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THE SMITH COMMISSION AND THE FUTURE OF SCOTLAND: A FIRST EVALUATION

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a) Introduction

The Smith Commission has been established by David Cameron¹ on the 19th of September 2014, immediately after the referendum that took place on the 18th of September. The Smith Commission has been part of the response to “The Vow” given by the British Government on the 16th of September 2014, two days before the Scottish referendum on independence. The “Vow” – published on the Daily Record² - stated that extensive new powers for the Scottish Parliament would be delivered by the process and to the timetable agreed by the three unionist parties, starting on the 19th of September.

Lord Smith of Kelvin 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. Subsequently, Lord Smith wrote on the 26th of September

to the political parties currently represented in the Scottish Parliament – five at the total - calling for submissions on further powers for the Scottish Parliament within the UK by 10th of October.

All five parties have nominated high profile figures to the Smith process and signaled a commitment to work constructively towards agreement. The Scottish Conservative Party, the Scottish Green, the Scottish Labour, the Scottish Liberal Democrats and the Scottish National Party have been engaged in formal talks since the 22th of October and have committed to “Heads of Agreement” that have been published on the 27th of November. The purpose of this working paper is to identify the proposals submitted to the Smith Commission as well as to clarify the terms of the agreement reached.

b) The Smith Process

The starting point for the discussions in the Smith Commission is the devolution of additional powers over taxation, with a second area of emphasis around welfare powers. That starting point was set by the commitment of the Conservative, Labour and Liberal Democrat parties prior to the referendum to move quickly to establish additional powers for the Scottish Parliament, reflecting the common ground in the content of the proposals each had published in the preceding months (Centre on Constitutional Change 2014: 9).

The positions of the three pro-union parties had quite some overlap. The core issue was around tax devolution. The main emphasis was on income tax devolution, with the Liberal Democrats and Conservatives proposing near complete income tax devolution, including the ability to vary tax rates, compared to those in the rest of the UK. Labour proposed less extensive devolution of income tax. All three parties were open to the devolution of a number of minor taxes. Both the Liberal Democrats and the Conservatives were open to an element of tax “assignment”, that is, the allocation of the receipts generated in Scotland from taxes set in a uniform way across the UK to the Scottish Parliament’s budget.

Additionally, both Labour and the Conservatives set out a number of commitments to welfare devolution (the Liberal Democrats were less clear in this field). Both advocated devolution of attendance allowance and housing benefits in Scotland. Labour proposed the devolution of the Work Programme, but to local government in Scotland rather than the Scottish Parliament. This is one of a number of measures they proposed to strengthen the powers of local authorities in Scotland an area where they share considerable common ground with the Liberal Democrats. There was little focus on other areas for possible additional devolution except in Labour’s proposals, which recommended devolution of a number of specific issues: powers over the Scottish Parliament election process, health and safety, employment tribunals, consumer advice and the railways.

In a distinctive manner, the Greens and the SNP each have presented much further reaching proposals. Just as the pro-union parties, submissions were the result of their earlier commission’s deliberations. More particularly, the SNP’s submission replicated the earlier proposition of the 2009 White Paper “*Your Scotland, your voice*”³ where the SNP has set out an initial prospectus for Scottish Independence but it has explored the option

of “full devolution” (or “devolution max” as the best second choice), that is, the maximum possible devolution consistent with continuing membership of the UK. That particular option was set out more systematically in the Scottish Government’s submission to the Smith Commission. According to the SNP, a maximum self-government within the Union would mean that the UK Parliament would have powers in relation to Scotland in only a small number of areas: aspects of the UK constitution, monetary policy, aspects of citizenship, defence,

intelligence and security and foreign affairs.

Finally, the Greens didn’t go so far on their demands but they proposed more than the pro-union parties. They had a fuller commitment to tax devolution (including full devolution of income tax and tax assignment) and to full welfare devolution (likely excepting pensions). They also emphasized the need for devolution in a number of fields that have a particular resonance in the green tradition, including quality of democracy, human rights, energy policy and immigration.

c) *The terms of the Agreement*

The Smith Commission’s report has been published on the 27th of November 2014 and the terms of the agreement have been rather deceptive. Major competences over fiscality and welfare policies such as state pensions; Universal Credit; national insurance contributions and corporate taxes have remained reserved. On the other hand, income taxes have remained a shared competence but Scotland has gained new extensive powers on that particular area. Within this framework, the Scottish Parliament will now have the power to set the rates of Income Tax and the thresholds at which these are paid for the non-savings and non-dividend income of Scottish taxpayers.

