Humboldt-Universität zu Berlin
Großbritannien-Zentrum

Master in British Studies

Master Thesis

SCOTLAND'S REPRESENTATION IN EUROPE IN THE POST-DEVOLUTION ERA: RESULTS AND EXPECTATIONS

Supervisor: Prof. Dr. Christiane Eisenberg

Author: Anna Dmitrieva
Matriculation Nr: 512560

Berlin, Germany
2008

Contents

List of Abbreviations ……..…… …….3

Introduction…….…….4

1. Scotland's Pre-Devolution Representation and Devolution Arrangements

1.1. Devolution, the UK constitutional tradition and the European principles…….....7

1.2. Scotland's pre-devolution representation in the UK and EC policy-making……...13

1.2.1. Scotland's pre-devolution representation in Europe……...13

1.2.2. 'Democratic deficit' under Conservative rule ……..16

1.3. Devolution legislation and European policy……19

Conclusion..……...……22

2. Devolution in Scotland and Multi-Level Governance

2.1. The theory of Multi-Level Governance……..24

2.2. Scotland's European Influence ……..29

2.2.1. Sub-national level……...30

2.2.2. National Level……...35

2.2.3. Supranational level……..37

Conclusion……41

3. Devolution in Scotland: Protection of the Union or a Step towards Independence?

3.1. The SNP vision of Scotland's future……..43

3.2. Independence in Europe? 48

3.3. The Scottish Constitutional Commission……...53

Conclusion……55

Conclusion……..56

Bibliography……...59

Appendix 1……...64

Appendix 2……...65

Appendix 3……...66

List of Abbreviations

COR……...Committee of the Regions

COSLA……..Convention of Scottish Local Authorities

CSG……...…….Consultative Steering Group

EC…….…European Community

EU…….…….European Union

JMC.....…...Joint Ministerial Committee

MEP……...Member of the European Parliament

MLG…….Multi-Level Governance

MP……...Member of the UK Parliament

MSP……..Member of the Scottish Parliament

NGO……Non-Governmental Organisation

SNA……Sub-National Authority

SNP…….Scottish National Party

SPICe……....Scottish Parliament Information Centre

STUC…….Scottish Trade Union Congress

UK……United Kingdom of Great Britain and Northern Ireland

UKRep……..……United Kingdom Permanent Representation

Introduction

This paper argues that devolution has had a critical impact on the developments in relationship between Scotland, the United Kingdom and the European Union. It also claims that the development of Scottish-European relationship in the post-devolution era is one of the means through which we can develop an understanding of the process of devolution itself. Through a critical analysis of the mechanisms of representation of Scotland's interests in Europe, the paper aims to both evaluate and explain the complex interrelations between the devolved Scottish government, the UK administration and the European institutions.

In recent years, some substantial studies on Scottish politics have indicated a growing interest in the process of devolution and the ways it relates to Scotland's changing position and prospects in Europe (see, for example, Robbins 1998, Burrows 2000, Lynch 2001, Sloat 2002, McFadden and Lazarowicz 2003). The 1999 devolution settlement has been described as "the most radical constitutional change [the] country has seen since the Great Reform Act of 1832" (Bogdanor 1999: 1). For Ron Davis devolution is not simply a fact of a constitutional change, but it is a process of modernisation of the country's constitution, which includes making government more transparent and representative of the people's will[1] (cf. Davies1999). In this paper, this definition of devolution is used to examine what changes it has brought into the relations between Scotland and the EU since the enactment of the Scotland Act 1998. Understanding of devolution as a process in the light of this research topic requires an attempt to compare Scotland's pre-devolution representation in Europe with the post-devolution transformations.

"Devolution essentially means the transfer and subsequent sharing of powers between institutions of government within a limited framework set out in legislation" (Burrows 2000: 1). In this sense, devolution has the potential for serious changes in the development and practice of intergovernmental relations within the Scotland-UK-EU triangle. An important task we have set for this research, through examining various devolution settlements, is to illuminate and critically assess particular ways of representing Scotland's voice in Europe. This includes answering the question whether Scotland's views on European affairs have received a degree of direct representation in the EU institutions, or whether they have continuously been

[1] A reference to the title of Ron Davis's essay "Devolution: A process not an event" published by the Institute of Welsh Affairs in 1999.

represented exclusively by the UK Permanent Representation in Brussels (UKRep) in Brussels. In addition, there are the questions of how and to what extent the Scottish position has been included in the formulation of the UK policy on European matters. Through examining these issues, this paper argues that devolution to Scotland has had serious implications for politics and policy formulation schemes not merely within the devolved Scottish administration, but also for the UK central government.

This paper examines devolution in Scotland in the light of ideas outlined above. It offers an interdisciplinary approach to the study of devolution to Scotland, including political, historical, sociological and legal facets. Chapter 1 provides an overview of the constitutional tradition in the UK within which devolution was introduced. It outlines Scotland's pre-devolution representation in the UK policy-making and examines the provisions of the Scotland Act 1998 which created the formal rules for the Scottish Executive's role in EC policy discussions and policy-making. Such consideration of the political histories of Scotland, the UK and the European Union allows for Scotland's relationship on these political levels to be re-examined in the light of devolution settlements.

Chapter 2 defines the theory of multi-level governance which challenged the view that national governments are the central players in European policy-making. It discusses the European Commission's role in encouraging sub-national participation in policy formulation and assesses whether the Scottish Parliament has been able to affect EC policy-making outcomes. In doing so, it concentrates on the key Scotland-related functions of the UK Joint Ministerial Committee, UKRep, the Council of Ministers, the European Parliament, the European Commission, the Scottish Executive, the Scottish Parliament European and External Relations Committee and Scotland House, and examines how Scotland's European interests are reflected in the workings of these political bodies. The chapter evaluates whether the theory of Multi-Level Governance (MLG) can be fully-applied to Scotland-UK-EU political relationship.

The paper concludes in Chapter 3 with an update on recent developments in the Scottish Parliament. The focus of this chapter is on the devolution-related issues which have arisen from the May 2007 elections to the Scottish Parliament. It explores the influence of party-politics on the dialogue between the Scottish Executive and the UK administration on EU affairs, and analyses what changes have occurred in the Scottish political agenda after the Scottish National Party (SNP) have taken control over the Scottish Parliament and presented the case for Scottish independence in

Europe, while the opposition parties have argued for further devolution of powers to Holyrood. In addition, the chapter discusses the issue of legality of Scotland's independence in Europe by analysing the SNP's claim that Scotland would automatically continue in the EU upon independence (cf. *The White Paper: Choosing Scotland's Future*, 2007). The study however does not claim to predict the future of the Scottish parliament and government within the UK and EU.

The research has been carried out mainly through interviews with members of the Scottish Parliament, analysis of primary documents, review of secondary literature and direct observation of debates and meetings during the author's three-month traineeship in the Scottish Parliament under supervision of Jackie Baillie MSP. During the preparatory period of work, Parliamentary sessions on subjects related to the area of research and European and External Relations Committee meetings have been attended. In addition, we have worked closely with the Scottish Parliament Information Centre (SPICe) to study planning documents and Government statements, review secondary literature and observe the media coverage of the main political developments in relation to Scotland's representation and prospects in the EU. The study has strived to be strictly neutral and take a logical approach to the research, independent of any of the parties' views.

1. Scotland's Pre-Devolution Representation and Devolution Arrangements

1.1. Devolution, the UK constitutional tradition and the European principles

Devolution has been introduced within the constitutional tradition of the United Kingdom and the existing European institutions, and therefore its relationship with the UK and EU bodies should be considered in this larger framework. This section examines how the devolution process in the UK was shaped by this broader political context and highlights the role Europe played in domestic debates about constitutional change.

The Treaty of Paris (1951) initially signed by six states[2] created the European Coal and Steel Community which, nearly fifty years later, became a Union with a constantly growing number of member-states[3]. Later on, single currency has been introduced and common policies have been developed. The UK governments were skeptical of an early membership in the Community, and yet Britain entered the European Community (EC) in 1973[4] motivated chiefly by perceived economic benefits and fear of exclusion (cf. Milfull 1999: 94). Amanda Sloat argues that economic markets, support for the welfare state, cultural development and foreign security lost their value for Scotland as the main incentives for close partnership with England in the period of post-war economic and political decline. Instead, Scotland's interests were redirected towards the changing Europe (cf. Sloat 2002: 18).

Mitchell puts forward an interesting idea that there had been a sense of common British identity in the UK which had been developed over years of close contact between peoples, but once the Scottish interests were threatened (or perceived to have been threatened), this provoked an opposite reaction which even led to calls for political separation (cf. Mitchell 1999: 164). His argument also covers Britain's relationship with Europe. Following this idea, the Conservative party which traditionally supported internal uniformity and assimilation, developed a type of British nationalism which rejected European integration, as it feared that the British interests could be threatened upon joining the Community. Whereas in contrast, the

[2] The founding members are Belgium, France, (West) Germany, Italy, Luxemburg and the Netherlands.
[3] There are currently 27 member-states in the EU. For consultation see http://europa.eu/abc/european_countries/index_en.htm.

Labour party and the Liberals developed an alternative pluralist vision of Britain and took more pro-European lines[5] (cf. ibid.: 165).

Together with the growth of Scottish sense of distinctiveness in the UK, members of the civil society acknowledged the importance of Europe to a devolved Scotland. The Liberal Democrats and the Labour Party suggested that devolution should provide for Scottish representation in the institutions of power in Brussels, whereas the SNP accepted the devolution settlement as a step towards 'Independence in Europe'. Since the Conservatives have traditionally been rather Euro-skeptical, their documents of the time say little about the Scottish Parliament's role in Europe (cf. Sloat 2002: 19-20). At the same time, as soon as Europe started to have an impact on British politics with many of its regulations having local government implication, Scottish local authorities started to see merit in devolution (cf. Mitchell 1999: 165).

No wonder that the developments in the UK regional policy have been compared to those in the European Union and its member-states (see, for example, Keating and Jones 1995, Burrows 2000, Sloat 2002). Critics have drawn a trend of interdependency between the advancement of the European Union and of regional autonomy of its member states (see, for example, Mitchell 1999, Sloat 2002). These two seemingly opposite European trends help us understand the relationship between state, region, identity and politics in Europe. The first trend can be traced in the establishment of the European Economic Community and a clear tendency towards closer cooperation in Europe. The other trend has been towards decentralisation of powers within the member-states (cf. Mitchell 1999: 157). The traditional idea of a sovereign and unified state and the image of closed external borders and internal uniformity have been undermined (cf. ibid.). This allows us to think that the campaign for the establishment of a Scottish Parliament reflected the wider trend of regionalisation, since other European states also devolved powers to their sub-national levels (e.g. Spain, Germany and Belgium). However, "while many European states developed procedures for managing relationships between national and autonomous sub-national governments before (or during) the addition of a European dimension, the UK remained a centralised state for twenty-five years after it became a member" (Sloat 2002: 21). Jacques Delors emphasised the role of regions within the Community member states, and by the end of the 1980s, the UK stood out as one of

[4] The UK applied for EC membership in the 1960s, but the application was vetoed by the French president Charles de Gaulle who doubted the UK's commitment to European ideals.

the few EC countries which did not have a tier of regional government (cf. Mitchell 1999: 165).

Some researchers have rightfully pointed out that European Union constitutional law provides a possible solution to the problem of power-sharing in a multi-layered political order (see, for example, Burrows 2000, Sloat 2002). European integration and devolution in the UK are both unfinished processes, where the main objective is to achieve a better representation of interests of the EU member-states and of the devolved regions of the UK accordingly. Moreover, European solutions are often chosen as possible approaches to various problems arising from the process of devolution (cf. Burrows 2000: 8). Thus, devolution of powers to the Scottish Parliament can be perceived in a similar way as autonomy of EU member-states under the common European legislation. What is different, however, is the direction of change in the two scenarios; autonomous European countries have been working towards establishment of common policies and greater integration, whereas Scotland, being part of the United Kingdom, has been struggling for greater autonomy.

The fact that the UK governments have been hesitant about sharing their powers with the European Union institutions is often explained by a strong constitutional tradition of parliamentary sovereignty existing in the UK (see, for example, Keating and Jones 1995, Little 2004). Views have been expressed that the key reason for such hesitance "lies in the debate about Britain and not about Europe", and the problem of power-sharing between different levels has been defined as a "double constitutional problem" (Gillespie 1996, 8). Amanda Sloat has rightfully noticed that the existence of this issue was acknowledged by Tony Blair at Labour's 1998 conference, when he said "It is no coincidence that the debates on devolution and Europe are happening together" (Blair qtd. in Sloat 2002: 21).

Scottish devolution has been the greatest constitutional change in the UK since the secession of southern Ireland in the 1920s and the most significant change to the well-established Westminster model (cf. Dardanelli 2005: 320). The New Labour party campaigned for devolution as part of the process of modernisation of the UK constitution. In this context, modernisation means bringing more inclusiveness, accountability and democratic representation into politics. This ambitious agenda for reform has therefore encouraged individuals to rethink and reevaluate the existing constitutional tradition and the role of government in the life of community (cf.

[5] The Liberal party had long supported home rule in Britain and European integration, whereas pro-European thinking within the Labour party can be called into question (for consultation see Gifford

Burrows 2000: 1). The central government was no longer seen as the only possible representative of people's will on domestic and international level. Given the remoteness of Westminster politics from the community life, there was a growing demand for local political institutions (especially in the regions situated furthest from London) which would be closer to people and could better represent public interests.

When it comes to institution building, the Scottish devolved institutions do share some common features with the UK institutions, but the New Labour has attempted to differentiate them from the Westminster model. The principles laid into the foundation of the new devolved institutions – equal opportunities, openness and transparency – have not been easily associated with the workings of the United Kingdom parliament and government (cf. Burrows 2000: 5). These values adopted by the New Labour in the process of devolution have created a new constitutional principles and a new constitutional language in the United Kingdom.

Paradoxically, the establishment of the devolved Scottish Parliament (and other devolved administrations) led by these new principles has both contributed to the British traditional democratic model and partially restricted it. It can be argued that Holyrood has followed more democratic principles than the Westminster model by introducing proportional representation (cf. Ezzamel, Hyndman, Johnsen, Lapsley and Pallot 2004: 145) and increasing accountability by regular detailed publications of information regarding the business of the Parliament and the Executive, as well as accessibility of such information (cf. Bonney 2003: 467). For example, the Scottish Parliament website provides regular publications of its legislative programme, minutes of committee meetings, Official Report and general information about the Parliament and its members. In addition, there is a public access to attend parliamentary sessions and submit petitions to the Public Petitions Committee[6].

