

## Speech JohnMac Lecture

May I begin by thanking you for affording me the singular honour of delivering this lecture in commemoration of one of Scotland's most distinguished academics and politicians.

We are familiar in Scotland with the West Lothian question. But John P Mackintosh presented us with the East Lothian question. Or, more precisely, the Berwick and East Lothian question.

Was it not feasible, he argued persuasively and persistently, that a method could be found to provide Scots with a measure of Home Rule?

Indeed, his words are now hewn into the stone of the Holyrood building, at the threshold of the Donald Dewar room.

I quote. "People in Scotland want a degree of government for themselves. It is not beyond the wit of man to devise the institutions to meet these demands."

This proved prescient. Institutions have indeed been devised. The process moved a previous Mackintosh lecturer, the late John Smith, to describe devolution as "the settled will of the Scottish people".

By that phrase, I believe that John Smith meant that the self-government proposals on offer at the time would not be resisted. However, it does not seem that the current devolutionary structure is proving to be the final will of the Scottish people.

The governance of Scotland and the wider UK is again under scrutiny. At Westminster, a Commission is studying the West Lothian question regarding the voting powers of MPs from Scotland – although there are few signs thus far that they will be any more successful than previous generations in completely solving Tam Dalyell's conundrum.

West Lothian is a serious issue, with substantial consequences. However, I hope you will forgive me if this evening I focus rather upon another constitutional issue: the practical considerations attending a referendum on independence.

Now, Alex Salmond is nothing if not benevolent and warm-hearted. He has argued that, given time and a little practice, the good and sensible people of England could almost certainly learn to govern themselves without Scotland's help.

Independence, of course, instantly addresses West Lothian - by reducing the number of Scots MPs to zero. However, for those Unionists who are inclined to grumble about Scotland's role in the Commons, it has one tiny snag. It dissolves the very Union they seek to protect.

Hence, I believe, the discernible cooling on the West Lothian issue by the Prime Minister and others. They appreciate that over-zealous complaints about Scottish representation at Westminster could lead to an outcome which they definitely deprecate. Indeed, David Cameron is on record as saying: "Better an imperfect Union than a perfect divorce."

Before delving into the details of a referendum, let us contemplate the broader nature of Scottish self-government, starting with the present institution: with devolution as advocated by John P Mackintosh. Because the recreation of Scotland's Parliament is in itself truly remarkable – whatever your views on the ultimate destination.

Glance back with me into history, to the Treaty of Union 1707. If you will forgive me, we will skip the sections on such matters as malt tax and foreign salt. They are a little too racy for a genteel company such as this.

Instead, let us confine ourselves to considering the fundamentals.

Article One specifies that: the Two Kingdoms of Scotland and England shall upon the 1st May next ensuing the date hereof, **and forever after** be United into One Kingdom by the Name of GREAT BRITAIN:

Article Two sets out the Protestant Hanoverian succession to the Crown.

And Article Three provides That the United Kingdom of Great Britain be Represented by one and the same Parliament, to be stiled the Parliament of Great Britain.

In those three articles, we have the incorporating Union favoured by the court, adopted by the Treaty commissioners, supported by some and loathed by others, then and since.

But think. Under devolution, that 300-year-old incorporating Union has at the very minimum been amended. It has been subject to caveat. The United Kingdom still has that one and the same Parliament, at Westminster. Except Scotland has another Parliament of her own to consider, to debate and to make the law in most domestic matters.

And now, in its turn, that devolved Parliament is under close scrutiny. We have the Scotland Bill going through Westminster which devolves further powers to Holyrood, including enhanced financial powers.

This Bill has been variously described as the most substantial transfer of fiscal power to Scotland since the Union – or as a con trick to impoverish the Scots. Those sundry analyses were offered by Michael Moore, the Scottish Secretary, and by Alex Salmond, the First Minister. I will leave you to guess who said what.

The Scotland Bill emerged from the Calman Commission set up by Labour, the Conservatives and the Liberal Democrats. It may thus be seen as representing the consensus position to date of those parties advocating the Union.

However, the Scottish Liberal Democrats have also set up a Commission to examine the prospect of further new powers for Holyrood as part of a wider rethink, including the role of local government. As evidence of its internal clout, this Commission is to be chaired by Sir Menzies Campbell, the party's former leader.

In detail or in outline, we have before us at least two options for amending the Union still further. Calman and what we might call Devo Max.

However, by far the greatest attention is currently being paid to the third suggestion with regard to the Union. That it should be repealed. That there should be a referendum enabling Scots to vote to establish an independent state.

The package as envisaged by Alex Salmond involves continuing but distinct membership of the European Union, the retention of the Queen as Scotland's head of state – and what Mr Salmond calls a “social union” with England and the rest of these islands.

To fundamentals on the referendum, then. When I was first training as a journalist, I was advised that the classic questions to ask in most situations were: **who, what, when, where, why?**

That has stuck with me – as has the advice of my tutor who said that what a journalist really needed was “ratlike cunning”. Perhaps one or two of my interviewees, perhaps indeed a few in this audience, may feel that I have subsequently taken that lesson particularly to heart.