However, all other aspects of Income Tax such as the imposition of the annual charge to Income Tax, the personal allowance, the taxation of savings and dividend income will remain reserved. On the overall, “minor” concessions have been granted in welfare – benefits for carers, disabled people and those who are ill⁴ – and in economic policy – employment provision (Work Programme and Work Choice). Some aspects of energy and onshore oil/gas extraction have been devolved (Smith Commission, 2014) as well as a new political compromise for the improvement of the current *Concordat on the Co-ordination of European Union Policy Issues* has been sealed.

According to Michael Keating (2014), with this new agreement, Scotland has received new powers to set the rates and bands of income tax but the tax itself has not been devolved. That is, taxation of investment income, National Insurance, inheritance tax and capital gains tax have remained reserved to Westminster. Corpora-

tion tax is to be reserved. Air Passenger Duty has been devolved but the SNP intends to abolish it. Fuel and alcohol duties are still reserved (there are European complications here). Similarly, devolution of welfare has been limited to bits of existing programmes whose roll-out has proved so problematic, is now locked in as a UK programme. Elements of housing benefit are to be disentangled from it, which could complicate matters further. The administration of the Work Programme is to be given to the Scottish Government but not the power to link welfare, labour market and economic development policies together effectively.

In the same line of thought, Nicola McEwen (2014) claims that the devolution of welfare policies has been quiet disappointing. Indeed, the report’s recommendations center on benefits for carers and people with disabilities. More specifically, devolution is recommended for Attendance Allowance, Carer’s Allowance, Industrial Injuries and Severe Disablement Allowance, and Winter Fuel Payments, which together, account for just fewer than 6% of social security spent in Scotland in 2012/13. Additionally, the report has also recommended the devolution of Disability Living Allowance/ Personal Independence Payments which is a more substantial benefit amounting to 8.2% of Scottish welfare spent. Nevertheless, and in spite of these major changes, around 87% of Scottish welfare spending, including pensions, child and family benefits, tax credits and almost all working-age benefits, will remain reserved to Westminster after the new settlement is implemented.

Finally, and apart from the constitutional future of Scotland, it should be noticed that the consequences of

the Smith Process can not be perceived from a Scottish perspective since it will certainly impact on England and on Wales. In England, the granting of significantly greater autonomy to the Scottish Parliament will inevitably strengthen the increasing claims for English Votes for English Laws (or EVEL). As for Wales, the Smith proposals will become the yardstick by which any proposals for Wales will be measured. It is worth recalling in this regard that First Minister Carwyn Jones has already made clear that he expects any new powers offered

to Scotland to be offered to Wales (though not necessarily accepted). Meanwhile the new Secretary of State, Stephen Crabb, has initiated a process that should lead to all party agreement on proposals for more devolution for Wales by St David's Day (1st March) 2015. To put it differently, the Smith proposals will inevitably be at the heart of that process and recent history would suggest that, on devolution, where Scotland leads Wales ultimately follows.

d) Concluding remarks

In this paper we have identified the Smith process that has been launched on the 19th of September 2014, on the aftermath of the referendum of the 18th of September. Whenever comparing the propositions initially made at the beginning of the process and the terms of the agreement finally reached, one could argue that the “outcome” is quiet deceptive.

However, in spite of minor constitutional improvements, it should be noticed that this is an “on-going

process” which will certainly deserve further attention on the near future. In that respect, the Smith report states it clearly when it mentions that “*further powers beyond those agreed in the report can still be devolved*” and “*that nothing prevents Scotland from becoming independent country in the future*” (Smith Commission 2014: 12).

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References

1. Articles and Scientific interventions

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2. Official documents

- SMITH COMMISSION. 2014. “*The Smith Commission: report of the Smith Commission for further devolution of powers to the Scottish Parliament*”.

Endnotes

- 1) On behalf of the British Government.
- 2) In <http://www.dailyrecord.co.uk/news/politics/david-cameron-ed-miliband-nick-4265992>.
- 3) The document can be downloaded here: <http://www.scotland.gov.uk/Publications/2009/11/26155932/16>.
- 4) Child benefit, maternity allowance or statutory sick pay and widowed parent have remained reserved competences.