disadvantage of delay in obtaining the final decision if the majority vote for "Change". Some have argued that such delay would be pointless because the voters could not give informed answers to the first 'gateway' question unless the two "Change" options had both been properly developed and presented to the electors before the first referendum.

Conclusion
The electors are faced with a multi-option decision because there are three recognised options for the future constitutional position of Scotland. In these circumstances, a decision can be made with clarity only by asking two questions.

If the two questions are to be asked at the same time, in one referendum, there is only one way to do that with clarity: the first question must be a 'gateway' question. Each question would be a binary question, but there would be three referendum campaigns, one for each constitutional position.

If the two questions are to be asked in two separate referendums, there are two quite different ways to do that with clarity. If the first question were a 'gateway' question, the second referendum would be held only if the majority voted for "Change" in the first referendum. If the first question were about taking the larger step, from "Status quo" to "Independence", the second referendum would be held only if the majority voted for "Status quo" in the first referendum.

If a structure with two referendums is preferred, it will be essential for the legislation for the referendum on the constitutional future of Scotland to provide for both referendums, to specify exactly the questions that would be put in both referendums, and to specify the outcomes of the first referendum that would trigger or cancel the second referendum.

James Gilmour   *8 March 2012*

Disclaimer
Dr James Gilmour is a member of the Electoral Reform Society and of the Fairshare Voting Reform Campaign Committee, but he has prepared this paper in a personal capacity.
Dr James Gilmour is not and never has been a member of any political party.