But, setting that to one side, let us indeed ask with regard to the referendum: **who, what, when, where, why?** I intend to address each of these questions - although not necessarily in that order and not entirely in distinct silos, without overlap.

The last shall be first. **Why** hold a referendum? Why do we need such a test of public opinion on the issue of independence? At its simplest, because the party which won most votes in the recent Scottish elections had such a policy at the core of its manifesto and genuinely believes that independence would be in the interests of the Scottish people.

Throughout its history, the Scottish National Party has broadly had two aims: independence; and furthering the interests of the Scottish people.

That second aim of furthering Scottish interests was cited when, after debate, the SNP voted to campaign actively for a Yes/Yes vote in the 1997 devolution referendum – despite the project on offer falling far short of their long-standing ambitions for Scotland.

In practice, though, the party believes that the objective of independence provides the best vehicle for delivering the other aim, that of furthering Scottish interests. Other parties, of course, dissent. Hence the referendum.

At various points, the SNP previously argued that outright victory for their party, initially among Scottish numbers at Westminster, latterly at Holyrood, would of itself constitute a mandate for independence.

With the passage of time, SNP strategy shifted. Party leaders concluded that confronting Scots at election time solely or predominantly with the party's long-term aim of independence could be counter-productive. The voters wanted to hear ideas for addressing their immediate day-to-day concerns: on jobs, the economy, health and education.

The SNP firmly retained the belief that independence would provide the best answer to each of these issues. But they decided that, tactically, it was better to go with the gradualist grain of popular opinion than to seem to swim against it in pure, fundamentalist water.

Further, it could legitimately be argued that people participating in a Westminster or Holyrood general election were influenced by a myriad of issues – and not solely by the question of independence, however central that was to the SNP's offer.

Further still, the SNP adopted and adapted a strategy already pursued by Labour with regard to devolution. Think back to the 1997 General Election campaign.

Each day, Labour wanted to talk about health or education or another aspect of policy detail. Each day, we in the wicked media wanted to ask about devolution. Suppressing exasperation, Labour leaders would gently explain that devolution was an issue to be settled later, by the Scottish people, in a referendum.

In the event, Labour won the election by a landslide and then secured a comfortable majority for both questions in the referendum, with support from the Liberal Democrats and the SNP.

Mr Salmond has since noted, with only a hint of a wry smile, that this created a splendid precedent for his own plans with regard to a referendum upon independence.

In sum, then, the SNP believes that a referendum provides the surest test of support for independence – and that they have a mandate to introduce such a test on the basis of the Holyrood elections in May.

Opponents are vigorously challenging the detail of the SNP's plan for a plebiscite. But there is widespread acceptance that the question should now be put. That, fundamentally, is **why** we are to have a referendum.

Next, **who** should participate in this referendum? With which I intend to ask the question **where?**

Some have suggested that independence for Scotland is a matter which affects the whole of the UK and, as such, should be tested across the whole of the UK.

Now, it is unquestionably true that there would be an impact across the UK – if only for the elementary reason that the United Kingdom, as currently formed, would cease to exist.

There would be a financial impact upon the rest of the United Kingdom, RUK. That impact could be positive or negative, depending upon your assessment of the current balance of expenditure and revenue between Scotland and the rest of the state.

There would, further, be an impact upon defence provision – not least inasmuch as the Trident nuclear base at Faslane would no longer be available to the UK.

It has even been suggested by some, mostly privately, that there might be some erosion of the UK's international standing.

That, for example, those nations who envy the UK's permanent membership of the UN Security Council might seize the opportunity of Scottish independence to suggest that the UK's status had changed and that its UN role should be downgraded as a consequence.

Then there is the issue of continuing membership of the European Union. What would happen to an independent Scotland? And, for that matter, what would happen to RUK? Would either or both be obliged to reapply for membership – or to accept revised terms?

Nationalists tend to say that Scotland, as part of an existing member state, would inherit the membership status and treaty obligations of that state, including the present UK position which is to steer clear, for now, of adopting the Euro currency.

By contrast, Unionists are inclined to suggest that there would be obstacles in the path of an independent Scotland: that it might have to apply afresh and might be obliged to accept the Euro. They tend to presume that there would be no such hurdles in the path of RUK, despite its altered status: that it would, in effect, be the continuing member state.

For myself, with regard to Scotland, I do not believe that the strict formal legal position has been conclusively proved on either side, despite the volume of evidence adduced in support of each case.

I believe rather that the core factors would be political, rather than constitutional or legal. Would the EU look favourably upon Scotland or not?

Indeed, that is implicitly recognised within the sundry arguments advanced by each side. For example, Unionists note that member states such as Spain and Belgium – with their own internal regional or federal tensions to appease – might be wary of appearing to facilitate the deconstruction of another member state for fear of setting a precedent.

For their part, Nationalists argue that the EU is scarcely going to turn up its refined Eurocratic nose at energy-rich Scotland.

In short, both sides insist that legal precision is on their side – while simultaneously adducing other arguments which go beyond legal precision. Perhaps a sign that they are not as confident as they assert about their legalistic claims.