On the other hand, following the idea of openness and transparency has been negatively reflected in the increasing information flows and information overload. Critics have marked "an unprecedented interest from the politicians and the public in information from the Scottish Executive and that the Civil Service may not have been able to cope with information provision on this scale" (Ezzamel, Hyndman, Johnsen, Lapsley and Pallot 2004: 150). This idea can be supported by our observations that there have been precedents when an Executive Minister had to answer over fifty parliamentary questions submitted by MSPs over a short period of time on a

---

2006). However, Labour's pro-European spirit can be seen at least on a rhetoric level.

[6] For information, see The Scottish Parliament website.

particular issue[7]. Thus, increasing scrutiny and allowing greater opportunities for open questioning of the executives in the devolved Parliament have had a negative side-effect – too much information – which has made members highly dependant on the experts (parliamentary advisors, committee clerks, researchers, audit institutions and interest groups). However, we associate this problem with the relatively short period of existence of the Scottish Parliament, and assume that it could be partly or completely resolved in the course of time.

Another paradox of devolution is the fact that it has been introduced in a country with no written constitution (cf. Burrows 2000: 2). The key question here is what the reason was for such deference for written legislation. The Scotland Act enacted by the United Kingdom Parliament in 1998 clearly forms the fundamental piece of the devolution process in Scotland, but, in addition, there is a mass of secondary legislation enacted under this Act. Moreover, there are codes of practice and written conventions which regulate the relationship between the central government of the United Kingdom and the devolved Scottish institutions. Noreen Burrows points out that the existence of such detailed and complex written legislation on devolution proves that 'nothing will be left to chance' and that 'at least in these early stages, devolution is a carefully controlled process' (ibid.). In our view, this can be explained by the fact that the aim of the Labour party's constitutional reform was to give the UK regions a new role within the union. To avoid an impression that the reform was meant as a major step towards separation of the UK regions, strict limitations needed to be imposed on the process of devolution.

Assessing the results of the reform, Mooney, Scott and Williams argue that the devolution settlement of 1998 calls into question the ability of devolved administrations to "radically follow a different path" since the key areas of legislation are reserved to Westminster (Mooney, Scott and Williams 2006: 7). This point of view will be further analysed in sub-section 1.3 of this paper, where we will look at the provisions of the Scotland Act 1998 and examine the rules it created for the Scottish Executive's role in the EC policy formulation.

[7] For example, the First Minister, Alex Salmond, during the First Minister's Question Time on 20 December 2007 said: 'Mr John Swinney has today answered in record time the 54 parliamentary questions that were lodged by MSPs'. See The Parliament Official Report, 20 December 2007, First Minister's Question Time: http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-07/sor1220-02.htm#Col4691

Conclusion

This section thus demonstrates that the UK's strong constitutional tradition of parliamentary sovereignty has had important consequences for the development of the country's regional and European political agenda and found reflection in the country's long resistance to the process of European integration and to the introduction of a system of regional government. On the other hand, it shows that Europeanisation has had a strong impact on the British constitutional debate and triggered Scotland's interest in establishing a more distinctive position both in the UK and in Europe. It also argues that the new principles of transparency and proportional representation adopted by the Labour government in the process of devolution have created new constitutional values in the UK.

Proposed establishment of a Scottish Parliament seemed to be a suitable and attractive solution to the lack of a tier of regional government. At the same time, European integration and devolution were seen as alternatives to the strong constitutional tradition of a highly centralised government.

1.2. Scotland's pre-devolution representation in UK and EC policy-making

The section examines Scotland's pre-devolution participation in UK and EC policy-making by assessing the roles of politicians, officials and interest groups. It explains why the calls for devolution became increasingly significant in the political agenda between 1979 and 1999, enhanced by the UK's political and economic decline and by the frustration of Scottish voters with eighteen years of Conservative Government. Highlighting weaknesses in the old system helps explain why members of civil society campaigned for a Scottish Parliament and a new style of policy-making.

1.2.1. Scotland's pre-devolution representation in Europe

In the pre-devolution period, the main way for Scotland to defend its territorial interests in the EC was through the Scottish Office run by the Secretary of State for Scotland who was assisted by four or five junior ministers and civil servants. However, their role in the formulation of the British views on European questions has been described by Keating and Jones as the one of "junior partners" (Keating and Jones 1995: 100). In terms of European policy-making, according to a House of Commons report, from 1988 until 1996, "Scottish Office Ministers attended 59 Council meetings out of a total of 790" (qtd. in Sloat 2002:72). "Scottish officials maintained contacts with Commission officials to explain Scottish points within the UK context and discussed the enforcement of EC legislation" (ibid.). Yet, Keating and Jones argue that although occasionally the Scottish Office could make a significant impact in matters of their specific interests and expertise (mainly fisheries and agriculture), generally their role was limited to "minor modifications of the overall UK line" (Keating and Jones 1995: 100). Additionally, it can be assumed that even when the Scottish Office managed to establish their interests as part of the British negotiating position, there was a threat that those interests could be given up as a compromise with other member-states.

As a territorial department, the Scottish Office lacked direct legitimacy to meet high expectations placed on it in the situation when attempts at home rule were blocked by the central government. There have been views that the Scottish Office merely articulated those Scottish national interests which were in line with the UK position, and that the Secretary of State for Scotland could not fully represent Scottish interests while being "not the chosen leader of the majority party in Scotland, but the

spokesman of the majority party in Westminster" (Kellas 1989 qtd. in Sloat 2002: 72). The Conservative governments from 1979 to 1997 were English-dominated. The Foreign Secretaries, with the only exception of Sir Malcolm Rifkind, all represented southern English constituencies. Thus, it is not surprising that the British Foreign Office mainly took into account views of the English audience when formulating foreign policy, and particularly European policy (cf. Robbins1998: 112).

The most obvious pre-devolution role of Scotland in the UK policy-making was the activity of its 72 Westminster MPs. In relation to European issues, some of those MPs were members of Commons committees, where they could voice their views on issues of importance to Scotland. There was no mechanism of in-depth consideration of distinctly Scottish issues; instead, MPs were meeting in the Scottish Grand Committee, two Scottish Standing Committees, and the Select Committee on Scottish Affairs. However, the ability of those committees to represent Scottish views was undermined by different party composition (cf. Sloat 2002: 70). Besides, the Scottish Constitutional Convention questioned the effectiveness of the Grand Committee claiming that it rarely voted, its agenda could be manipulated by the government and its debates had effect only if the government chose to recognise them. The Scottish Standing Committees were only used when the government decided to manage Scottish legislation separately, and the Select Committee required a government majority even if the party formed a minority in Scotland. Some questioned the autonomy of the Scottish Office itself, arguing that it "can be distinguished from a Whitehall Department only in the sense that it is not physically located in Whitehall" (Scottish Constitutional Steering Group 1988 qtd. in Sloat 2002: 70).

Scotland traditionally had a large range of interest groups with a major focus on lobbying in Edinburgh, which were a legacy of a separate civil society maintained after the Union of 1707 and which experienced a sharp decrease in their influence in the 1980s. When such territorial interest groups were able to come together and defend the national economic interests, it could make it easier for the Scottish office to present the case in the Government. But due to the fact that the process of final decision-making was happening behind closed doors at the Cabinet level, regional interest groups found it hard to follow how well their interests were represented in the discussions. Even when Scottish organisations had their own links in Brussels, they remarked that little could be done without support of the Scottish Office (cf. Keating and Jones 1995: 103). In terms of European issues, their assessment of Scotland's pre-devolution representation varied considerably, while most sectors admitted that

there was a clear lack of transparency which might have hindered their opinion (cf. Sloat 2002: 108).

The Scottish Trade Union Congress (STUC) is formally separate from the British TUC. When the union influence rapidly declined in the 1980s, STUC moved from an anti- to a pro-Community position and supported the Scottish Home Rule. A recent study demonstrates that STUC officials were generally satisfied with the level of Scottish pre-devolution representation in Europe, although some officials mentioned that Scotland lacked "any or sufficient effective political involvement" (Sloat 2002: 109). Officials from local government and Scotland Europa felt that representation of Scotland's interests was acceptable, whereas most businessmen thought that the level of representation depended on the person in power and suspected little Scottish involvement in macro-issues, where the policy was formulated for the UK as a single entity with little attention to the regions (cf. ibid.). Members of civic organisations (Church of Scotland, voluntary organisations) expressed particularly negative views on the inclusion of Scotland's position in the UK line, arguing that "Scottish interests may have been sold out in favour of larger UK concerns" (ibid.: 108).

In additional to an obvious lack of transparency, structural funding was placing further pressure on the British centralised system, since according to the Commission regulations, funding was allocated through regional programmes with which regional governments were to be associated (cf. Keating and Jones 1995: 110). This was problematic in a country where there were no regional governments, and therefore structural-fund money was treated by the central government merely as a contribution to the single account for public expenditure, which subsequently damaged the allocation of the received funds (cf. ibid.).

Scotland was represented in Brussels by Scotland Europa which was established in 1992 as a subsidiary of Scottish Enterprise[8] and included members of industry, public bodies, educational institutions, local authorities, trade unions and voluntary organisations. Its key functions have been to promote Scottish interests, provide information to its members about the European legislative agenda and funding opportunities, promote policy initiatives to the Commission through its occasional papers, and assist Scottish visitors to Brussels (cf. Sloat 2002: 93). The UKRep,

[8] Scottish Enterprise (formerly the Scottish Development Agency) was a semi-autonomous government agency which was used to sponsor activities which the Scottish Office could not undertake directly. Government insisted that the Scottish Enterprise (later Scotland Europa) would be concerned purely with economic as opposed to political representation and would provide assistance to its clients rather than general lobbying. For further consultation see, for example, Keating and Jones 1995: 106-107.

however, remained responsible for representing the view of the UK to the European institutions, and therefore the influence of Scotland Europa remained subtle. Mitchell described the role of Scotland Europa in Brussels as "providing a presence in the absence of a parliamentary representative" (Mitchell 1995 qtd. in Sloat 2002: 93).

Conclusion

Thus, demands for regional and national autonomy and European integration in the pre-devolution period were managed without a significant constitutional change. Under the subsequent Conservative governments, parliamentary sovereignty remained the main constitutional principle, and regional policies and European cooperation were seen predominantly as part of Westminster politics. Most officials pointed out that there was a relatively high degree of Scottish participation in discussions of European issues, but a very low degree of influence. There were proposals to establish direct links between a future Scottish Assembly and the European Commission, including representation of the future Scottish Government in the UK delegation to the Council of Ministers (cf. Scottish Constitutional Convention 1989 in Keating and Jones 1995: 112). Although Scotland had its own office with Cabinet representation, yet the Scottish Office was highly dependant on Whitehall and lacked political weight for policy leadership. Scotland did not have its own politicised office in Brussels, neither did it have an opportunity for a direct receipt of money from the structural funds. Establishment of a Scottish Parliament, as proposed by the Scottish Constitutional Convention and the New Labour party, was seen as a solution to many of these problems. In addition, the Parliament was expected to increase transparency of decision-making and visibility of Scottish opinions, especially when they were different from Westminster.

1.2.2. 'Democratic deficit' under Conservative rule

Devolution was not invented by the New Labour party. It has been present on the political agenda in the UK over the nineteenth and twentieth centuries, even though the term itself appeared in the twentieth century (cf. Burrows 2000: 9). Although initially strongest demands for home rule came from Ireland, historians claim that

Scotland never fully accepted the union with England and Wales and made demands for the return of institutions of governance (cf. ibid.).

Political scientists often connect the demand for home rule in Scotland with the traditional resentment against Conservative rule of the region. Interestingly, James Mitchell remarks that during the twentieth century, the Conservatives had fewer Scottish seats and votes than Labour, despite being the leading party in the UK Parliament, only on two occasions before 1979 – in 1922 and between 1970 and 1974 (cf. Mitchell 2006: 466). Additionally, the Scottish Office was created in 1885 to take into consideration Scottish distinctiveness within the UK. This demonstrates that on those early stages there was little evidence of a problem of legitimacy.

It was after 1979 that the criticism of Conservative rule of Scotland began to sharpen (this problem has been frequently described as a 'democratic deficit'), which subsequently resulted in the growing support for devolution. Discontent with the government, especially in the areas situated furthest from London, was growing in the light of economic problems. The legality of Conservative rule could not be questioned, since there is no requirement that the Government should have a majority in each component part of the UK. The question which arose from the 1979 elections was how the Conservative rule of Scotland could be justified taken that the Labour party had a clear majority in Scotland. In February 1983, Gordon Brown, then vice-chairman of the Scottish Labour party, questioned whether Conservative rule of Scotland would be legitimate if Labour won in Scotland again (cf. Brown in Mitchell 2006: 467).

Parties in the opposition "had long played the Scottish card to embarrass the government of the day" (Mitchell 1999: 166). The opposition questioned the legitimacy of Conservative Scottish Secretaries, who had little support at home, to be responsible for Scottish affairs. On many occasions, the Scottish Office was compared to a colonial governing power and Scottish Secretaries to colonial Governor-Generals[9]. Therefore, as Mitchell concludes, there was recognition of Scottish distinctiveness, but there was little indication of Scottish democracy (cf. ibid.).

Obviously, 'democratic deficit' created over the 18 years of Conservative rule is the major but not the only explanation which political researchers give to the crucial difference in the results of the two referendums on devolution held in Scotland in

[9] Malcolm Rifkind who served as a Scottish Secretary from 1986 to 1990 himself made this comparison on one occasion.

1979 and 1997[10]. Paolo Dardanelli names two other important reasons. Firstly, he argues that there was a crucial difference in the two 'devolution packages', the first one perceived as a document which would establish a strong domination of the Labour party in Scotland by introducing the first-past-the-pole system in the proposed devolved assembly. Following his argument, this might have turned non-Labour supporters of devolution against the Scotland Act 1978 in the run up to the referendum in 1979. Secondly, Dardanelli marks that the results of the 1979 referendum were affected by the divide and unpopularity of the Labour party itself and by the insufficient funding of the YES campaign (cf. Dardanelli 2005: 321). In contrast, in 1997 the Labour party was on peak of its popularity and higher resources were allocated for the YES campaign, so the situation can be seen as reversed.

Not surprisingly, those who voted for the establishment of a Scottish Parliament in the first referendum were frustrated by its outcome. The fact that the poll tax was introduced in Scotland one year earlier than in England caused a massive discontent and accusations that "Scots were being used as guinea-pigs" (Mitchell 1999: 167). The campaign for a Scottish Parliament continued with the establishment of a Scottish Constitutional Convention (1989) which was "to agree a scheme for an Assembly or Parliament for Scotland" and "to assert the right of the Scottish people to secure the implementation of the scheme" (qtd. in Burrows 1999: 243). Members of the Scottish Constitutional Convention represented a wide range of Scottish organisations, political parties[11], trade unions, business organisations, local authorities and voluntary sector. The final report of the Convention *Scotland's Parliament, Scotland's Right* was published in 1995 and, as its name suggests, called for a creation of a Scottish Parliament elected by proportional representation and partial transfer of powers from London to Edinburgh (cf. Burrows 2000: 16). But since the Conservative party was still in power and had little interest in the process of devolution, a change of government was necessary for the implementation of the proposals made by the Constitutional Commission.

