

THE UNCONSTITUTIONAL PRECEDENT of LAW-MAKING by OPINION POLL, TABLOID HEADLINE and ADVISORY BODY

Early in the Scottish referendum campaign, the official No side – pressed heavily by a parochial Scottish TV and newspaper media – **changed the terms of the debate.**

It was changed from whether or not Scotland should be in or out of the UK, to the much weaker position of whether Scotland should leave, or stay in and get 'more powers'.

This confused the message.

On one hand it suggested we were 'Better Together' but on the other hand it suggested that politically we needed to move 'Further Apart'.

It was, and remains, politically incoherent.

To say the Union can only be saved if it moves further apart is like saying a marriage can only be saved if the couple move into separate houses and go their own ways.

It legitimised the SNP's position that there was something wrong with the United Kingdom.

Yet it is basic political strategy that you should avoid legitimising your opponent's position!

This mistake was one of the reasons why the vote was a lot closer than it should have been – and it is the main reason why the debate has not been able to be shut down.

We explained the wrongness of this strategy in our booklet, *Devo-Danger* – sent to MPs in February 2014, and which can be read at www.aforceforgood.org.uk/devo/dm5

"THE VOW"

This political incoherency reached its apogee with 'The Vow' tabloid headline in the *Daily Record* on 16-9-14, which appears to have been the Labour, Tory and Lib Dem response to a *Sunday Times* opinion poll conducted by YouGov and published on 7-9-14, which put the Yes side on 51% and the No side on 49%.

Murray Foote, the editor of *The Daily Record* has given the inside story of **his tabloid stunt** at: Murray Foote, "Inside THE VOW: How historic Daily Record front page which changed the course of Britain's constitutional settlement was born", *The Daily Record*, 18-9-15 at <http://tinyurl.com/nbjnd3t>

STUNT DEGRADED OUR CONSTITUTION AND DEMOCRACY

Here are some basic constitutional facts.

The British Parliament is the ultimate law-making body in the UK. Tabloid editors do not make the law – although in their defence one might say that if politicians are foolish enough to be ensnared into a ploy by a tabloid newspaper then they deserve what they get.

So-called 'vows', made by Party Leaders **are not binding** on the British Parliament – especially so when two of those people are no longer even Party Leaders.

**Proud
to be
N** 

**On 18 Sept 2014
2,001,926**

**Stood Up and
were Counted
and Saved
Scotland**

**from the
DISASTER OF
SEPARATION**

I was one of them

aForceForGood.org.uk



One Parliament cannot bind another and a Party Leader cannot seek to bind his own Party, much less a Parliament!

Advisory bodies, such as the Smith Commission, are not law-making bodies.

Yet all these basic principles have been compromised by this shoddy process.

The Smith Commission especially, masqueraded intentionally, or otherwise, as a law-making body.

It used language which should have been considered unacceptable for an advisory body, and it was misinterpreted by many people as if it were a law-making body.

For example, throughout its Report, it used the word 'will' – as in 'will be devolved' – rather than the correct 'could'.

In this manner, the Smith Commission set a bad precedent. It seriously damaged our understanding of how laws are made, and it set unrealistic expectations among a section of the public in a harmful way.

Only in a country where too many people don't properly understand how our British Parliamentary democracy is meant to work could an advisory body be able to pass itself off as a law-making body.

Only in a country where too many people don't properly understand how our British Parliamentary democracy is meant to work could an advisory body represent its Report as a done deal apparently to be railroaded through the British Parliament and rubber stamped with the absolute minimum of debate or disagreement expected.

Indeed, Smith's proposals have been treated almost like an EU Regulation – passed with little debate on the principles other than typical advantage-seeking, party-political bickering from MPs hoping to score points off each other.