In sum, though, Scottish independence would have an impact upon the rest of the UK in a range of ways.

So, then, should there, must there be a vote across the whole of the UK in order to endorse Scottish independence? I would say not.

Remember the origins of the Act of Union. It was a Treaty, a bargain, a political compact between two sovereign Parliamentary nations – arrived at, on Scotland's part, either willingly or under a degree of duress and persuasion, according to your interpretation of history.

It surely cannot be right that one signatory nation can be held to the Treaty in perpetuity if it is plain and palpable that the majority of that nation's citizens have lost faith in the bargain. I stress, if.

Devolution has already changed the nature of the Union – and there is now a significant body of opinion within one signatory nation urging repeal.

Successive UK Prime Ministers have declared that the Scots cannot be held in the Union against their will – while simultaneously declaring their belief that such a development would not be in the interests of Scotland or the wider UK.

Think of it this way. There are voices in these islands, sometimes strident voices, suggesting that Britain should leave the European Union. They demand a referendum to bring that about.

But Britain leaving the European Union would undoubtedly have an impact upon other EU member states and the wider European polity. Are we then to say that there must be a referendum across the whole of the European Union before such a step could be taken, before the UK could quit?

I think not. Such a position would, potentially, mean that the people of the UK were being held in the European Union against their will. Ditto Scotland with regard to the Union that is the United Kingdom.



Contrary to legend, nations do not spring fully formed from divine inspiration or remain perpetually unchanged. They are human and political constructs, created and sustained by various factors such as geography, history, conflict, common cause, emotion, diplomacy and manipulation.

Above all, they rely for survival upon common cause. One cannot credibly and constantly tell people that they belong ineluctably to one political construct if they believe or have come to believe that they belong to another.

Equally, one cannot oblige people to quit that political construct if their instincts tell them to stay put.

As with Britain and Europe, so Scotland and the Union. Independence is a matter for the people of Scotland to determine, having first been presented with the competing arguments and information.

Incidentally, by the people of Scotland, I mean those who are on the voters' roll in Scotland.

I mean no insult whatsoever to the diaspora – including umpteen members of my own extended family – when I say that it would be neither practical nor desirable to attempt to include millions of expatriate and ancestral Scots, however attached they may feel to the old country.

Elections are open to those on the register – and so it would be with a referendum. There would be contention over SNP plans to extend the franchise to those aged 16 and over. But there is no practical alternative to using the Scottish voting register, however defined.

So my answer to the question **who** should be entitled to participate in an independence referendum is “the registered voters of Scotland.” And my answer to the question **where** is, quite simply, in polling stations across Scotland and via postal ballot.

Which leaves us with the questions **when** and **what**. The big two.

In considering the issue of **when** the plebiscite might be conducted, let us ask ourselves this. Why does Alex Salmond not hold a referendum on independence tomorrow?

Answer? Because he fears he might lose.

Why then does David Cameron not jump in and hold a referendum on independence tomorrow? Answer? Because he fears he might lose.

Let us consider firstly the case of the First Minister.

Alex Salmond has a keen interest in Scottish history. In preparing for an independence referendum, I believe that he is also drawing a lesson from East Lothian – but a rather more venerable one.

I am led to believe that Mr Salmond has been casting a tactical eye upon the Battle of Dunbar in 1650.

In that conflict, a Scottish army commanded by David Leslie faced Cromwell's troops. Leslie abandoned a strong position on high ground to pursue Cromwell. The result? A heavy defeat for the Scots.

Learning from that, it is Mr Salmond's intention to occupy for quite some time yet – if he can - the high ground afforded by the role of First Minister before engaging with his opponents in hand-to-hand referendum combat.

Mr Salmond points out, entirely correctly, that he promised during the Holyrood election campaign that he would **not** seek to call a referendum upon independence until well into the latter half of the current Scottish Parliamentary term.

That means the referendum would not take place until 2014 at the earliest. Mr Salmond has stressed repeatedly that he is simply keeping his promise to the voters: something, he suggests mischievously, that only appears unusual to those parties which customarily break such promises.

It is true that Mr Salmond made such a promise. It is true that he has repeatedly stressed his intention to keep it. But we should also inquire as to why he made the promise on timing in the first place. Not, incidentally, in the manifesto but during the campaign.

Which brings me back to the initial point: that the First Minister fears he might lose an early referendum, particularly given the current mood of anxiety and disquiet occasioned by economic uncertainty. He feels he needs to build towards the vote, with an immediate stress upon popular concerns about jobs and finance.

Think of it this way. Mr Salmond and his party yearn for independence. It is their driving ambition, their core motivation.

Their belief, honourably held and consistently expressed, is that Scotland would prosper as an independent nation.

Do you really think that, if he believed that a Yes vote to independence was guaranteed, that he would have issued the promise to defer the plebiscite in the first place?

One might argue that Mr Salmond is to be commended for adhering to the pledge delivered during the campaign. But consider again why the pledge was made. Consider its genesis rather than merely its exegesis.