It is important to understand that there are some significant differences between the proposals made by the Scottish Constitutional Convention and the Scotland Bill introduced by the New Labour government upon election in 1997. The Convention

[10] The 1979 referendum gained majority support for devolution to Scotland but failed to meet the requirement that the YES vote comprise at least 40 per cent of the entire electorate. In 1997 support for the establishment of a Scottish Parliament reached 74.3%, and a decisive majority of voters (63.5%) supported tax-varying powers for the Parliament. For further consultation see Appendix 1 and The Electoral Commission website www.electoralcommission.org.uk/referendums.

[11] Conservatives and SNP refused to participate in the Scottish Constitutional Convention.

had sought to introduce a principle of sovereignty based on the will of the people, whereas the White Paper *Scotland's Parliament* states that:

> The UK Parliament is and will remain sovereign in all matters: but as part of the government's resolve to modernise the British constitution Westminster will be choosing to exercise that sovereignty by devolving legislative responsibilities to a Scottish Parliament without in any way diminishing its own powers. (*Scotland's Parliament* 1997)

Further differences between the two documents will be addressed in the following sub-section.

Conclusion

What can be concluded from this section? Thatcherism became mainly associated with centralisation of power, particularly in Scotland where Labour gained majority in successive elections. However, the New Labour did not entirely reject the idea of centralisation. As already mentioned above, for the New Labour, devolution was introduced as part of a larger programme of modernisation, which was meant to strengthen the democratic process and restore public confidence in political institutions, and most importantly, to secure the union in Great Britain rather than split it. Devolution under the New Labour did not restore Scotland to its position before the Acts of Union were passed in 1707. Thus, creation of a devolved Scottish Parliament meant greater inclusiveness within the existing constitutional arrangement and the British union state.

1.3. Devolution legislation and European policy

The remainder of this chapter discusses the devolution arrangements drawing attention to the role of the Scottish Parliament and Executive in European policy-making, as shaped by the devolution legislation.

The final document produced by the Scottish Constitutional Convention suggests that the future Scottish Parliament would be "represented in UK ministerial delegations to the Council of Ministers where appropriate" and Scottish Ministers would lead these UK delegations when the discussed issues would be "of specific relevance to Scotland" (*Scotland's Parliament, Scotland's Right* 1995). Although the document does not make it entirely clear who would be deciding when a Scottish

involvement would be appropriate, it still outlines a prospect of significant participation of the devolved Scottish Parliament in Europe.

However, this prospect had changed sufficiently by the time when Labour took power in Westminster in 1997 and produced the White Paper *Scotland's Parliament*. In his foreword, the Secretary of State for Scotland said that Scotland would remain "firmly part of the United Kingdom" and Westminster would continue to be in charge of those areas of policy which are "best run" on a United Kingdom basis, including foreign affairs (Cook qtd. in Robbins 1998: 106). Furthermore, the chapter devoted to Scotland's relations with the European Union started with the following unequivocal phrase: "Relations with Europe are the responsibility of the United Kingdom Parliament and Government" (*Scotland's Parliament* 1997). Although the chapter equally stresses that the Scottish Ministers would be involved "as directly and as fully as possible" in the formulation of the UK policy line towards the EU, it carries on that the Scottish officials would be expected "to support and advance the single UK negotiating line which they have played a part in developing" (ibid.). Unlike the Convention document, there is no vagueness here; the central government will set the rules for Scottish participation in European matters. Further on, the paper discusses issues of implementation of the European legislation in Scotland and the role of the Scottish Parliament in that process.

Before the Scottish Parliament became operative, political scientists had predicted that Scotland's control over domestic affairs could lead to a growing demand for greater control over its foreign affairs and for direct representation in Brussels (cf. Robbins 1998: 114-115). The White Paper addresses this issue stating that Scotland may consider establishing a representative office in Brussels. It continues, however, that such an office should "complement rather than cut across" the work of the UKRep which would remain responsible for representing the views of the UK to European institutions (Taylor 2002: 170). Such an office, Scotland House was established in 1999, and its key functions will be closer examined in Chapter 2 of this paper.

The Scotland Act 1998 implemented devolution and gave effect to the approach outlined in the White Paper. In accordance with Schedule 5 of the Act, foreign affairs are a reserved matter. This includes "relations with territories outside the UK, the European Communities (and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation" (Scotland Act 1998, Sched 5 para 7(1)). However, paragraph (1) does not

reserve "observing and implementing international obligations, obligations under the Human Rights Convention and obligations under Community Law", and assisting Ministers of the Crown in relation to any of the above mentioned matters (Scotland Act 1998, Sched 5 para 7(2)). Therefore, the Scottish Parliament is responsible for giving effect to international obligations as far as they relate to devolved matters. In relation to EC law, in case of breach a Scottish Minister may be liable under EC law to the same penalties as UK ministers (cf. McFadden and Lazarowicz 2003: 10). Since assisting UK Ministers is not reserved, Scottish Ministers are able to assist UK Ministers in the formulation and negotiation of their position and are able to participate in European Council meetings (cf. ibid.). A Scottish Minister may speak for the United Kingdom in meetings of the Council of Ministers in appropriate cases; the lead United Kingdom Minister would however retain full responsibility for the negotiations (cf. Burrows 2000: 137).

It also needs to be mentioned that once most of the powers of the Secretary of State for Scotland were transferred to the Scottish Executive, its role was significantly altered, and later on the post was added to the existing responsibilities of another member of the Cabinet in 2003. The Scotland Office (successor to the Scottish Office) has seen a number of changes, and is currently headed by the Secretary of State for Scotland. It is part of the Ministry of Justice based in the Whitehall, and its key functions are to represent Scotland's interests in Westminster and to act as a guardian to the devolution settlement (cf. Scotland Office website).

In addition to the Scotland Act 1998, the Memorandum of Understanding has been agreed on to outline the key principles underlying the intra-governmental relations on European matters. These principles are: "full involvement of the devolved administrations in the formulation of the United Kingdom's policy position; mutual respect for the confidentiality of discussions; and adherence by all devolved administrations to the resultant United Kingdom line" (Burrows 2000: 135).

These principles are further expanded upon in the Concordat on Co-ordination of European Union Policy Issues[12], which states that there must be "adherence of the Scottish Executive to the resulting United Kingdom line" and that "this line will reflect the interests of the United Kingdom as a whole" (Concordat on Co-ordination of European Union Policy Issues para B1.4). Judging by this extract from the

[12] A concordat is not a legally binding document. It is intended to be binding in honour only. For further information see McFadden and Lazarowicz 2003: 131-133. Donald Dewar referred to the concordats as non-statutory agreements "to ensure that the business of government in Scotland and at

Concordat, we can conclude that the Scottish Executive would not be able to weaken the United Kingdom position in negotiations in the Council of Ministers.

The Concordat stated that when matters could not be resolved bilaterally between departments, the Joint Ministerial Committee would meet under the Chair of the UK Foreign Minister to resolve disputes over EU issues (cf. Burrows 2000: 137). Once again, the fact the Joint Ministerial Committee is chaired by a United Kingdom minister demonstrates that European policy co-ordination is fully controlled by the UK government with a clear lack of parliamentary scrutiny[13], and disputes therefore will be resolved within the UK Cabinet Office.

The use of concordats has been continuously criticised by researchers and politicians. Some based their criticism on the fact that concordats lacked a firm legal underpinning (see, for example, Rawlings 2000, Sloat 2002) and did not allow the Parliament to debate the terms of the concordats (cf. Alex Neil MSP in the Scottish Parliament Official Report 7 October 1999 col 1113; Annabel Goldie MSP in the Scottish Parliament Official Report 7 October 1999 col 1120). Others were concerned that the Joint Ministerial Committee would reach agreements rather than decisions, and that the final decision would be presented by the lead United Kingdom Minister who would be simultaneously representing English interests (cf. Davies 1999).

Conclusion

As demonstrated above, the Scotland Act 1998, the Memorandum of Understanding and the Concordat on Co-ordination of European Union Policy Issues left little room for the Scottish Parliament's autonomous action in Brussels. A subsidiary position of the Scottish Parliament in Europe once again confirms that the Labour government introduced devolution within the United Kingdom to secure the future of the union, not to separate Scotland from England. Although it is a fair remark that the final approach in the devolution legislation differs substantially from the one outlined in the Convention document when the Labour party was in opposition, it is however entirely reasonable, within the overall devolution settlement, that the UK Government must take the leading role on EU matters. When the member-states' Ministers gather

---

the UK level is conducted smoothly, by setting the ground rules for administrative co-operation and exchange of information" (Dewar 1998 qtd. in Lynch 2001: 150).

[13] Minutes of the Joint Ministerial Committee are not published and therefore not available for parliamentary scrutiny.

around the top table of the Council of Ministers, it seems to be sensible that they expect to see one person representing the United Kingdom as a whole instead of four persons representing each of the UK regions separately.

Nevertheless, there is a considerable structural difference between the new system and the pre-devolutionary one. In the past, the Scottish Secretaries were presenting their views to their colleagues in the Cabinet and were accountable to a common Parliament in which "their party, by definition, could reasonably expect support from its own majority" (Taylor 2002: 173). Within the new settlement, in contrast, Scotland's First Minister is negotiating with UK Ministers from a different Parliament and possibly from a different party (like in today's situation). If the UK Ministers and the Scottish Ministers are not able to reach an agreement and choose to stand up against the other side, it is most likely that the UK carries weight and it will be directed against the narrower interests of Scotland. However, what is new under the new settlement is that in any case the Scottish Parliament and Executive are able to voice their opinion on European matters, and this opinion cannot be shut behind the closed doors as in the pre-devolution scenario. This makes it harder for the central government to ignore Scotland's interests in Europe, which undoubtedly increases transparency and accountability in the new-style UK politics.

2. Devolution in Scotland and Multi-Level Governance

As we have seen in the previous chapter, the establishment of a devolved Scottish Parliament occurred within the context of wider European integration. Therefore, it is clear that the workings of the Scottish Parliament require a degree of consultation and cooperation with the European bodies and the UK government, because of the divided and partly overlapping powers of these institutions. There is no strict separation of powers between Holyrood and Westminster, Westminster and Brussels; instead, we associate devolution with sharing of powers between various levels of government.

This chapter provides the theoretical framework of the study and outlines academic assessments of interaction among political levels. It further examines the issues touched upon in the previous chapter by examining them in the light of the theory of Multi-Level Governance (Marks 1993) – in essence, it analyses how Scotland's European interests have been represented in Brussels through the workings of Scottish, British and European institutions, and whether the theory of Multi-Level Governance can be fully applied to our case of study.

2.1. The theory of Multi-Level Governance

In recent years, the theory of Multi-Level Governance (MLG) has attempted to incorporate and assess the role of institutions and other actors on the European stage. It has taken into account the importance of sub-national, national and supranational levels of decision-making and their connections with each other (cf. Sloat 2002: 35; Jeffery 2000: 1).

The theory of Multi-Level Governance has developed partly due to the failure of previous theories to acknowledge the role played by different actors in European policy-making[14]. Its authors argued that the previous supranational and national

[14] Previously, the main debate has been between variants of neo-functionalism and intergovernmentalism. Neo-functionalism (Haas 1958, 1964; Lindberg 1963, 1970) predicted that sovereign states would transfer some powers to a supranational institution which would facilitate decision-making between states; this could threaten their sovereignty due to the fact that integration in one sector might require further integration in another sector to complete the initial goal. Intergovernmentalists (Carr 1939; Hoffmann 1966, 1987; Morgenthau 1967) argued that unitary states are the main actors and, therefore, they determine the speed of integration and the process does not threaten their sovereignty. These two theories over-emphasised the roles of supranational institutions

approaches did not take into account the increasing role of sub-national level (cf. Marks 1993 in Sloat 2002: 35). Thus, MLG acknowledged the continuing role of the state, the growing influence of supranational institutions and the importance of regional participation in the process of policy-making.

Hooghe has called the growing engagement of regional authorities in EU policy-making "sub-national mobilisation", arguing that the European legislation enacted in the 1980s and 1990s included provisions which diluted the power of central states and provided for greater participation of sub-national authorities[15] in the policy-making process (Hooghe 1995). The features of this process included the reforms of the structural funding process which demanded fuller sub-national involvement in European structural policy introduced by the Single European Act (1986); introduction of qualified majority voting which enabled individual governments to be outvoted; the EU treaty revisions which have allowed for sub-national input into the Council of Ministers and established the Committee of the Regions (The Maastricht Treaty 1992); establishment of organisations of inter-regional cooperation on EU programmes; location of regional offices in Brussels; and introduction of a six-week period between the publication of legislative proposals and their agreement in the Council of Ministers, thus allowing more time for domestic discussion (The Amsterdam Treaty 1997) (cf. Jeffery 2000: 2).

According to MLG, policy is not decided by one level of government; it requires discussion and cooperation between all three levels – European, national and regional. Advocates of the theory argue that competencies are not monopolised by state executives and recognise "the increasing number of participants involved in decision-making and implementation, ranging from governments to non-state actors" (Sloat 2002: 37). Theorists recognise that with the involvement of other actors, central governments lost part of their legislative powers to both sub- and supranational levels (cf. ibid.: 38), and argue that a real transformation has taken place in the intragovernmental level when sub-national authorities have taken part of the central governments' competence to represent their member-state in the process of EU policy-making (cf. Jeffery 2000: 2).

However, applying this rule to our case of study, it is important to understand that the different sides of the Scotland-UK-EU triangle are not equal players in the policy-

---

and national governments, respectively. Other theories highlighted how domestic factors affected policy-making at the European level (Bulmer 1983). For further consultation see Sloat 2002: 33-35.

[15] The term 'sub-national authorities' was introduced by Bomberg and Peterson in their work "European Decision-Making: The Role of Sub-National Authorities" (1998).

making process. Given that mobilisation and influence are not synonymous, the most important question for our study is whether sub-national mobilisation has resulted in any real influence on what Marks called "authoritative decision-making" (Marks 1997: 22). In other words, we need to find out whether Scotland has been able to make any real impact on the outcomes of the EU policy discussions. In order to answer this question, we will first seek to understand and assess the general role of sub-national authorities in the EU policy-making, keeping in mind that their ability to transform mobilisation into influence can vary in individual cases (cf. Jeffery 2000: 3), and then apply the outcomes of our observation to Scotland.