THE UNHOLY RUSH AVOIDS A DUTY OF CARE TO THE UK

On 8 May 2015, David Cameron stated his intention to implement the proposals in the Scotland Bill "as fast as we can". (Quoted in: <http://tinyurl.com/nwobpk7>)

This should not be a race! It should be a process which takes years, *if it happens at all!*

Some of the concerns regarding the wrongness of this rush were summed up in the Report by **the House of Lords Committee on the Constitution** entitled "Proposals for the devolution of further powers to Scotland" (24-3-15) which examined the Scotland Bill. For example, our **emphases**:

Para. 32. We do not consider that the Smith Commission process, its conclusions, and this Command Paper represent sufficient engagement and consultation with the public for these significant constitutional changes. Given that the leaders of the main UK-wide political parties had agreed in advance to implement the recommendations of the Smith Commission, **which could be characterised as an abrogation of their responsibility to set policy**, we are particularly concerned at the speed with which these proposals were formulated and with the fact that there was no meaningful interaction with either the Scottish or UK Parliament, or indeed with citizens and civil society both in Scotland and across the UK.

Para. 43. We are concerned that Parliament has been, in effect, excluded from the decision-making process in light of the cross-party agreement already in place among the leaders of the main UK-wide political parties. This significantly restricts its capacity to contribute to the development of these proposals. **Parliament is expected to pass these proposals into law without significant amendment, even though it is not clear whether vital considerations such as *the impact of these proposals on the UK as a whole* will have been taken into account.**

Para. 47. We do not believe that the referendum and subsequent events constitute a "clearly justifiable" reason for adopting such an unusual process for initiating significant constitutional change. **The undue haste with which the process was conducted, including the use of arbitrary deadlines based on significant dates in the Scottish calendar, undermines confidence in the outcome.**

Para. 48. Moreover, we are deeply concerned that **an agreement by the leaders of the three main UK-wide political parties to implement the recommendations of Smith Commission, made before that Commission had even met, appears to have pre-empted any possibility of meaningful consultation and discussion on the merits of the proposals**, including with the parliaments of Scotland and the United Kingdom.

Para. 49. This is not the first time that we have expressed concerns about the process by which constitutional reforms have been implemented. As we have previously noted, **"The constitution is the foundation upon which law and government are built. The fundamental nature of**

the constitution means that it should be changed only with due care and consideration." We do not believe that the process by which these proposals have been brought forward meets this standard.

See Report at <http://tinyurl.com/o9ddhlo>

Unfortunately, its Report was almost entirely ignored by the media, and by the Government and House of Commons.

The Government – **even with a majority which could have enabled it to change the proposals for the betterment of the United Kingdom** – has pressed ahead without due regard to "the impact of these proposals on the UK as a whole".

As we emphasise in this document, it is difficult for pro-UK people in Scotland to continue to sustain our position when the rug is being pulled from under our feet on a constant basis.

It seems the British Parliament is presently involved in re-creating the problems it was formed to resolve in the first place.

A WORD ABOUT THE SCOTTISH NATIONALISTS: THEY WANT SEPARATION, NOT DEVOLUTION

Some people think that 'more powers' will force the SNP to be responsible. Here is the fact of the matter!

The SNP is not interested in doing devolution properly.

It is interested only in getting separation.

Devolution, and any 'more powers' attached within that context, are only stepping stones to be exploited towards its goal of separation.

Expecting the SNP to deal responsibly with 'new powers' and to 'make devolution work', or some such idealistic notion, totally misunderstands their agenda.

They are not interested in making devolution work!

They cannot allow devolution to appear to work – because that would frustrate their goal of separation.

They will never take responsibility for any negative thing which happens within a devolved situation.

Everything that goes wrong will always be 'Westminster's fault'. Even if things work out well, the SNP will say that it could have worked out better...if it wasn't for the Union and Westminster.

That will be the case regardless of how many 'new powers' it has at its disposal.

And even if the SNP got its separation, it would still complain. It would still need the bogeymen of 'Westminster', or 'the English Parliament' or 'London' or 'the Tories' or 'the Labour Party' to justify its existence and maintain its support.

IN THE FOLLOWING PAGES...

We raise some of the points of **Philosophy and Policy** which have been **completely ignored** in the advantage-seeking, party-political bickering which has represented debate on this Bill so far in the House of Commons.

We offer our work in the hope that some people may be alerted and may seek, at least, to raise these matters publicly.

Ultimately, this document will stand as a testament that some of us in Scotland have been watching and warning, and that we care about the future of our United Kingdom.

We start with the importance of understanding what *is* the United Kingdom, in order to understand how devolution might conceivably maintain its integrity. **(Next page →**