Mr Salmond has regularly argued that Scots will opt for independence when they feel confident about themselves and their own prospects, when they come to believe that full self-government would be preferable to continued Westminster rule.

Economic uncertainty was the prevailing mood long before the Holyrood elections in May this year. That mood of gloom and discontent has persisted since.

According to the Salmond analysis, such a mood does not provide a propitious backdrop to an independence offer. He believes that Scots may be disinclined to give a hearing to independence arguments while they are deeply concerned about their jobs and the prospects for their families.

There are some who might argue, to the contrary, that problems besetting the UK Government offer an opportunity to those presenting an alternative constitutional and economic scenario. By that analysis, Scots might be conjoined to view the UK as bust and to seek refuge in independence, almost in flight from decline.

Mr Salmond does not take that view. He believes that people in Scotland will choose independence when they feel upbeat about themselves and their nation, when they feel ready to take charge, politically. When they feel confident, not depressed.

Now, do not mistake my point. Alex Salmond and John Swinney are not by-standers in the economic debate. They repeatedly criticise the UK Government, present and previous, for what they assert are fundamental mistakes in handling the banking crisis and its aftermath. They face substantial criticism in their turn.

Equally, though, they are alert to the possible potency of the claim that an independent Scottish government might have struggled to provide the funding needed, for example, to rescue the Royal Bank of Scotland. They seek to rebut the claim, arguing that the failure of banking regulation occurred on Britain's watch. They point to examples of small European nations who, they argue, have better handled the response to the economic crisis.

But they are aware of the potential political salience of such an argument, particularly with regard to the issue of independence. Their concern is that Scottish self-confidence, which they regard as a prerequisite for independence, may have been undermined, reasonably or otherwise.

Incidentally, on this issue of relations with the rest of the UK, you will frequently hear it said that Alex Salmond is prone to "picking fights with London", that his every utterance is deliberately provocative.

Really? What has he done that is so brutally aggressive? Has he annexed Berwick? Has he marched upon Derby? Such were the strategies deployed in the past by leaders who sought to marshall Scottish support.

More seriously, has the SNP withdrawn its co-operation from the UK Government? Has it asserted that the Conservatives have no mandate to govern Scotland? Has it sought to disrupt the business of the Commons in a Parnellite campaign to draw attention to its demands?

To the contrary, Scottish Government Ministers have, mostly, gone about their daily devolved business, within the structures laid down by the Scotland Act 1998. That has continued with the election of a UK Government led by a party, the Tories, with but a single MP in Scotland.

Nationalist Ministers *could* make their every working day at St Andrews House a sustained, public protest against the continuation of the United Kingdom. Instead, they mostly get on with the day job.

Now, again, do not mistake my point. Mr Salmond and his Ministers frequently complain about the lack of power, financial and otherwise, available to the devolved Scottish Parliament. They frequently argue how much better things would be if only Holyrood had sovereign control.

But they tend to choose particular issues which they feel will have public traction. Most recently, for example, Mr Salmond complained long and loud when the UK Government decided against supporting a carbon capture and storage scheme at Longannet.

Of course, Alex Salmond is thereby hoping that voters will conclude that the UK acts contrary to Scottish interests. But such an approach is quite different from mounting a sustained insurrection against the fundamental powers of the United Kingdom Government.

Mr Salmond may oppose David Cameron's role in the governance of Scotland. He may dislike the Prime Minister's politics – and the very existence of his office, as it applies north of the Border.

But Scottish Ministers still sit down with UK Ministers to discuss mutual governmental interests. Scottish civil servants still correspond across the border.

Why?

For two reasons. SNP Ministers argue that devolution is remote from the Premier League of politics. But they know it is big league, nonetheless.

Their strategy, declared and pursued, is to govern as consensually as possible within the relative constraints of devolution, thus inviting the voters to infer how much better things could be if only Scotland had full power.

Secondly, Scotland as a whole is not in a semi-permanent ferment of fury about the constitution. Scots want pragmatic politics, not state-funded protest.

So the immediate challenge to the state implicit in the advent of an SNP administration has been addressed by the established structure – partly because Scottish civil servants prepared thoroughly for the prospect and partly because SNP Ministers continue to calculate that their longer-term political interests lie in overtly consensual politics.

Now, again, please do not misunderstand me. I am not, repeat not, saying that Alex Salmond has settled for devolution. Quite the reverse.

The First Minister envisages Scottish constitutional politics as a series of linked stepping-stones. A devolved Scottish Parliament. An SNP government. A referendum. Eventual independence.

Which brings me back to timing. I believe that Alex Salmond has, very broadly, four motivations for deferring the referendum. These are democratic, practical, tactical and strategic.

The democratic point is that pledge delivered during the election. Mr Salmond insists it would not be right to break that promise. Nor, frankly, would it suit his wider purpose as it might disincline voters to trust him on independence - if he could not, apparently, be trusted on timing.

The practical point refers to the current Scotland Bill which is proceeding through Westminster and is designed to enhance Holyrood's powers – including additional control over taxation and the introduction of capital borrowing.