Sub-national authorities (SNA) have been concerned to find channels to influence European policy since the 1990s (cf. Jeffery 2000: 4). They have succeeded in accessing European institutions directly through establishment of the Committee of the Regions, pro-regional lobbies, regional offices in Brussels, EU-oriented inter-regional associations, and access to the Council of Ministers (under Art. 146 of the Maastricht Treaty). At least at this stage, critics have argued that sub-national authorities have managed to achieve substantial progress compared to the state of affairs in the 1980s (ibid.). Since European integration has traditionally been qualified as a field of foreign policy, and therefore has fallen under the central governments' prerogative, the entry of sub-national authorities onto the European arena even at this initial level can be considered a significant breakthrough.

However, researchers questioned the effectiveness of the above-mentioned channels of sub-national access to the European policy-making. These include the effectiveness of domestic and European lobbying, the Commission's role in encouraging sub-national involvement, the authority of the Committee of the Regions, and the weight of regional networks (cf. Sloat 2002: 42). The importance of the problem is emphasised by the variety of academic views on this question. MLG supporters view national governments as crucial actors in the EU policy-formulation process, but they acknowledge their role as one player among several (cf. Marks and McAdam 1996, 274). In contrast, Bache observed that sub-national and supranational involvement in EC policy-making is limited, because the central government acts as a "gate-keeper" in the political process, which, in his view, results in multi-level participation, but not in Multi-Level Governance (Bache 1998 qtd. in Sloat 2002: 43). We are sympathetic with the arguments of Jeffery who disagreed with Bache's opinion and argued that the central state cannot be seen as a "gate-keeper", as sub-national authorities have managed to obtain direct unmediated channels of access to

European institutions (cf. Jeffery 2000: 6). However, he continues, it is clear that sub-national authorities have only achieved a change in the structure of authoritative decision-making "within the framework and logic of the Member State" (ibid.).

There are different academic approaches to Multi-Level Governance. Marks argues that the European Commission is the "central actor" because it is providing the agenda and therefore allowing sub-national authorities to develop direct "vertical links" with the supranational level, bypassing the national government's mediator role (Marks 1993 qtd. in Sloat 2002: 45). Jeffery builds up on this idea, putting forward an argument that sub-national authorities may themselves, from the "bottom up", actively initiate policies providing a base for greater sub-national mobilisation in the European policy-making: "This base has supported the creation of those intra-state channels of access to European policy processes […] where SNAs have succeeded in breaching central state monopoly control over European decision-making" (Jeffery 2000: 8). We agree that sub-national authorities often become involved in European policy formulation by their own initiative; however, we also support the point of view of other academics who incorporate the ideas outlined above and argue that the pressure for regionalisation is a two-way process: from below, when SNAs seek more autonomy and participation in the EU policy-making, and from above, when the Commission supports territorial policies (cf. Benz and Eberlein 1999 in Sloat 2002: 45).

Amanda Sloat differentiates between "institutionalised" and "non-institutionalised" channels for sub-national authorities (Sloat 2002: 46). Thus, the Committee of the Regions is the most accessible institutionalised channel for SNAs. The 222-member body has been established by the Maastricht Treaty (1992) to advise the Council of Ministers on the issues of importance for the member states' regions such as education, public health, and structural funds. Later on, the Amsterdam Treaty (1997) enlarged the number of areas of obligatory consultation by adding employment, social policy, environment and transport (cf. ibid.). The Committee of the Regions has been heavily criticised by academics for having little influence, offering too many divided opinions, and having questionable legitimacy (cf. McCarthy 1997 in Sloat 2002: 47). The fact that the Committee's membership is appointed by central governments has been a subject of further disapproval (cf. Bomberg and Peterson 1998). On the other hand, critics acknowledged the fact that the Committee of the Regions represents, for example, local governments which cannot establish an office in Brussels, provides for sub-national involvement in the

process of European decision-making, enables joint action by the regions and circulates information flows (cf. Sloat 2002: 47).

Regional information offices have been established as the main non-institutionalised channels used by SNAs. The Brussels-based offices have a number of functions including monitoring EC policy developments and providing an early warning for the domestic institutions, enabling access to politicians, providing information to the Commission and lobbying for funding (cf. Sloat 2002: 47), although it is arguable whether regional offices have had any influence on the EC policy outcomes (cf. ibid.).

Jeffery, acknowledging that the level of sub-national authorities' involvement in European issues varies in different member states, has proposed a number of factors which determine the degree of SNAs participation in the European policy-making. The factors are constitutional arrangements, intergovernmental relations, entrepreneurship, legitimacy and social capital (cf. Jeffery 2000: 12-17).

Considering the first and the most important factor, constitutional arrangements, Jeffery puts forward the following proposition: "SNAs constitutionally endowed with extensive internal competences are likely to exert stronger influence over European policy than their more weakly endowed counterparts" (Jeffery 2000: 12). This allows us to conclude that the pre-devolution UK regions, being part of a centralised unitary state, could have much less influence on the European stage than, for example, German *Länder*. However, following Jeffery's idea, the constitutional variable is not necessarily static, and a process of constitutional change within a member-state would affect the EU policy engagements by SNAs (cf. ibid.). As discussed in the first chapter, devolution process in the UK has been a significant constitutional change, and therefore, according to Jeffery, we could expect a growing influence of the Scottish Parliament on the European arena.

Considering the other factors, Jeffery draws a formula that the degree of SNAs effective involvement in the European policy-making would depend on the existence of (non-) constitutionalised coordination structures for policy formulation on the domestic level; on the ability to adapt to the challenges posed by the European integration; and on the extent to which SNAs policy corresponds with the "values or social representations of the population concerned" (Smith 1996 qtd. in Jeffery 2000: 17). We have demonstrated in sub-section 1.3 of Chapter 1 that in accordance with the devolution legislative arrangements, there are formal procedures for structuring the intergovernmental relations between the UK government and the Scottish

Executive in relation to formulation and implementation of the EU policy. Scotland is certainly an example of effective adaptation to the European context with the early mobilisation of the Strathclyde Regional Council and further establishment of a regional office in Brussels (cf. Jeffery 2000: 16). The argument of legitimacy and social capital is possibly the most valid one in case of Scotland, since there are well-established civic traditions, an evident sense of identity, and ethnic solidarity within the territory. Thus, in accordance with Jeffery's "bottom-up" approach to the theory of Multi-Level Governance, the four factors demonstrate Scotland's great potential in the light of devolution settlement to establish a significant sub-national influence on the European policy-making and implementation.

Given this potential, we can now turn to the key question that we asked in the beginning of this section: has it made any difference? In other words, has Scotland been able to exercise real influence on the European policy outcomes since the establishment of the Scottish Parliament? We will attempt to answer this question in the following sub-section by applying an "actor-centred approach" to MLG (Sloat 2002: 53). We will analyse Scotland's European interests in the post-devolution era at the three levels - sub-national, national and supranational – as represented by institutionalised and non-institutionalised actors.

2.2. Scotland's European Influence

The state-based structure of the European Union makes it hard for Scotland to act independently in Brussels bypassing Westminster. Instead, the Scottish Executive may try to convince the UK government of specific Scottish interests and make it incorporate those interests in the UK policy line on European affairs. In close co-operation with Westminster, the Scottish Executive may seek to promote a nuanced perspective on those European issues which directly affect devolved matters. A direct contact with Brussels may be required if the Scottish position is supported but not prioritised by the UK. However, if Scotland disagrees with the UK, it cannot openly defy a UK minister and present its separate line to EC institutions, because the Commission officials listen to member states over regions. This section discusses various channels enabling assertion of Scottish views in Europe, and aims to answer the questions whether post-devolution Scotland, by using those channels, has

achieved a greater representation in Europe and whether it has been able to influence the European policy outcomes.

2.2.1. Sub-national level

The Scottish Executive

According to the Scotland Act 1998, the Scottish Executive has not been given a legal right to take part in the decision-making and legislative process on European affairs. As discussed above, this function has been reserved to the UK Government, since the UK is a member-state of the European Union and Scotland is not. The Concordat on Co-ordination of European Union Policy Issues has consequently served as a non-statutory method to allow the Scottish Executive to play a role in those aspects of European policy-making which directly affect devolved matters. These include non-devolved matters which would have a significant impact on Scotland.

The Concordat, however, emphasised that cooperation between the UK Government and the Scottish Executive would be subject to "mutual respect for the confidentiality of discussions and adherence by the Scottish Executive to the resulting UK line" (Concordat on Co-ordination of European Union Policy Issues para B1.4). According to Lynch, this indicates that it would be possible for the UK Government to choose a policy which would be directly opposed to the one of the Scottish Executive, and the Scottish Executive would not have a mechanism of direct participation in the EU to argue against the UK line (cf. Lynch 2001: 158). Thus, when there is a general agreement between the UK Government and the Scottish Executive, a Scottish Minister will indeed be able to participate in shaping the resulting UK line by making sure that it covers specific Scottish interests. In contrast, complications might arise in those cases when there is no overall agreement on policy. In such cases, the scope for autonomous Scottish action is highly limited.

Where differences between the Scottish and the UK Governments cannot be resolved through a more informal contact, matters are passed to the Joint Ministerial Committee (JMC) on EU affairs for discussion. The JMC is chaired by the Prime Minister and includes Ministers of the UK Government and Ministers from the devolved administrations, and operates at an "administration-to-administration level, rather than involving the parliaments/assemblies as such" (Research Note by the

Scottish Parliament Information Centre 2000: 1). Further information on the workings of the Joint Ministerial Committee will be provided below in sub-section 2.2.2. devoted to national-level actors.

The experience of the past ten years of the devolved arrangements suggests that the mechanisms outlined in the Concordat have worked reasonably well. However, it needs to be mentioned that the present study has experienced difficulty in analysing Scotland's participation in discussions with the UK Government on European affairs on a case-by-case basis. This would be necessary to assess the Scottish Executive's influence on the resulting policy line. Confidentiality of such discussions and the lack of materials accessible to the public can explain this difficulty. Thus, in our conclusions we have relied mainly on academic assumptions and official reports by the UK Government. Those sources suggest that information on EU issues has been routinely shared with the Scottish administration; the Scottish Executive has been regularly consulted by the lead Whitehall Department on matters of policy formulation on European issues; Scottish officials have been invited to take part in UK-level meetings on matters of particular importance to Scotland; Scottish Executive Ministers have taken part in the Council of Ministers as part of the UK delegation; and on a number of occasions a Scottish Minister has spoken on behalf of the UK as a whole (cf. McFadden and Lazarowicz 2003: 133).

The Scottish Parliament European and External Relations Committee

However, it is not just the Scottish Executive that has a role in European matters as far as devolved issues are concerned. While the Scottish Executive has mainly participated informally in the development of UK policy line on EU issues, the Scottish Parliament has also been an important actor in this area. According to its legislative powers, the Scottish Parliament can decide how the European obligations are to be implemented in devolved matters (cf. McFadden and Lazarowicz 2003: 133). And although it is the UK Government that decides on the British input into decision-making and legislation within the EU, through the devolution settlement the Scottish Parliament has been offered an opportunity of scrutinising EU legislative proposals in advance.

The Scottish Parliament European and External Relations Committee has been created to scrutinise EU legislative proposals and decide on their implementation

within Scotland. According to the White Paper and the European Concordat, the UK government is responsible for providing full information to the Scottish administration on business of the European Union, which appears to be of interest to the devolved administration (cf. Sloat 2002: 79). European documents are thus sent by the lead Whitehall department to the European and External Relations Committee at the same time as Westminster. Being unable to examine the entire flow of legislation coming from Brussels, the Committee clerks and the convener have developed a mechanism of categorising documents by their priority. After the clerks have completed the primary selection, the Committee examines the issues relevant to Scotland and may either pass them to other subject committees, decide to establish joint committees or call for experts or advisory panels. The final report of the Committee has to be presented to the Scottish Executive and Westminster (cf. ibid.: 81).

According to the Annual Report, in the first year the Committee met on 18 occasions, none of the meetings held in private. It was able to analyse over 1,100 items originating from Brussels (cf. Annual Report of the Scottish Parliament Committees 2000).

> The European Committee has taken its role of "policing" the handling of EC/EU business in Scotland very seriously. One of the main activities […] has been to scrutinise, at as early a stage as possible, how the Scottish Executive has presented the Scottish case as part of the development of a UK negotiating line for any draft European legislation and to assess how the Executive has, or will, implement such legislation when passed. (Annual Report of the Scottish Parliament Committees 2000)

The Committee has been working to encourage Scottish views to be heard in relation to European legislation, and to make the process of Scotland's participation in the formulation of the UK policy line more transparent. In addition, the Committee has taken the initiative to investigate a wider range of Europe-related issues of interest to the people and organisations of Scotland, including European Structural Funds, environmental policy and agriculture, economic and social fields (cf. Annual Report of the Scottish Parliament Committees 2000).

Seeking to develop early intelligence on forthcoming issues, the Committee has been undertaking fact-finding visits to Brussels to meet Commissioners and MEPs, and to visit Scotland House and Scotland Europa. Videoconferences with MEPs have been held, and delegations have been received from other European countries' parliaments, regional governments and embassies (cf. ibid.).

Among the domestic activities of the Committee, informal seminars have been organised to promote the benefits of EU membership to a wider Scottish society.

Furthermore, regular meetings have been held with the Scottish MEPs, the president of COSLA, politicians and officials from the UK and other devolved administrations to discuss the priorities in relation to European political agenda (cf. ibid.).

Thus, by fulfilling both the function of scrutinising the EU legislation and the role of a generalist committee on European affairs, the Committee appears to have developed a strategy very close to the one suggested by the Consultative Steering Group (CSG) in its proposals made prior to 1999 for the way the Scottish Parliament should operate (cf. McFadden and Lazarowicz 2003: 134). Politicians and academics have pointed out that the Scottish Parliament European and External Relations Committee "is able to carry out a much more detailed and comprehensive scrutiny of proposed and actual EU legislation, than its Westminster counterparts (which do, of course, have a much broader field to cover than that to which the Scottish Parliament is limited)" (ibid.).

Prior to the May 2007 elections, the Labour-led Scottish Parliament and Executive declared itself satisfied with the post-devolution arrangements for Scotland's participation in European issues (the situation formed by the May 2007 elections will be dealt with in Chapter 3). Under those arrangements, Scotland has been seeking to ensure that its interests are represented within the UK central policy line in Europe; the absence of direct representation has mainly been compensated for by the UK's larger influence in the EU as one of the largest member-states (cf. McFadden and Lazarowicz 2003: 136). However, attempts have been made since 1999 to establish direct links with the EU without the mediation of UK institutions, which can be demonstrated by the establishment of a direct Scottish presence in Brussels – Scotland House – and the development of direct political links with other devolved administrations in the UK and other European regions.