Mr Salmond has disdained the scope of the Bill. He has warned that it could, indeed, set Scottish interests back if Scotland is obliged to fill transient gaps in spending through income tax alone without having what he argues would be the necessary control of a broad basket of taxes, such as business taxation and excise duty.

These are arguments he will undoubtedly draw upon when the referendum campaign is under way. But, for now, he judges that it is sensible to wait until the Scotland Bill has made further progress.

The essential argument, from a Nationalist point of view, is that the Calman Commission proposals as implemented by the Scotland Bill will form the new status quo.

Again from an SNP perspective, it is argued that it is essential to establish the precise nature of the Unionist offer before presenting people with the counter-arguments of independence.

For myself, I believe this argument to be open to challenge, from a logical standpoint. If an independence referendum were to be implemented, that would swiftly trump the continuing discussion over Calman and the Scotland Bill.

The political and popular focus would be upon independence - yes or no - with, by comparison, relatively little salience for the Scotland Bill.

That is not to say that the Scotland Bill is irrelevant. In its own right, it attracts support and criticism. Its content or overall approach would and will form part of a referendum campaign.

However, I do not believe it is sufficient of itself to prevent or deter the calling of a referendum upon the much bigger question of independence. If all things were equal and there were not other factors, I do not believe that the First Minister would let the Scotland Bill stand in his way.

But he has concluded that, taking other issues into account, it is sensible in practical terms to allow the Scotland Bill to make progress before calling a referendum.

I say “make progress” deliberately because, as I have discussed on my blog – come on, I’m allowed one plug – Scottish Ministers are still considering whether to veto the Scotland Bill by asking MSPs to reject the necessary Legislative Consent Motion or LCM before the Westminster provisions become law.

Remember that UK Ministers have said that they will not enact the Scotland Bill without specific, further consent from Holyrood in line with the provisions of the Sewel Convention.

At Holyrood, this will be a pragmatic, governmental decision. Ministers will have to weigh the benefits of gaining extra powers for Holyrood against their assessment that the fiscal clout is too limited and could result in Scotland losing out, financially. This assessment, of course, is vigorously disputed by advocates of the Bill who say it will give Holyrood the responsibility and accountability which has been lacking thus far.

But the decision on an LCM or Sewel motion is also a political calculation for the SNP. Is it better for Nationalists to be seen to be facilitating the full scope of the current Unionist offer to Scotland, thus permitting that offer to be subject to later challenge in the referendum?

Or is it better for Nationalists to assert vigorously that the Scotland Bill powers are limited and potentially damaging – and thus must be thwarted at this stage, well ahead of a referendum?

In essence, Ministers have to decide – in this political calculation – whether voters in Scotland would understand why an SNP government is apparently resisting added powers for Holyrood.

We are some way off from this decision. Discussions are still under way - with Scottish Ministers, for example, seeking influence over the Commencement Orders which would determine the time-scale for the implementation of tax powers featured in the Bill.



But, for what it is worth, my reckoning is that Scottish Ministers will ultimately incline towards agreeing that the legislation should pass. That they would otherwise find it too difficult to explain their stance to voters and that they will calculate that it is in their longer-term interest to allow the full current Unionist offer to be on the table, available for challenge.

That it is better, in short, to allow a straightforward competitive debate between independence and the post Calman status quo – than to limit the terms of that debate by blocking the proposals from the UK Government. But we shall see.

Back, then, to Mr Salmond's four considerations re timing. We have discussed the democratic motivation – he promised to defer the referendum. The practical – progress on the Scotland Bill.

Let me briefly rehearse the remaining two points: tactical and strategic.

With regard to tactics, Mr Salmond believes that it would be smart to call the referendum relatively close, if possible, to the scheduled UK General Election in 2015. That does not necessarily mean that he is committed to waiting for a further four years.

It is simply that he believes that cohesion within the Unionist camp – already, it would appear, hard to build and sustain – may be inclined to fragment as a Westminster election looms.

Nationalists ponder: will Labour leaders really stand shoulder to shoulder with Tory Ministers they are seeking to supplant? Instead of coalescing, won't the Liberal Democrats be seeking to set out a distinctive approach as 2015 nears? Further reasons, of course, for those parties to encourage an earlier referendum.

The final point here concerns strategy. Which is broadly the issue I analysed earlier: that Mr Salmond prefers to hold his referendum when the economic environment is, potentially, less distressing than it is at present. As noted, I believe this to be the most powerful of the motivations for a deferred referendum.

Mr Salmond wants to be seen to be dealing with popular preoccupations over the economy and employment before seeking support for his party's long cherished objective of independence.

He wants to go with the tide of public opinion on the economy – before seeking to sway public opinion to his side in a referendum.

Next, let us turn to the other side of the coin regarding timing. UK Ministers have repeatedly complained about what they see as an unwarranted delay in settling the issue of independence. David Cameron has urged an early plebiscite. Nick Clegg has accused Mr Salmond of playing “cat and mouse with the Scottish people.”

Which, of course, begs an obvious question. Why doesn't the UK Government call a referendum of its own? After all, the constitution is reserved to Westminster under Schedule Five of the Scotland Act 1998. David Cameron could call a referendum tomorrow, next week or next month – if he chose.