Scotland House

In October 1999, the Scottish Executive established a European office co-located with Scotland Europa in Scotland House. As already mentioned above, Scotland House was established due to lack of direct Scottish representation in Brussels. This office has been working very closely with the UKRep and therefore has played an important role in establishing working relationships between the Scottish Executive and the UK Departments to decide whether European obligations affecting devolved matters

should be implemented in Scotland by the Scottish Executive or by UK statutory instruments (cf. McFadden and Lazarowicz 2003: 133).

Scotland Europa is a membership organisation which represents interests of Scottish industry, education, local authorities, public bodies, trade unions and voluntary sector (cf. Sloat 2002: 118). Initially, Scotland Europa was acting mainly as a lobbyist for Scottish interests and had no real input into policy decisions. Its role was subsequently expanded by the new Labour Government in the 1990s as part of their plan to improve relations between the UK and EU. Scotland Europa started to publish Occasional Papers and respond to Commission inquiries, dealing with a wide range of policy areas, playing a role in business agendas and seeking partners in other European regions (cf. ibid.).

Since the creation of the Scottish Parliament, Scotland House has served as the Executive Office of the Scottish Government in Brussels. Scotland Europa has continued to deal with its members and NGOs, monitor the domestic policy agenda and focus chiefly on economic development, whereas the Executive Office has provided for political presence and access to policy-makers. Thus, Scotland House in its new composition has been providing a profile for Scotland in Brussels, representing Scottish interests, relaying information back to the Executive and civic organisations, assisting visitors, channeling information and providing base for lobbying (cf. Sloat 2002: 119).

However, it needs to be mentioned that although the Executive has been seeking influence on the EC legislative outcomes through its European Office, it has still been operating within the UK framework. Amanda Sloat has rightfully pointed out that Scotland House in Brussels was not named Scottish Permanent Representation for the reason that the latter would have been too suggestive of Scottish independence in Europe (cf. ibid.).

Conclusion

At the sub-national level, the Scottish Parliament and the Scottish Executive have not received much scope for autonomous action on the European stage in the post-devolution era. The distinct Scottish interests have been continuously represented within the UK negotiating line, although the Concordat on Co-ordination of European Union Policy Issues have guaranteed Scotland's involvement in the policy formulation within the UK overall framework. Lack of direct representation led to the

establishment of the Scottish Executive Office in Brussels which has provided for Scotland's political presence, but has been working under the UKRep control. The greatest level of influence on the sub-national level is, in our view, the ability of the European and External Relations Committee to implement the European legislation in devolved areas in the ways different from those of the central Government after consulting more broadly with potentially affected organisations.

2.2.2. National level

Joint Ministerial Committee

The Joint Ministerial Committee (JMC) deals with relations between the UK central government and the devolved administrations. Its establishment was announced as part of the Memorandum of Understanding, and its aim has been to encourage consultation and cooperation on matters of mutual interest and to provide a forum for resolution of disputes between the bodies (cf. The Memorandum of Understanding 2001: Part II. A1.2). The devolved administrations would therefore be involved by the central government at ministerial level into consideration of "non-devolved matters which impinge on devolved responsibilities" and "devolved matters which impinge on non-devolved responsibilities" (ibid.). Although the Committee is a purely consultative body and does not legally bind any of the participating bodies, the involved administrations are expected to support the resulting agreements of the JMC discussions (cf. Research Note by the Scottish Parliament Information Centre (SPICe) 2000: 3).

The terms of the Memorandum were agreed upon by the Scottish Parliament on 7 October 1999. The JMC meetings are prepared by a committee of officials from the UK Government and the devolved administrations. The proceedings of the meetings are confidential, however, on some occasions the Committee might wish to issue a public statement on the results of its discussions (cf. Research Note by SPICe 2000: 3). Since its first meeting on 1 September 2000, plenary meetings of the JMC have been held at least once a year (cf. SPICe).

There have been various views on the effectiveness of the Joint Ministerial Committee. On the positive side, critics have argued that it has allowed for proper negotiations to take place before the UK Government overrules a decision by a

devolved assembly and presents its final position to the Council of Ministers (cf. Research Note by SPICe 2000: 3). On the negative side, for example, Alex Neil MSP has argued that there have been a UK bias in the arrangements of the JMC, since it would always be chaired by a UK Minister and the final decision would always be up to Westminster (cf. Neil in Research Note by SPICe 2000: 3).

UK Permanent Representation in Brussels (UKRep)

The official website of the UK Permanent Representation in the EU says little about its relationship with the devolved Scottish administration. Kim Darroch, one of the UK Permanent Representatives, described the functions of UKRep as keeping "in touch with anyone who has an interest in what happens here, or who is affected by the EU", including the UK regions, and that UKRep has been working closely with the Scottish Executive and other devolved administrations (Darroch qtd. in the UKRep homepage).

According to a recent study, officials from Scotland Europa estimated that they had a constructive relationship with UKRep. However, they felt that Scotland Europa was prevented by the UK Permanent Representation from getting involved into political issues which might affect a UK policy (cf. Sloat 2002: 121). Although the influence of the Scottish Executive Office has been quite limited, its relations with the UKRep has been described by officials as "close" and "harmonious" (ibid.). Politicians acknowledged the involvement of the Scottish Representative Office in UKRep working groups, in particular on agriculture and fisheries. Some officials from local governments, chiefly from COSLA, have called for independence from the UKRep. Others, however, have declared a close working relationship, including exchange of information and focusing on economic development (cf. ibid.).

The practice of seconding Scottish officials to UKRep has continued post-devolution. The main purpose of this practice has been to bring knowledge about Scotland to the UKRep work and, in exchange, to bring experience about Brussels to the Scottish institutions. However, it has been underlined that while being in Brussels, Scottish officials are to work for UKRep, rather than seek to exercise Scottish influence on the final decisions (cf. Sloat 2002: 151).

Conclusion

Even though the UK Government has remained responsible for the formulation of the final policy line on European affairs, the Scottish Parliament and Executive have been working together with other devolved administrations to affect the UK position. Although it is arguable whether post-devolution Scotland has been able to make a great impact on the overall UK European policy agenda, in those areas where Scotland has a disproportionate interest (agriculture, fisheries, environment, and structural funds), the Scottish Executive has been able to demonstrate and promote its distinct approach and participate in UKRep working groups. In addition, there has been evidence of greater civic involvement, since various organisations have managed to make use of pre-legislative scrutiny and interact more with politicians.

2.2.3. Supranational level

The Committee of the Regions

Scotland has four (out of the UK's twenty four) representatives in the Committee of the Regions (COR) – the EU body in which Scottish politicians play a direct role in policy discussions.

The Committee of the Regions was established in 1994 to provide local and regional authorities with a voice in European policy-making. Its establishment was justified by the fact that three quarters of the European legislation directly affects and is implemented at regional and local levels. Secondly, the COR has provided for public involvement in the development of new EU laws by "involving the elected level of government closest to the citizens" (The Committee of the Regions website). The Maastricht Treaty and the Amsterdam Treaty together set out ten areas in which the Commission and Council are obliged to consul the COR whenever new proposals are made. Those areas include economic and social cohesion, trans-European infrastructure networks, health, education, culture, employment policy, social policy, the environment, vocational training and transport (cf. ibid.). The COR is also able to submit its opinion on its own initiative on issues which have an important regional implication; this enables the Committee to initiate EU legislative proposals (cf. ibid.).

There have been varying opinions on the authority of the Committee of the Regions. Many have been skeptical about its mixed membership, as there is not the same number of representatives from each state. Few have thought that COR enables Scottish politicians to affect European policy outcomes, because it is not a decision-making body. Others have been more optimistic arguing that the Committee represents sub-national interests, enables some pre-legislative consultation, gives recommendations, helps local authorities network and engages citizens (cf. Sloat 2002: 125, 154,183).

Some members of the Committee of the Regions (for example, Germany) have pictured it as a second chamber of the European Parliament which would be able to challenge the Parliament's authority. However, the Parliament holds the power over the COR's budget and has so far been unwilling to share its powers. Among other flaws is the fact that the COR involves into too many areas of policy and has too many aims (cf. Sloat 2002: 125). In contrast, some officials have thought that COR provides regions with clear understanding of complicated issues and, importantly, brings a regional and local dimension to the EU (cf. ibid.).

The European Parliament

The European Parliament is another institution which provides for Scotland's direct voice in the European Community. There are currently seven (out of the UK's seventy-eight) Scottish Members of the European Parliament representing the four main parties in the Scottish Parliament (The European Parliament website). Although there is no formal mechanism of cooperation between the European Parliament and sub-national authorities, there are certainly overlapping areas of interests between, for example, Members of the Scottish Parliament and Scottish Members of the European Parliament due to the fact that they represent the same region and due to overlap of policy areas within their competence.

While the European Commission is the only body empowered to initiate European legislation, the European Parliament shares legislative powers with the Council of Ministers; besides, it can veto proposals improved by the Council (cf. The European Parliament website). Some researchers have seen this as a mechanism of protection of sub-national authorities against national states (cf. Sloat 2002: 97).

In the absence of statutory guidelines regulating the relationship between Scottish politicians, the Scottish Parliament European and External Relations Committee has established close links with MEPs and other sub-national authorities in and outside the UK. Scottish MEPs have been regularly participating in the European and External Relations Committee meetings to exchange information and discuss strategies about EU policies affecting Scotland (cf. The Scottish Parliament website). Such communication between Scottish politicians has been productive for the effective cooperation between multiple levels of governance.

The Council of Ministers

The Council of Ministers is the main decision-making body in the European Community, and therefore it is important to examine what channels have been used by the Scottish administration to present its views to the Council.

Already prior to the establishment of the Scottish Parliament, most actors (politicians, UK officials, civic observers, STUC and COSLA officials) had predicted that Scottish participation in the Council of Ministers would be strictly limited. All four parties argued for Scottish participation in the Council of Ministers, although there were disputes about the extant of Scotland's involvement. The Liberal Democrats and the Conservatives called for a statutory involvement in devolved areas of interest, the Labour mentioned the "observer" status, whereas the SNP called for a similar status as German Länder and Flanders who could speak, vote and lead in the Council (Sloat 2002: 181).

Scottish Ministers have continued the pre-devolution practice of attending the Council meetings on areas of disproportionate interest and have occasionally spoken on behalf of the UK as a whole, although it has been up to the UK ministers to decide when it would be appropriate for Scottish ministers to be included or to lead a UK delegation (cf. Sloat 2002: 196). Some officials have emphasised that Scottish ministers must speak to the previously agreed UK line, and therefore their participation can be viewed as merely symbolic (cf. ibid.: 151).

Over the past years, Scottish ministers have participated in a number of Council of Ministers meetings which dealt mainly with fisheries, forestry, agriculture, environment and education, all of which have been referred to as the areas of disproportionate interest in Scotland (cf. Sloat: 216). The figures on the Council

attendance are not published by the Scottish Government, although it is known from the Parliamentary Questions that from the Parliament's opening in 1999 until mid-March 2001 Scottish Ministers attended 18 meetings (cf. ibid.: 217). At the moment it is hard to assess the Scottish impact on EC legislative outcomes due to a lack of reporting by the Scottish Ministers to the Parliament; according to the European and External Relations Committee, such a mechanism of reporting to the Parliament is being developed.

The European Commission

The European Commission has been encouraging regional involvement, and therefore it has welcomed sub-national input from Scotland. Many have emphasised that "the perceived openness of the Commission causes many organisations and sub-national governments to use it as the first point of contact in Europe" (Sloat 2002: 152). According to some observers and representatives of sectoral interests, Scottish officials could submit information to the Commission about devolved issues; officials from COSLA and Scotland Europa have said that it has been possible to influence the work of the Commission by entering the process at an early stage, meeting those who are drafting policy and providing useful consultation (cf. ibid.: 124). The Commission officials themselves have argued that they are trying to listen to all the views, and have stressed that to achieve a positive outcome, regions should voice their concerns during the initial consultation (cf. ibid.: 152).

The European Commission Office in Scotland has been established to represent the EC and explain its policies to the people in Scotland; to report back to Brussels on political, economic and social developments in Scotland; to reveal to the Commission information about the views of the Scottish people on EU-related matters; to follow the work of the Scottish Parliament on the current EU issues and build contacts with the Scottish Ministers and civil servants; to provide reporting on political developments to London, to Brussels and to the media (cf. The website of the Office of the European Commission in Scotland).

Scottish officials have been successfully using personal contacts to present specific problems and solutions collectively. Thus, the Scottish Executive Office has developed links with other Scottish civil servants and representatives of other regions working in Brussels, which has provided for a more successful collective lobbing by a

bloc of regions. Many have doubted the effect of one sub-national parliament among many, but most officials have agreed that collective lobbying has been quite effective (cf. Sloat 2002: 153, 197).

Conclusion

As demonstrated in this chapter, the devolution settlement has affected the process of European policy-making on all three levels: sub-national, national and supranational. Thus, the theory of Multi-Level Governance can be applied to Scotland, given the need for the Scottish Parliament to cooperate with several tiers of government - local authorities, the central UK Government and the European institutions – due to overlapping competences. Compared to the pre-devolution settlement, the role of Scottish sub-national authorities has increased significantly, but this has been seen mainly through mobilisation rather than direct influence on the European politics, since the Scottish Parliament and Executive have highly limited abilities to initiate their own policies on European affairs.

The Parliament has provided for a political presence of Scotland in Brussels by allowing Scottish Ministers to attend and play a role in relevant Council of Ministers meetings. The establishment of Scotland House increased networking opportunities, allowing the Scottish Executive to work closer with other European regions and institutions, and enabling Scottish industries to promote their products and lobby for funding. Consequently, it can be argued that post-devolution Scotland, through various channels discussed in this chapter, has received a much greater degree of representation in the European Union.

Thus, we can conclude that the Scottish Parliament and Executive have not sufficiently increased the *formal* influence on the European policy outcomes on an institutional level, they have provided for *informal* ways of highlighting the distinct Scottish interests. On the national level, the Parliament has publicised the disputes between Scotland and the UK through parliamentary debates and media coverage. This has put more pressure on the UK Government and has enabled observers to judge accurately whether the UK has taken Scottish interests into consideration when formulating its policy line. On the supranational level, the devolution settlement has enabled Scotland to play its part in less formal discussions with EU institutions and to build closer relations with other regional and local governments. In addition, through devolution Scotland has acquired access to those channels of participation in the EU

which are not dominated by the UK, including the European Parliament, the Scottish Executive Office in Brussels and the Committee of the Regions.

3. Devolution in Scotland: Protection of the Union or a Step towards Independence?

In the first two chapters we have chiefly discussed Scotland's pre-devolution representation in the UK policy-formulation on Europe, and the main benefits and challenges which appeared from the devolution settlement in relation to Scotland's ability to voice its opinion in Europe. The last chapter provides an update on the current developments in the Scottish Parliament and concentrates mainly on the new political agenda formulated by the Scottish National Party minority Government after the elections in May 2007. The chapter compares what future the main political parties in the Scottish Parliament see for Scotland in the United Kingdom and in the European Union, and what steps they have taken to change the existing constitutional settlement. It also deals with the issue of legality of the SNP's claim for Scottish independence in Europe by analysing assessments of leading political researches, officials and commentators.