If, as we shall discuss later, he frets over Mr Salmond's proposed referendum question or questions, then he could table his own. If Nick Clegg feels Mr Salmond is playing cat and mouse, then he has a choice. Get a dog.

So why don't UK Ministers act? Why hesitate? Quite simply, because they fear that, if they call an early referendum in their own right, they might lose.

Alex Salmond has repeatedly stressed that his Scottish Government has a mandate for a referendum on independence on the timescale set out in the election which generated that mandate. He would cry foul if the UK government attempted to pre-empt that programme.

So the calculation for UK Ministers is this. Is it better to get on with the referendum, with a question of their choosing? Or might that be counter-productive?

Might people in Scotland heed Alex Salmond's arguments? Might they see this as unwarranted interference by a Prime Minister from a party which has but a single MP in Scotland? Might they be inclined, as a consequence, to give that Conservative Prime Minister a bloody nose?

Could David Cameron take the risk? In Scotland? Which has regularly rejected his party at the ballot box?

It is by no means out of the question that the UK Government could call a referendum – if, for example, there were to be an exceptionally prolonged delay or they regarded the nature of the question or questions as unacceptable or, to quote UK Ministers, as “rigged.”

There are undoubtedly voices in the Prime Minister's ear, suggesting just such a course of action. Seize the day, they say. Or, more precisely, name the day. It is credible to suggest that such voices may ultimately be heeded.

Indeed, the issue of timing was raised when the new Scottish Conservative leader Ruth Davidson met her *colleague* David Cameron in Downing Street. She said later that “uncertainty and dither” over a referendum ran counter to Scotland's interests. Her colleague agreed, arguing that what he called a “clear cut” referendum should follow upon enactment of the Scotland Bill.

But, for now, it would appear that the UK Government is calculating that Alex Salmond is palpably popular in Scotland – and that it would be unwise, from a Unionist perspective, to challenge his timescale directly by intervening immediately. The Scottish Secretary Michael Moore is on record as saying that this is a matter for the Scottish Government in the first instance.

There is another factor, also tracked on my blog – OK, that's two plugs. Would a referendum called by the UK Government be subject to a Legislative Consent Motion at Holyrood, as per the Sewel Convention? Would MSPs have to give their consent to the Westminster legislation enabling the referendum to take place?

Suffice it to say at this point that Scottish Ministers are acutely alert to this prospect. As are UK Ministers.

At the very least, Scottish Ministers might well insist upon tabling an LCM at Holyrood in the event of a UK-led referendum. That LCM would duly be defeated by the SNP majority – thus demonstrating to voters that the UK-led referendum was being proposed against the wishes of the elected Scottish Parliament.

Against that, one UK Minister muttered to me darkly: “A convention is just that. A convention. It can be overturned.”

As ever, it is popular mood which will be decisive. If that mood is apparently aligned with the Scottish Government and Alex Salmond, then the UK Government would not risk calling a referendum of its own.

If, however, the mood turns, if a sense were to emerge that Mr Salmond was somehow not being reasonable over, for example, the wording of the questions, then perhaps the UK Government would judge that they could safely intervene over the heads of Scottish Ministers at Holyrood.

There is yet another prospect which is that the UK Government might seek to amend the Scotland Bill with a specific clause setting out parameters for the referendum, perhaps specifying the wording and time limits. This might be a Scottish version of the Clarity Act which the Canadian Parliament passed in order to define the terms of the Quebec Referendum. Such a proposal would be resolutely resisted by the Scottish Government and might incline them still further to veto the Scotland Bill.

Again, at all points, UK Ministers are alert to the balance of Scottish opinion. Which is why it is regularly noted that the Coalition would be reluctant to intervene without support from the Labour Party - who retain greater clout in Scotland than either the Tories or the LibDems.

Indeed, several of the options floated for UK action amount in effect to attempts to get Labour onside in a common front against the SNP. There are, plainly, obstacles here.

Labour is presently leaderless in Scotland. More fundamentally, Labour would be reluctant to be seen as simply following on the coat-tails of the coalition. Labour would want to lead any such anti-SNP initiative, particularly in Scotland.

The wider issue, ultimately, may be whether the motivation to support the Union trumps partisan imperatives.

There would be considerable impetus behind the search for a common Unionist perspective, if such can be sustained.

More generally, it does not appear that those endorsing the Union will wait passively for the referendum to be called. They argue that they too have a direct interest in the future of the Union. One senior Westminster source suggested to me that the prospect of UK Government intervention - in some form - was now higher than seventy five per cent. I stress, in some form.

In any event, it is clear that those endorsing the Union, particularly in the UK Government, are demanding a role in setting the rules for the referendum, with the implicit warning that they could take charge of the process if such a role is denied.

Those rules, of course, would apply most specifically to my final question. **What?** What will be the content of the referendum? What will the voters be asked to decide? That, ultimately, matters more than timing.

At various points, in governmental office, SNP Ministers have canvassed a range of options. On the 14<sup>th</sup> of August, 2007, they launched their National Conversation which invited people to comment on Scotland's constitutional future, either as an independent nation or retaining sundry forms of devolved status.

In tandem with this, there was published a draft Referendum Bill which indicated that voters would be asked to agree or disagree with the proposition that the Scottish Government should negotiate a settlement with the UK Government so that Scotland became an independent state.

In short, the formal proposal at that point was for a straight Yes or No to independence – although it was stressed that Ministers were open to other options.

On the 26<sup>th</sup> of March 2008, Alex Salmond published the responses received to the National Conversation – and indicated in reply to media questions that the referendum might indeed include other options.

Further, he suggested that the public might be asked to choose between alternatives using the Single Transferable Vote which would take second preferences into account.

In short, independence and enhanced devolution and the status quo would be in modulated competition with each other.

On St Andrew's Day 2009, the Scottish Government published "Your Scotland, Your Voice", a White Paper tracking developments.

It expressed support for a straightforward choice on independence but also noted that there might be a case for a multi-option referendum - although it was further noted that there was a problem with defining the option of enhanced devolution.

On the 25<sup>th</sup> of February 2010, Ministers published a draft Bill for a referendum. To the derision of opponents, it was not formally introduced at Holyrood - on the grounds that there was no Parliamentary majority for the project. Another example of Alex Salmond remaining on the high ground rather than indulging in a scrap which he was certain to lose.

For the first time, this draft Bill set out in detail the notion of a referendum with two distinct questions. Question one would be on either the Calman Commission proposals or on full fiscal and monetary devolution. Question two would seek endorsement for "an additional power to enable Scotland to become an independent country."

In short, voters were asked to consider enhanced devolution and independence in sequence – not in competition with each other.

With modifications, that, broadly, remains the position of the Scottish Government. They are adamant that there will be a question on independence but they are open to another question on enhanced devolution.

It is now argued by Ministers that the Calman package would not feature in a referendum. On two grounds: that it is too limited to merit inclusion and that it is probable that it will form the status quo, not an innovation, by the time the referendum is held. Voters are to be asked their views on change, with the revised status quo taken as read.

Consequently, the suggestion now is that the two questions placed before the voters might feature Independence and what has become known as Devo Max – which is loosely defined as full control of tax and spending with defence and foreign affairs shared across the continuing UK.

Why does the SNP favour this approach? The basic answer is that they are keen to discern and serve the interests of the Scottish people, once expressed.

However, there are also strategic considerations. Alex Salmond wants a fall-back position, should independence fail to find favour. He knows the damage to his own party's morale which would be caused by outright, unmitigated defeat in an independence referendum. If Scots voted for Devo Max instead, he could seek to argue that progress had been made towards the ultimate goal.

Secondly, he hopes to divide the Unionist camp. He believes that Liberal Democrats in particular would be attracted by the option of Devo Max which, however defined, comes close to their long-standing vision of Scottish governance. Indeed, he urges LibDems in particular to provide a definition which could feature in a White Paper and thus on the referendum ballot paper.

Mr Salmond hopes, thereby, to prise the Scottish Liberal Democrats away from loyalty to the UK Coalition, away from working with the Tories in an overt campaign against independence. He believes, further, that there are leading figures in Labour and the Conservatives who would endorse Devo Max in a referendum campaign.

According to taste, this would either clarify the range of options available to the Scottish people – or cloud the arguments for and against independence.

For the Liberal Democrats, the option of Devo Max being on the ballot paper is tempting. For many LibDems in Scotland, the notion of departing ideologically from the Tories simply adds lustre to the offer. The LibDems are presently weakened – but they wonder whether they could mount a strong campaign and so secure their long-held dream of a financially responsible Scottish Parliament.

Further, as noted earlier, they have established a Commission to look at enhanced Home Rule, chaired by Ming Campbell.

Why not use that Commission to draft a scheme for Devo Max? Why not accept Alex Salmond's offer and put that option on the ballot paper, alongside independence?

I believe they will consider that offer – but I believe they will resist. Party leaders, I believe, will conclude that it is more important in the meantime to contain the advance of the SNP and to thwart the prospect of independence. LibDems may favour the principle of Devo Max – but they continue to support the Union. A Union which they believe is in jeopardy.

I believe the LibDems will, eventually, proceed on three parallel lines. The LibDem Scottish Secretary Michael Moore will seek to carry the compromise that is the Scotland Bill through Westminster. The party as a whole will prepare to fight on the Unionist side in an independence referendum. In the meantime, the Campbell Commission will formulate longer-term options for enhancing devolution still further, once the independence issue is settled.

Alex Salmond argues that his two question plebiscite has a precedent in the 1997 devolution which asked Scots to endorse a Scottish Parliament and, separately, tax powers for that Parliament.

Others, however, argue that the two questions in 1997 were contingent upon each other, not in competition.



Yes, it would have been mildly amusing if Scots had voted FOR tax powers – but against the Parliament. In practice, though, the tax proposal was understood as an additional element, dependent upon the first question. It could not have been asked on its own.