3.1. The SNP vision of Scotland's future

During the first and second terms of the Scottish Parliament, academics predicted a potential tension which could arise when different parties hold offices in Holyrood and Westminster, estimating that the European policy formulation could become one of the main devolution issues. They have expected stronger pressure for Scotland's autonomous action in the EU from an independence party in the Scottish Parliament and, at the same time, constraints on Scottish European influence from the unionist central Government (see, for example, Burrows 2000, Lynch 2001, Sloat 2002). In his speech before the 1999 elections, the SNP leader Alex Salmond gave reasons for such view when he told the European Institute in Brussels that Scotland would not be satisfied with "subsumed" involvement in EU matters. He said: "If the UK position is to be given in the Council of Ministers, it must never be given without either an assent from Scotland or a dissent from Scotland. Our democracy demands nothing less" (Salmond qtd. in Taylor 2002: 175). However, until recently, the situation when the Scottish Parliament is no longer run by a Labour administration could only be examined in hypothetical terms, whereas the May 2007 elections have turned it into political reality for both Scotland and the UK. "Independence in Europe" has returned

on the political agenda provoking a heated debate among all political parties over Scotland's prospects in relation to the UK and Europe. We will consider this problem in two parts: this section will analyse the vision of the road towards an independent Scotland by the Scottish National Party, while the following section will deal with the problem of Scotland's membership in the European Union.

One has to bear in mind that independence is the main reason of existence of the Scottish National Party. Although the opposition parties have argued that the SNP have won the election "by promising that a vote for the SNP would not lead to independence", but only to a referendum (Wendy Alexander MSP in the Scottish Parliament Official Report 6 December 2007 Col 4133), it was clear that an elected SNP Government would promote independence as the best option for Scotland. Unwittingly, some commentators have wondered, referring to the 142,000 invalid ballot papers, how a country which had so much trouble in holding an election could break its ties with the United Kingdom (cf. Telegraph Online Speakers' Corner 4 May 2007).

However, the result of the 2007 elections gave the Scottish National Party one more seat than the Labour, which allowed the SNP to declare a historic victory, even though they are still a minority in the Scottish Parliament and need to form coalitions with the other parties to push their policies through. Some commentators have marked that 2007 was the year when the Union between England and Scotland celebrated its 300th birthday, but it was also the year when Scotland elected its first nationalist government which aims to take Scotland out of the Union, and the first time in fifty years when Labour lost a Scottish election (cf. Lodge and Schmuecker 2007: 90). These events have indicated a radical change in the 1998 devolution settlement, since it is for the first time that one of the devolved administrations opposes the present constitutional principles of the United Kingdom. And therefore, it is likely to be seen in the near future whether devolution has provided for a long-term stable form of regional government or whether it is a step towards a more radical change, such as break-up of the United Kingdom.

The SNP intends to have an independence referendum in 2010 to be able first "to build its credibility and reputation in government" (Nicola Sturgeon MSP in the European and External Relations Committee Official Report 11 December 2007 Col 221). The party has already achieved some success. Alex Salmons has raised the issue about Scottish fisheries, insisting that Scotland should take the lead in the EU negotiations on fishing quotas. Although this is a reserved matter, the SNP has relied

on a chance that a refusal by the Westminster Government to allow Scotland to negotiate on behalf of its fishing industries would allow the SNP to argue that the UK has been selling out Scottish interests in the Council of Ministers, and that an independent Scotland could have obtained a better deal (cf. The Political Quarterly 78.3, Commentary 2007: 342). The SNP has also received a strong support in the Parliament for opposing the renewal of Trident and for rejecting the building of nuclear power stations. Instead, the SNP has proposed increasing renewable energy (ibid.). Again, taken that defense is a reserved matter, it allows the SNP to argue that devolution constraints do not let Scotland settle issues in the way its Government and people would prefer.

The question whether the Scottish Parliament has the powers to hold a referendum on independence has been continuously discussed among MSPs and academics (cf. Alex Neil MSP in the European and External Relations Committee Official Report 11 December 2007, Col 223; cf. Murkens with Jones and Keating 2002: 22). The Scotland Act 1998 makes it explicitly clear that it is outside the competences of the Scottish Parliament to enact legislation on reserved matters, which include "the Union of Kingdoms of Scotland and England" (The Scotland Act 1998, Schedule 5, Part I, para 1(b)). Nevertheless, different views have been expressed, including the one of the late Donald Dewar, the first First Minister of Scotland, who thought that the Parliament has powers to authorise a consultative referendum to gain public opinion (cf. Dewar in Murkens with Jones and Keating 2002: 23). This view have received a wide support from academia (cf. Prof. Neil McCormick, Prof. Colin Munro, Prof. Mark D. Walters in Murkens with Jones and Keating 2002: 23-24), proving that in principle the Scottish Parliament could debate any issue and consult the people of Scotland (but not legislate), regardless of whether the matter is within its legislative competence. The fact that the Government's White Paper[16] that proposed a National Conversation[17] followed by a referendum on independence has been the subject of a special meeting of the European and External Relations Committee proves that the Scottish Executive has the right to debate the issue in the Parliament (cf. The European and External Relations Committee Official Report 11 December 2007).

[16] The White Paper *Choosing Scotland's Future* was published by the Scottish Executive in August 2007. In the foreword the First Minister, Alex Salmond, said: "We in the Government believe that independence would be the best for our country".

[17] A National Conversation on Scotland's constitutional future was launched by the SNP Government in August 2007. Its aims and principles are outlined in the White Paper Choosing Scotland's Future, the main aim being to invite the people of Scotland to express their view and to make decisions on the future of Scotland mainly through a website blog. For consultation see Choosing Scotland Future or the Scottish Government website www.scottishexecutive.gov.uk/Topics/a-national-conversation.

The real challenge for the Scottish Executive will be to introduce a Referendum Bill, which would become a subject to legislative scrutiny and possible challenge. Arguably, it will be even harder to obtain the Parliament's support for the Bill, given that the majority of MSPs represent unionist parties. It remains to be seen whether the Scottish Labour, the Scottish Conservatives and the Scottish Liberal Democrats decide to oppose the Bill fearing that through a referendum the SNP would obtain a wide public support for independence, or whether they would vote for the Bill hoping that the people of Scotland would reject independence and the issue would be wiped off the political agenda, given that "the First Minister is on the record as saying that a referendum is a once-in-a-generation opportunity" (Nicola Sturgeon MSP in The European and External Relations Committee Official Report 11 December 2007 Col 227).

In our view, there are two important reasons for the opposition parties to support a referendum bill. Firstly, as the opinion polls consistently demonstrate, during the last few years a substantial minority of the Scottish population has been in favour of independence (see Appendix 3). On a few occasions support for independence has risen above the average thirty to forty per cent, although those sudden changes have mainly depended on the personality of individual leaders and political developments in Westminster. For example, in November 2006, an ICM opinion poll showed that 52 per cent of people in Scotland approve their country becoming independent, which journalists immediately connected to Tony Blair's "lasting legacy" (Curtice 2006), whereas a You Gov poll in August 2007 showed only 23 per cent of Scots supporting independence (cf. The Scottish Parliament Information Centre). Secondly, if the unionist parties reject a referendum bill lodged by the Scottish Executive, it will give the SNP all the reasons to accuse their opposition of rejecting the right of the Scottish people to decide on their country's constitutional future. However, while there has been a persistent support for home rule in Scotland, it is difficult to see devolution as a step towards independence from the United Kingdom – a development which could only be possible with a radical change in voters' preferences in Scotland.

In addition, there are a number of difficulties with the SNP doctrine of "independence in Europe" which have lately been discussed by journalists and academics. Firstly, Scotland's transition to independence would require negotiations with the UK Government in relation to sharing the assets and liabilities between the remaining part of the UK and an independent Scotland. For example, some experts have assumed that Scotland would be able to keep up to 95 per cent of the UK oil

reserves and nearly half of the gas reserves which matter enormously to the Scottish National Party. Although the largest part of those natural resources lies within the Scottish territory, Chris Bowlby has argued that "property is usually divided in these circumstances – as it was when the Czech Republic and Slovakia split in 1992 – according to population share" (Bowlby 2007). This would mean that Scotland could claim up to eight or nine per cent of the UK's assets, or agree on a compensation deal with the UK central Government. Importantly, together with the natural resources, Scotland would inherit part of the UK's national debt. There would be further issues involved, such as sharing state pension liabilities, military equipment, marine mineral reserves and fisheries. The SNP Government has outlined in the White Paper *Choosing Scotland's Future* that The Queen would remain the Head of State in Scotland upon independence (cf. *Choosing Scotland's Future* para 3.25), however, her role would have to be redefined in a Scottish Constitution and the rule of succession would have to be negotiated with the United Kingdom.

There has been a severe reaction from the UK Government to the First Minister's announcement that Scotland could become an independent state in 2017. Alex Salmond has specified that the Government's strategy is to achieve the UK's economic growth rate by 2011 and the one of small independent EU countries by 2017 (cf. Quinn 2007); in the meantime, the SNP has repeatedly argued that "small European countries work better" (Motion S3M-935 lodged by Alex Neil MSP on 29 November 2007; The SNP website, Independence: Success Stories). And although some of the Labour politicians have acknowledged that Scotland would be able to prosper as an independent country (cf. BBC News, *Labour 'Shift' over Independence*, 3 November 2007), prior to the May 2007 Scottish election Tony Blair has accused the Scottish National Party of creating "a situation of enormous uncertainty and instability" by promoting a bill and a referendum on Scottish independence (Blair qtd. in Wintour and Carrell 2007). He has also expressed his disapproval of the SNP's policy of claiming rights to North Sea oil and condemned the nationalists for betting the country's future on the oil prices (cf. Blair in Devlin 2006).

Membership in the European Union itself presents both a problem and a trump for the Scottish National Party. It is a problem, because the whole philosophy of the SNP is based on economic and political autonomy from the United Kingdom. This contradicts with the idea of the EU membership: once Scotland would obtain independence from Britain, it would quickly lose its economic and political autonomy in favour of the European Union, which would impose political, economic and legal

limitations on a newly independent country. For illustration, Scotland's joining the European Economic and Monetary Union would limit its ability to adjust currency levels and interest rates, and to maintain low inflation. On the other hand, the main benefit of the European membership would be the fact that, supposingly, it would protect an independent Scotland from economic isolation and would enable the Scottish people to participate more directly and efficiently in the process of European decision-making.

3.2. Independence in Europe?

Based on the academic assessments, this section discusses the legality of the SNP's claim that "an independent Scotland would *automatically* [my emphasis] be a member of the European Union upon independence" (Nicola Sturgeon MSP in the European and External Relations Committee Official Report 11 December 2007 Col. 231). In this section, working on a presumption that the SNP Government would achieve sovereignty for Scotland, we aim to answer the question whether Scotland would automatically continue in the EU or whether it would have to re-negotiate its entry. This requires examining the rules for state accession and succession to the European Union, and assessing how those rules would apply to an independent Scotland.

Jo Eric Murkens who worked as the lead researcher on the Scottish Independence project at the Constitution Unit has stated that there is no doubt that Scotland would be entitled to being a member of the EU, since it would certainly meet the criteria for membership[18] (cf. Murkens with Jones and Keating 2002: 115). Thus, the question is not about Scotland's right to enter the EU, but rather about the necessary steps towards it.

The SNP arguing for Scotland's succession in the EU relied on the legal opinion by a French Advocate Maitre Xavier de Roux (cf. ibid.), and on the legal and political position of the European Commission Secretaries General including Professor Emile Noël (cf. Alex Neil MSP in the European and External Relations Committee Official Report 11 December 2007 Col. 233). De Roux argues that the United Kingdom acted

[18] According to the European Council in Copenhagen (1993), the criteria include: democracy, the rule of law, human right and respect for and, protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.

on behalf of Scotland when it entered the European Community in 1973, empowered to do so by the Acts of Union 1707; therefore, a political change would have no impact on the legal status of Scotland in Europe (cf. Murkens with Jones and Keating 2002: 116). Other advocates of this position, including European and international politicians, officials, Ministers and Ambassadors say that if Scotland is willing and able to meet the criteria for European membership, the EU will be flexible to resolve any institutional matters (cf. ibid.). Thus, the SNP's claim that there is a substantial legal opinion supporting their view is valid.

On the other hand, by analysing the provisions of the Vienna Convention on State Succession in Respect of Treaties (1978) which the SNP's claim is based on, Murkens, Jones and Keating conclude that the UK rather then Scotland would be the successor state (or, as they call it, "the continuing state") and will have full rights to continue in international Treaties if Scotland gains independence (Murkens with Jones and Keating 2002: 117).

In relation to Scotland's succession in the European Union, the SNP has relied on the article 34(1) of the Vienna Convention, which covers the case of separation of states:

> When a part or parts of a territory of a state separate to from one or more states, whether or not the predecessor state continues to exist:
>
> a) any treaty in force at the date of succession of states in respect of the entire territory of the predecessor state continues in force in respect of each successor state so formed.
>
> (Art. 34(1) of the Vienna Convention qtd. in Murkens with Jones and Keating 2002: 118)

Murkens, Jones and Keating argue that although this article seems to support the SNP's claim for Scotland's automatic continued membership in the European Union and presents the main argument of the advocates of the claim, they see a number of complications with the assumption that the Vienna Convention would apply to the European Union Treaties. They emphasise that the Treaty of Rome which created the European Community "has established its own legal regime and created an organisation that is fundamental to the substantive legal regime established" (Murkens with Jones and Keating 2002: 118). They continue that the Vienna Convention would not overrule the provisions of the treaty of Rome, since Article 34(2) implies that the application of the treaty to the successor state (in our case Scotland) cannot be "incompatible with the object of the treaty" or "radically change the conditions for its operation" (Art. 34(2) of the Vienna Convention qtd. in Murkens with Jones and Keating 2002: 119). In other words, Scotland's automatic

membership in the European Union as a newly independent state would be incompatible with the formal rules of EU accessions, which require all candidates to apply for membership and the existing member-states to agree on their accession. Controversially, next to the paragraph about Scotland's automatic membership in the EU upon independence, the Scottish Executive's White Paper includes another section which says that "Negotiations would also be required concerning the terms of Scotland's (and the rest of the United Kingdom's) continuing membership of the European Union and other international bodies to which Scotland currently belongs as a component nation of the United Kingdom" (*Choosing Scotland's Future* para 3.18). Thus, the SNP's claims to automatic EU membership and required negotiations seem to contradict one another. Once again, as already mentioned in the beginning of this section, academics and politicians have had little doubt about Scotland's entitlement to being a member of the European Union upon independence; however, based on the existing regulations, the majority opinion argues that Scotland would have to apply to join the EU and negotiate over the conditions and details of its accession, and the existing member-states would have to give their consent. This opinion has been voiced by the members and participants of the Scottish Parliament European and External Relations Committee – Irene Oldfather MSP and Jackie Baillie MSP - in the Committee meeting on 11 December 2007, where the Scottish Executive's White Paper *Choosing Scotland's Future* was discussed (cf. The European and External Relations Committee Official Report 11 December 2007). It has also been supported by academics who relied on the International Law Commission (cf. Murkens with Jones and Keating 2002: 120).