Other objections have been raised. Willie Rennie, the Scottish LibDem leader, has argued that positing Devo Max and independence as distinct propositions in the same referendum could lead to a curious outcome. What would happen, he asks, if Devo Max attracted ninety per cent support – while independence won backing from fifty one per cent?

In those circumstances, one might argue that Devo Max was palpably more popular than independence. Yet, under the current two question formulation, both questions would be carried – and independence negotiations should therefore proceed.

Again, the issue is whether the two propositions are considered as being in competition with each other – or whether they are viewed in sequence.

Mr Salmond argues that they are points on the spectrum. That it would be reasonable to posit Devo Max and then, in the same exercise, to ask whether voters were prepared to go a stage further, to independence.

Rivals say that the two propositions are quite distinct, indeed competing, options for the Scottish people to consider.

It would be possible to place the two in competition on the ballot paper: to ask, firstly, whether Scots wanted change at all. And then to ask which change they favoured: Devo Max or Independence.

To be clear, that is not currently on offer from the Scottish Government. Nor do I believe that it would find favour with other parties who are increasingly adamant that there must be a single question. Yes or No to independence.

Alex Salmond argues that he has a mandate to hold a referendum on independence, that the possible questions were clearly set out in previous Scottish Government publications – and that he promised during the election campaign that the referendum would be in the latter half of the present Scottish Parliament.

His rivals say that he has a mandate for an independence referendum. Just that. They note further that neither the questions nor the detailed timetable featured in the SNP's election manifesto – although, to be fair, there was a reference to addressing the Scotland Bill “in the meantime” which might be taken as implying a deferral of the independence choice.

It is impossible to be precise. But it seems unlikely at this stage that anyone with relevant status will take up Mr Salmond's offer to draft a Devo Max option for inclusion in the referendum.

Not Labour. Nor the Tories. Nor the collective UK Government. Nor, I believe, the Liberal Democrats as a party.

Which might seem to point, at this stage, in the direction of a referendum which asks the people of Scotland whether they favour independence or not – unless, of course, Mr Salmond opted to devise his own version of Devo Max, with support from advocates of that cause, and to feature that in a White Paper and subsequent ballot paper.

Which prompts a further issue. A referendum generally involves consulting the people upon a specific proposal advanced by a Government or a governing party. That applied to the European referendum in 1975, the devolution polls in both 1979 and 1997 – and even to the AV referendum earlier this year where change was advocated by one of the UK Coalition parties.

Even although the referendum itself may not be binding, it is implicit in holding such a ballot that the outcome will influence or direct government action.

In this case, independence is the specific proposal of the Scottish Government.

Should that proposal be endorsed by the people in a referendum, then the Scottish Government would assert a mandate to open negotiations with the UK Government to create an independent Scotland.

But what mandate would be created by a vote for Devo Max? As Scottish Ministers acknowledge, the notion presently lacks substantive form. Even if such form could be given, it would fall to Westminster, to the UK Government, to legislate for such a substantial enhancement to devolution.

And UK Ministers – both Tory and LibDem – say they are opposed to such an option being placed on the independence ballot paper. They object to the proposition. How could they be obliged to enact a proposal when it emerges from a referendum to which they object, in whose formulation they have played no part?

Mr Salmond might say: the people have spoken. UK Ministers would continue to challenge the legitimacy of the ballot.

There is one further issue. Could the referendum plans face a legal challenge and a possibly prolonged court hearing?

It is suggested that a challenge could be mounted by an aggrieved citizen who felt, perhaps, that the Scottish Government was exceeding its powers in that the constitution is reserved to Westminster by the Scotland Act.

In this context, UK Government sources say that, while they themselves would not mount a legal challenge, they anticipate that such a challenge might well emerge. They say further that they might help overcome such potential hurdles if – and only if – they have a clear role in determining the content of the poll. The question or questions to be asked, it is suggested, matter more than timing - although timing is also important.

The SNP's opponents say that a properly constituted independence referendum would be valid – but that it would be better, clearer and fairer for Scottish Ministers to stick to that, to the SNP's own agenda, while deferring, for now, consideration of other options for Scotland's constitutional future.

Against that, others argue that the election result in May was decisive: that the Scottish National Party demonstrably gained a popular mandate for a referendum.

Mr Salmond argues that it would be an unwise politician who would stand or appear to stand in the path of the plainly expressed will of the people. He says it would be contrary to popular democracy. He says further that the Scottish Government is legally entitled to consult the people of Scotland in a popular plebiscite and declines to rule out the inclusion of Devo Max on the ballot paper.

So, finally, back to basics. The basic questions. **Who, what, when, where, why.** We know **why** a referendum is pending. We know **who** will participate and **where**. There is considerable contention and uncertainty, to say the least, as to **when** and **what**.

Then, of course, there is one further fundamental question. **How?** How will the people of Scotland respond? What judgement will they reach on issues such as finance, economic growth, Europe, defence and diplomacy? On the future of Scotland? On the future of the United Kingdom?

My answer is that .... I stand ready, as ever, to assist in informing these debates as the people of Scotland consider their future.

Thank you for listening to me.