Researchers have considered three possible scenarios for Scotland's membership in the EU without succession: 1) the EU could introduce a new rule that a newly independent part of an existing member-state automatically becomes a member of the EU; 2) the EU could simplify and accelerate the process of accession for Scotland; 3) the EU could apply general rules to Scotland and make it apply for accession as a new applicant state (cf. Murkens with Jones and Keating 2002: 121). Certainly, much would develop on the political context of the situation, as well as on the relations between the UK, the EU and newly independent Scotland. But, even more importantly, in none of those scenarios would it be for Scotland to decide how the process of its accession is carried out. Until today, all membership applications have required consent of the existing member-states. Thus, during the interviews conducted in the Scottish Parliament, some MSPs expressed their concern that Spain

could veto Scottish membership fearing to provoke a rise of separatist movements within its own territory. Besides, it ought to be kept in mind that the remaining part of the UK would also have to give its consent. The Scottish Government in its White Paper *Choosing Scotland's Future* has acknowledged that transition to independence would require negotiations with the United Kingdom Government concerning the terms of independence and the details of transition (cf. *Choosing Scotland's Future* para 3.14); thus, those negotiations would have to be smooth and amicable, as their results could have an impact on Scotland's future position in Europe.

In the worst case scenario, if Scotland for whatever reason found itself outside the EU, the status of Community law which has been applied to Scotland as part of the UK since 1973 would be ambivalent. According to Murkens, Jones and Keating, Community law would continue to apply, and "EC Regulations and domestic laws applying EC Directives on fishing or the environment would remain law until an independent Scotland changed them – which it could do if it wanted" (Murkens with Jones and Keating 2002: 122). On the other hand, Scotland would lose the EU rights, including free movement and non-discrimination, as it would no longer be a member-state, and it would not be obliged to adopt any future EC legislation or follow decisions of the European Court of Justice (cf. ibid.: 127).

Interestingly, some SNP members have said that Scotland would not necessarily choose to join the European Union, but follow Norway's example and make its own individual agreements with Brussels (cf. Bowlby 2007). However, the Government's position stays with the automatic continuing membership (cf. European and External Relations Committee Official Report 11 December 2007 Col. 231), although apart from Community law, this would largely depend on the political negotiations. The scenario of Scotland's exclusion from the European Union seems to be unrealistic in the era of the European enlargement; however, the political factor might add complications to the process of Scotland's accession. In addition to MSPs' fears regarding Spain's veto, politicians and commentators found it hard to believe that Germany, France, Italy, Spain, Austria and Belgium would watch the process of Scottish independence and accession in the EU without any resistance, while their regions would be observing the improvements and weaknesses applying them to themselves (cf. Robin Cook, Prof. Clive Archer in Murkens with Jones and Keating 2002: 123).

Many, however, have supported the opposite point of view. Those including the SNP members and supporters have argued that as long as Scottish independence is

the democratic will of the Scottish people, no European member-state would have the right and the valid reason to block Scottish accession to the EU. Proceeding from this assumption, the SNP leaders have asserted that the United Kingdom Government would have to resolve the matter in a democratic way if the people of Scotland express a majority support for independence, since Scotland is not just a region – it is a nation within the UK with its own distinct traditions, values and rights (cf. The Scottish National Party website). According to this claim, Scottish independence would be an internal matter, and it would have to be resolved between the Scottish and the UK Governments without interference of other states. But given that Scotland is currently a member of the European Union as a territory of the UK, the EU would naturally be involved into the process, mainly:

> A Scotland bent upon independence grounded in the clear democratic support of the Scottish people would create a moral and, given the international law principle of self-determination, probably a legal obligation for all member states to negotiate in good faith in order to produce a result [agreed by all member states]. (Lane 1991 qtd. in Murkens with Jones and Keating 2002: 125)

However, since there have been no precedent of secession within the European Union, it is hard to predict the future of an independent Scotland in Europe. Brussels officials refuse to speculate before the issue becomes a reality, neither does this paper aim to do so.

3.3. The Scottish Constitutional Commission

As demonstrated in section 3.1 and Appendix 3, a consistent minority of the Scottish population has been in favour of independence over the last few years. However, the majority of Scots have favoured giving the existing Parliament more powers (see Appendix 3). Peter Lynch, analysing the 1997 referendum survey, says that Scottish voters had expected that the new devolved Parliament would improve the Scottish economy, welfare state and unemployment, even though these were reserved matters (cf. Lynch 2001: 181). Many had expected that the Scottish Parliament would become the most important political institution for Scotland. Opinion polls of 1999 and 2000 demonstrated that voters wanted the Scottish Parliament to have more influence than Westminster (cf. ibid.: 182-183). Thus, the issue of increasing the Parliament's responsibilities had to be addressed by all Scotland's political parties, not just the SNP.

After having lost the May 2007 election to an independence party, the Scottish Labour had to reassert Labour's leadership around Scotland's constitutional future. We can observe a certain similarity between the Labour's agenda in 1974-1979 and in 2007. In 1974-1979, when Labour was threatened by the SNP's potential to challenge Labour's leadership within Scotland, this situation was crucial in convincing Labour to support the establishment of a devolved Scottish Assembly (cf. Lynch 2002: 173), even though the campaign did not lead to devolution, but only to a failed referendum of 1979. Similarly, in 2007 when the SNP, through a major breakthrough, found themselves in Government and Labour in opposition, Labour initiated the establishment of a new Scottish Constitutional Commission using it as a defense against the SNP's National Conversation and independence referendum.

The establishment of the Commission has been supported by all three unionist parties both north and south of the border – Labour, Conservatives and Liberal Democrats. According to the Scottish Labour leader, Wendy Alexander, the Commission will seek to provide a future for Scotland "which would allow [it] to walk taller without having to walk out" (Wendy Alexander MSP in the Scottish Parliament Official Report 6 December 2007 Col 4133).

During a parliamentary debate on the new Constitutional Commission on 6 December 2007, Labour has accused the SNP of not having consulted the parliament before having initiated a National Conversation, and of having already decided what the only acceptable outcome of the National Conversation will be (ibid. Col 4134-4135). There is a lot of controversy about this statement. On the one hand, the national conversation has not been agreed by the Scottish Parliament, which is a democratically elected body representing the people of Scotland. On the other hand, the national conversation seeks, at least rhetorically, to involve the Scottish people into a discussion of their country's future directly, without the Parliament's mediation.

The leaders of the Scottish Conservative and Liberal Democrat parties have raised a number of fair points. Annabel Goldie has argued that the agreement between the opposition parties on establishment of a new Constitutional Commission has proved that the issue is beyond party politics, whereas independence is the agenda of the Scottish National Party and not Scotland's agenda. She called the SNP's National Conversation "a nationalist conversation", arguing that the SNP's only desire is "to rip Britain apart" (Annabel Goldie MSP in the Scottish Parliament Official Report 6 December 2007 Col 4142). Nicol Stephen has pointed out that the unionist parties

through a cross-party initiative created the Scottish Parliament – the process in which the SNP did not take part. He has contradicted the SNP's claim that a Constitutional Commission would exclude the views of the Scottish people and suggested that Scottish business, civic Scotland, the churches and the voluntary sector should have a significant and direct involvement in the process (cf. Nicol Stephen MSP in the Scottish Parliament Official Report 6 December 2007 Col 4145).

It has been agreed by the unionist majority in the Scottish Parliament that a new Constitutional Commission will be formed as an independently chaired body which will review the devolution arrangements in the light of experience and recommend any changes to the existing settlement. Besides, an important aim of the Commission will be to secure the future of Scotland within the United Kingdom by devolving more powers and giving more responsibility to the Scottish Parliament. The opposition parties have agreed that increasing financial accountability of the Scottish parliament should become one of the key issues addressed by the Commission (cf. Wendy Alexander's speech in the University of Edinburgh: 30 November 2007), however, other possible issues have not been explicitly mentioned. It is not clear whether the Commission will address the European dimension of the Scotland-UK relationship and whether it could recommend any changes for improvement of Scotland's representation in the European Union. We will find out when the Commission present its results, presumably by the end of 2009[19].

Conclusion

It is remarkable that each of the major political parties represented in the Scottish Parliament has made proposals for revision of the existing devolution settlement. The SNP Government, in addition to proposing independence as a long-term solution, has argued for extension of the Parliament's responsibilities for North Sea oil and gas, fisheries, civil service and broadcasting (cf. *Choosing Scotland's Future* para 1.15). The main opposition parties – the Scottish Labour, the Scottish Conservatives and the Scottish Liberal Democrats – have proposed establishing a new Scottish Constitutional Commission to review the devolution settlement in the light of

[19] In her speech given on St.Andrew's Day at the University of Edinburgh, Wendy Alexander said that if established early in 2008, the Commission might sit for about 18 months hearing evidence and drawing its conclusions. At the end of the process it would present the results which would not be

experience and to recommend changes to the current constitutional arrangements. Whatever implication this could have on the UK and European constitutional landscapes in future, it is clear that devolution is not static and will continue to be on top of sub-national, national and international political agenda.

The parliamentary debate on the Scottish constitutional future has demonstrated that all the parties represented in the Scottish Parliament recognise that the status quo is not an option for Scotland. In terms of European representation and influence, only the SNP's preferred option - "independence in Europe" and in the world – outlines clearly the aim of the current Scottish administration to achieve direct representation for Scotland in international bodies at the same level as other independent states. However, as discussed in sections 3.1 and 3.2, it remains debatable whether Scottish voters will support independence from the UK and, if they do, how long negotiations on Scotland's accession in the EU would take. The opposition parties have supported extension of powers, but they have yet to define which powers could be further devolved to the Scottish Parliament. Most likely, this is going to be the task that the new Scottish Constitutional Commission will engage in. It seems likely that the Commission will recommend devolution of further powers to Scotland, and that the Scottish Parliament will use the report by the Commission to start negotiations with the central UK Government. However, it is hard to predict whether Scotland could receive additional powers with regard to relations with the European Union during the next devolution phase.

---

binding but could be considered by all political parties. For further consultation see http://wendy.intraspin.com/2007/11/30/a-new-agenda-for-scotland.

Conclusion

Devolution has become a permanent feature of the British political landscape, and its significance for the regional, national and supranational decision-making process should not be underestimated. As discussed in this paper, the powers reserved under the Scotland Act to the UK Parliament and Government in key areas including the constitution, foreign policy and macro-economic policy remain considerable; nevertheless, the Scottish Parliament and Executive have already started to participate actively in UK-level discussions on European matters – a right which has been guaranteed to Scotland under the devolution legislation.

The research carried out for this thesis has demonstrated that the European dimension of Scottish devolution has been the central topic of numerous academic essays on political science, constitutional law and international relations. Building on their findings, this paper has argued that a strong UK constitutional tradition of parliamentary sovereignty, the years of Conservative rule, the European trend for regionalisation and the increasing role of regions in the European Community reinforced the demand for home rule in Scotland. However, on the pre-devolution stage, the Conservative central Government was extremely skeptical about sharing its powers with the other levels, regional and European, which constituted a double-edged constitutional problem.

The establishment of the Scottish Parliament has signified a new era in British politics. The newly established body has become a symbol of transparency, accountability, inclusiveness and greater representation in politics. On the other hand, the UK Government had to impose strict limitations on the devolutionary process to secure the future of the Union. As a consequence, the ability of the Scottish Executive to pursue a separate policy line in the European Union was restricted by the Scotland Act 1998, the Memorandum of Understanding between the UK Government and the Scottish Executive and by the supplementary concordats. The analysis of those documents has shown that relations with the European Union have remained responsibility of the central Government. Instead, the Scottish Parliament and Government have been offered a greater participatory role in formulation of the UK resulting policy line on European affairs.

In the introduction to this thesis, we set two important research questions: 1) whether Scotland post-devolution has received a degree of direct representation in Europe and 2) whether the Scottish position has been better included in the

formulation of the UK policy on European matters. The answer to the second question is a qualified yes. Devolution has created new mechanisms of multi-level governance in Scotland, where the Scottish Parliament needs to cooperate and consult with the other levels due to overlapping competences. Scottish Ministers have been able to participate in discussions with the UK Government on those European issues which affect Scotland; the Scottish Parliament European and External Relations Committee has developed working schemes to scrutinise EU legislative proposals and decide on their implementation in Scotland; and the Scottish Executive has established a politicised representative office in Brussels.

The answer to the first question is less definite. We think that Scotland has achieved a degree of influence on European policy outcomes, although it needs to be emphasised that such influence is strictly limited by the existing legislative framework. We have taken an actor-centred approach to Multi-Level Governance and analysed the ability of the Scottish Parliament and Executive to influence political decisions separately at the regional, national and European levels.

At the regional level, the most available channel of influence is the ability of the European and External Relations Committee to implement the European legislation in devolved areas in different ways from the central Government after consulting more broadly with potentially affected organisations. Besides, the Scottish Parliament has been able to put more pressure on the UK Government by publicising the disputes over European agenda through parliamentary debates and media coverage.

At the national level, Scotland has been able to cooperate with the other UK regions to modify the UK European policy agenda through the work of the Joint Ministerial Committee. In addition, in the areas where Scotland has a disproportionate interest, Scottish Ministers have been able to participate in UKRep working groups and promote their distinct position.

At the European level, devolution has provided Scotland with an opportunity to speak for the UK in relevant meetings of the Council of Ministers, to be involved in less formal discussions with the European institutions and to cooperate with other regional and local governments. Furthermore, Scotland post-devolution has acquired access to those channels of European influence which are not dominated by the UK – the European Parliament, the Committee of the Regions and the European Commission.

The paper has addressed the current debate in the Scottish Parliament between the supporters of further devolution and proponents of independence, which has often

been focused on how to improve the standard of governance in Scotland within a larger European environment. Importantly, the paper was written at a unique moment in the British political history when the Scottish Parliament is no longer run by a Labour dominated administration. The SNP Government has clearly articulated its aim to achieve independence for Scotland with a subsequent full membership in the European Union and other international organisations. In response, in December 2007 the supporters of further devolution – the three main opposition parties – have voted for an establishment of an independently chaired Constitutional Commission to examine the devolution settlement and recommend further improvements.

It is yet to be seen whether these developments will provide Scotland with additional powers in relation to European affairs. As it often happens in politics, much will depend on circumstances. The revival of the Conservative party and its challenge to the Labour leadership at the next UK parliamentary election in 2009, a growing pressure for resolution of the West Lothian question and the Kosovo precedent are to be named as the most current factors which could radically change preferences of Scottish voters. These questions go beyond the scope and time frame of this paper and could be addressed in future research.

This thesis has provided a comprehensive and up-to-date analysis of the main changes that have occurred in relation to Scotland's representation in Europe in the post-devolution era. It has also covered the most recent developments in Scottish politics under the current administration and set a number of questions for future research. The results of this thesis can be used as a consultative material by students and researchers in Scottish and British politics, as well as by a wide circle of readers interested in devolution, politics and international relations.

Bibliography

Alexander, Wendy. *A New Agenda for Scotland*. Speech to the Institute of Governance, University of Edinburgh. 30 November 2007. http://wendy.intraspin.com/2007/11/30/a-new-agenda-for-scotland. Last viewed 25 February 2008.

"A New Agenda for Scotland". Motion S3M-976 in the name of Wendy Alexander. 4 December 2007. http://www.scottish.parliament.uk/Apps2/business/motions/Default.aspx?motionid=12842. Last viewed 25 February 2008.

Annual Report of the Scottish Parliament Committees 2000. http://www.scottish.parliament.uk/corporate/anrep-accts/spar/cttees-00/spacr00-03.html#01. Last viewed 25 February 2008.

Bogdanor, Vernon. *Devolution in the United Kingdom*. Oxford: Oxford University Press, 1999.

Bomberg, Elizabeth and John Peterson. "European Union Decision-Making: The Role of Sub-National Authorities". *Political Studies* 2 (June 1998): 219-235.

Bonney, Norman. "The Scottish Parliament and Participatory Democracy: Vision and Reality". *The Political Quarterly* (2003): 459-467.

Bowlby, Chris. "A Scottish divorce… who gets the kids?" *BBC News Online*. 6 December 2007. http://news.bbc.co.uk/2/hi/uk_news/magazine/7129382.stm. Last viewed 25 February 2008.

Burrows, Noreen. *Devolution*. London: Sweet & Maxwell, 2000.

Burrows, Noreen. "Unfinished Business: The Scotland Act 1998". *The Modern Law Review* 62.2 (March 1999): 241-260.

"Commentary: Devolution – The Next Phase". *The Political Quarterly* 78.3 (2007): 341-343.

"Committee of the Regions". http://www.cor.europa.eu/pages/HomeTemplate.aspx. Last viewed 25 February 2008.

Curtice, John. "Tony Blair's lasting legacy could be end of the Union". *Telegraph Online*. 25 November 2007. http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/11/26/nunion126.xml. Last viewed 25 February 2008.

Dardanelli, Paolo. "Democratic Deficit or the Europeanisation or Secession? Explaining the Devolution Referendums in Scotland". *Political Studies* 53 (2005): 320-342.

Davies, Ron. *Devolution: a process not an event*. Cardiff: Institute of Welsh Affairs, 1999.

Devlin, Kate. "PM attacks SNP's 'politics of grievance'". *Telegraph Online*. 25 November 2007. http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/11/25/nlabour225.xml. Last viewed 25 February 2008.

"European Parliament". http://www.europarl.europa.eu/news/public/default_en.htm. Last viewed 25 February 2008.

Ezzamel, Mahmoud and Noel S. Hyndman and Age Johnsen and Irvine Lapsley and June Pallot. "Has Devolution Increased Democratic Accountability?" *Public Money and Management* (June 2004): 145-152.

Gifford, Chris. "Political Economy and the Study of Britain and European Integration: A Global-National Perspective". *Political Studies* Association (2006): 1-16.

Gillespie, Paul. *Britain's European Question: The Issues for Ireland*. Dublin: Institute of European Affairs, 1996.

Hooghe, Liesbet. "Subnational Mobilisation in the European Union". *West European Politics* 18.3 (July 1995): 175-198.

"Is Scotland ready for independence?" *Telegraph Online*. 4 May 2007. http://www.telegraph.co.uk/news/main.jhtml?view=BLOGDETAIL&grid=F11&blog=yourview&xml=/news/2007/05/04/ublview04a.xml. Last viewed 25 February 2008.

Jeffery, Charlie. "Sub-National Mobilization and European Integration: Does it Make Any Difference?" *Journal of Common Market Studies* 38.1 (March 2000): 1-23.

"Joint Ministerial Committee". Research Note 00/70. The Scottish Parliament Information Centre: 6 September 2000.

Keating, Michael and Barry Jones. "Nations, Regions, and Europe: The UK Experience". *The European Union and the Regions*. Eds. Barry Jones and Michael Keating. Oxford: Oxford University Press, 1995.

"Labour 'shift' over independence". *BBC News Online*. 3 November 2007. http://news.bbc.co.uk/2/hi/uk_news/scotland/7075988.stm. Last viewed 25 February 2008.

Little, Gavin. "Scotland and parliamentary sovereignty". *Legal Studies* (2004): 540-567.

Lodge, Guy and Katie Schmuecker. "The End of the Union?" *Public Policy Research* (June-August 2007): 90-96.

Lynch, Peter. *Scottish Government and Politics: An Introduction*. Edinburgh: Edinburgh University Press, 2001.

Marks, Gary. "An Actor Centred Approach to Multilevel Governance". *The Regional Dimension of the European Union*. Ed. Charlie Jeffery. London: Frank Cass, 1997: 20-38.

Marks, Gary and Doug McAdam. "Social Movements and the Changing Structure of Political Opportunity in the European Union". *West European Politics* 19.2 (April 1996): 249-278.

McFadden, Jean and Mark Lazarowicz. *The Scottish Parliament: An Introduction*, 3rd ed. London: LexisNexis, 2003.

Milfull, John. *Britain in Europe: prospects for change*. Aldershot: Ashgate, 1999.

Mitchell, James. "Devolution's Unfinished Business". *The Political Quarterly* 77.4 (2006): 465-474.

Mitchell, James. "Scotland and the New Regionalism". *Britain in Europe: prospects for change*. Ed. John Milfull. Aldershot: Ashgate, 1999.

Mooney, Gerry and Gill Scott and Charlotte Williams. "Introduction: rethinking social policy through devolution". *Critical Social Policy* 26.3 (2006): 483-497.

Murkens, Jo Eric and Peter Jones and Michael Keating. *Scottish Independence: A Practical Guide*. Edinburgh: Edinburgh University Press, 2002.

"Office of the European Committee in Scotland". http://ec.europa.eu/unitedkingdom/about_us/office_in_scotland/index_en.htm. Last viewed 25 February 2008.

Quinn, Joe. "Salmond: 'Independence for Scotland in ten years'". *Scotsman Online*. 13 November 2007. http://thescotsman.scotsman.com/politics/Salmond-Independence-for-Scotland-in.3498186.jp. Last viewed 25 February 2008.

Rawlings, Richard. "Concordats of the Constitution". *Law Quarterly Review* 116 (2000): 257-286.

Robbins, Keith. "Britain and Europe: devolution and foreign policy". *International Affairs* 74.1 (1998): 105-118.

Scottish Constitutional Convention. *Scotland's Parliament, Scotland's Right*. Edinburgh: COSLA, November 1995.

Scottish Executive. *Choosing Scotland's Future: A National Conversation*. Edinburgh: Scottish Executive, August 2007.

Scottish Office. *Scotland's Parliament*. London: Scottish Office, 1997.

Sloat, Amanda. *Scotland in Europe: a study of multi-level governance*. Bern: Peter Lang, 2002.

"Small European Countries Work Better". Motion S3M-935 in the name of Alex Neil MSP. 29 November 2007. http://www.scottish.parliament.uk/Apps2/business/motions/Default.aspx?motionid=12790. Last viewed 25 February 2008.

Taylor, Brian. *The Road to the Scottish Parliament*, revised ed. Edinburgh: Edinburgh University Press, 2002.

The Amsterdam Treaty 1997. http://www.unizar.es/euroconstitucion/Treaties/Treaty_Amst.htm. Last viewed 25 February 2008.

"The Electoral Commission". http://www.electoralcommission.org.uk/ referendums. Last viewed 25 February 2008.

The European and External Relations Committee Official Report. 11 December 2007. http://www.scottish.parliament.uk/s3/committees/europe/or-07/eu07-0902.htm#Col215. Last viewed 25 February 2008.

"The European Union". http://europa.eu/index_en.htm. Last viewed 25 February 2008.

The Maastricht Treaty 1992. http://www.unizar.es/euroconstitucion/Treaties/Treaty_Maast.htm. Last viewed 25 February 2008.

The *Scotland Act 1998*. http://www.opsi.gov.uk/acts/acts1998/ukpga_19980046_en_1. Last viewed 25 February 2008.

"The Scotland Office". http://www.scotlandoffice.gov.uk. Last viewed 25 February 2008.

"The Scottish Government". A National Conversation. http://www.scotland.gov.uk/Topics/a-national-conversation/Tell-us/Blog/scotworldfm2. Last viewed 25 February 2008.

"The Scottish National Party". Independence: Success Stories. http://www.snp.org/independence/success. Last viewed 25 February 2008.

The Scottish Parliament Official Report. Devolution Review. 6 December 2007. http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-07/sor1206-02.htm#Col4133. Last viewed 25 February 2008.

The Scottish Parliament Official Report. First Minister's Question Time. 20 December 2007. http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-07/sor1220-02.htm#Col4691. Last viewed 25 February 2008.

The Scottish Parliament Official Report. Memorandum of Understanding and Concordats. 7 October 1999. http://www.scottish.parliament.uk/business/

officialReports/meetingsParliament/or-99/or021202.htm#Col1097. Last viewed 25 February 2008.

"The Scottish Parliament". Information about the European and External Relations Committee. http://www.scottish.parliament.uk/s3/committees/europe/ index.htm. Last viewed 25 February 2008.

The Single European Act 1986. http://www.unizar.es/euroconstitucion/Treaties/ Treaty_SingleEA.htm. Last viewed 25 February 2008.

The Treaty of Paris 1951. http://www.unizar.es/euroconstitucion/Treaties/ Treaty_Paris.htm. Last viewed 25 February 2008.

The United Kingdom Government. *Memorandum of Understanding and Supplementary Agreements.* London: The UK Government, 2001.

Wintour, Patrick and Severin Carrell. "Independence for Scotland would be crazy, says Blair". *Guardian Online*. 17 January 2007. http://www.guardian.co.uk/ politics/2007/jan/17/scotland.devolution. Last viewed 25 February 2008.

Appendix 1. The results of the referendums Scotland 1979 and Scotland 1997

Scotland – 1979

The question asked in the 1979 Scotland referendum was:

"Do you want the provisions of the Scotland Act to be put into effect?"

The result of the referendum was:

Yes: 51.6%

No: 48.4%

Turnout: 63.8%

Scotland - 1997

Two questions were asked at the 1997 Scotland referendum. The first involved the creation of a Scottish Parliament:

1. I agree that there should be a Scottish Parliament; or
2. I do not agree that there should be a Scottish Parliament

The result of the first question was:

Option 1: 74.3%
Option 2: 25.7%
Turnout: 60.4%

The second question involved tax-varying powers:

'1. I agree that a Scottish Parliament should have tax-varying powers; or
2. I do not agree that a Scottish Parliament should have tax-varying powers.'

The result of the second question was:

Option 1: 63.5%
Option 2: 36.5%
Turnout: 60.4%

Source: The Electoral Commission

http://www.electoralcommission.org.uk/referendums/Scotland1979.cfm,

http://www.electoralcommission.org.uk/referendums/Scotland1997.cfm

Appendix 2. Scottish Parliamentary Election Results 2007

Table 1: Scottish Parliamentary Election Results 2007

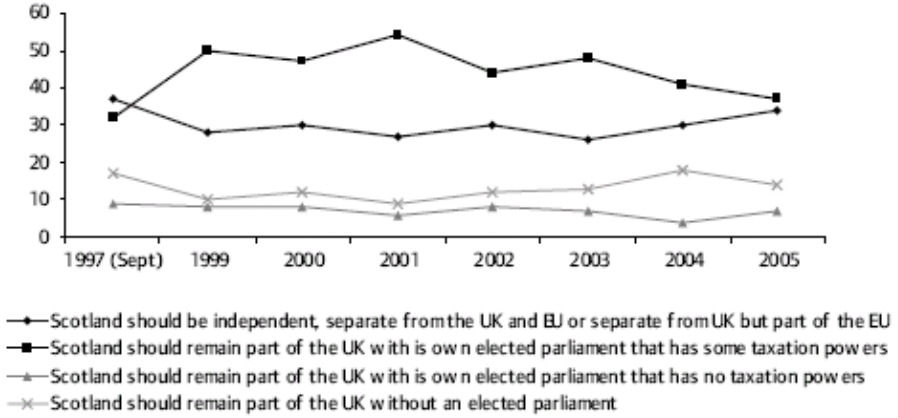
	Constituency vote % (+/- compared to 2003)	List vote % (+/- compared to 2003)	Constituency seats	Regional seats	Seats +/- compared to 2003	Total
SNP	32.9 (+9.1)	31 (+10.1)	21	26	+20	47
Labour	32.3 (-2.3)	29 (-0.3)	37	9	-4	46
Conservatives	16.6 (=)	13.9 (-2.2)	4	13	-1	17
Liberal Democrats	16.2 (+0.9)	11.3 (-0.5)	11	5	-1	16
Green	0.2 (+0.2)	4 (-2.9)	0	2	-5	2
Scottish Socialist Party	0 (-6.2)	0.6 (-6.1)	0	0	-6	0
Other	1.2 (-2.2)	1 (-7.9)	0	1	-3	1

Sources: BBC Scottish Elections 2007; BBC Scottish Elections 2003

Source: Lodge, Guy and Schmuecker, Katie. "The End of the Union?" *Public Policy Research* June-August (2007): 91.

Appendix 3. Support for Scottish Independence

Figure 1: Support for Scottish independence compared to other options



Source: Data taken from Curtice (2006a) and Scottish Social Attitudes 2004; 2005. (accessed through UK Data Archive 31/05/07)

Table 2: Response to the statement: 'The Scottish Parliament should be given more powers'

	2000	2001	2003	2005
Strongly agree/agree	66	68	60	63
Neither agree nor disagree	15	14	16	17
Strongly disagree/disagree	17	16	22	18

Note: Missing years as question not asked every year
Sources: Scottish Social Attitudes Surveys 2000; 2001; 2003; 2005 (accessed through UK Data Archive, 31/05/07)

Source: Lodge, Guy and Schmuecker, Katie. "The End of the Union?" *Public Policy Research* June-August (2007): 91-92.