

# COMBINING MAJOR REFERENDUMS & GENERAL ELECTIONS: THE CASE AGAINST

**By Nigel Smith**

**October 2010**

**Nigel Smith** - chaired the cross party campaign for a Yes vote in the Scottish Devolution referendum in 1997, advised the Yes campaign in the Northern Ireland referendum in 1998 and chaired the UK Euro No campaign from 2002 to 2004. In the latter role, he worked with the Electoral Commission for two years interpreting PPERA in preparation for the Euro referendum and then beyond its abandonment in June 2003 to the conduct of the NE Regional Assembly referendum in November 2004.

Since then he has visited referendums and initiatives in many countries including Switzerland, the US - notably California and Colorado and several of the EU Accession referendums. He has taken a special interest in how broadcasting balance is achieved during referendums talking to experts in UK, Ireland, Switzerland and Denmark.

He served on the Wilson Committee reviewing the fairness of the BBC's coverage of the EU. He has extensive contacts among practitioners & academics working in IR.

## Introduction

The UK Deputy Prime Minister, Nick Clegg, has represented the issue of combining a major referendum with a general election as a simple act of voting twice. He makes no mention of the importance of the referendum debate - it is only a matter of sorting out ballot papers and all will be well. However it is a great misrepresentation of what it is involved.

The Electoral Commission is most at fault. Its poor advice based on research without insight, its curt 9 line dismissal of the Commission's previous policy without mention of the centrality of the referendum debate, its mistaken concentration on turnout as the only source of legitimacy, and its failure to acknowledge the referendum as a distinct device in our democracy has led the Government astray.

This paper presents the case against combining major referendums, defined as those of a broadly constitutional nature (a definition that would include all 8 of the UK's non-local referendums) with general elections to the UK Parliament and its devolved parliaments. It does not consider combining minor referendums with local elections or referendums with other referendums.

### **Why separate anyway? An important principle is involved.**

Political theory places the referendum, a direct democracy device, at the other end of the spectrum from representative democracy. It tries to disengage a single issue as far as possible from party politics allowing the referendum debate to provide the voter with enough information to make his or her own decision.

A practical illustration occurred in the UK in 2002 when David Trimble, then Northern Ireland's First Minister, proposed a referendum on the provincial border be combined with the 2003 Assembly elections. However well-intentioned his idea, the Border issue would be put right back into the party political arena.

Karl Rove, the Republican strategist may have fewer scruples. He uses referendums to put a wedge issue into an election and drive supporters to the polls by emphasising a cleavage in society.

Both approaches would be considered a misuse of referendums and one fundamental reason why theory and practice separate major referendums from general elections. Yet the Electoral Commission treats combination as essentially an administrative issue not involving a superior democratic principle.

### **The Informed voter as a source of legitimacy**

The Electoral Commission holds turnout as the prime source of legitimacy. Yet most academics and the Neill Committee regard an informed voter as just as important in making the result legitimate. An informed voter can vote yes or no, an uninformed voter is more cautious with a greater tendency to stick with no – (presuming it is the status quo).

The Commission intends to drive up turnout by combination. It claims to recognise that combination is likely to make it more difficult to inform the voter and to have anticipated all risks that would cause one form of legitimacy to be sacrificed to another.

There are no party labels on the referendum ballot paper, voters are freed from party allegiance thus in 7 of the UK's 8 referendums significant minorities, sometimes majorities, have voted against party recommendations. Because voters are not choosing a government but deciding a single issue, politicians may more easily dissent from party even to cabinet level, cross party campaigns and extra-parliamentary campaigns become possible. In these ways the single issue becomes the focus of debate not party politics. The vote is preceded by a referendum debate made up of partisan campaigns and usually an independent information campaign. The whole debate is covered by a broadcasting regime that is entirely different from elections. These referendum debates matter often producing significant swings in opinion. Most of these factors are suppressed or compromised by driving the referendum debate back into party politics. Informing the voter becomes harder not easier.

The broadcasters are absolutely central to the referendum debate. The UK shares with a few other countries like Switzerland, Ireland and Denmark (quite different from the US), a deliberate policy of 50:50 referendum broadcasting coverage regardless of the relative popularity of the two sides. We know achieving balance is a difficult enough task in the heat of a general election. It should not be made more difficult by asking producers to maintain election balance at one moment and referendum the balance the next. It is more likely to confuse than inform the voter.

Having been personally involved at a senior level in three UK referendums, I believe the Commission greatly underestimate how difficult the referendum debate is in a country without a referendum culture. The international evidence bears out my fears. The Commission regards its conduct of the North East of England Regional Assembly referendum, its only referendum experience to date, as a success but the winning side, presumably with no axe to grind, did not share that confident assessment in its post referendum memorandum.

Combination makes achieving legitimacy through informed voters more difficult.

## **The Commission's evidence for combination is suspect**

The Commission suggests there is not much concern about combining referendums and elections in other European countries.

It might like to consider the following figures: Switzerland 100% of national referendums are held separately, of 400 European (non-Swiss) referendums over 94% were held separately, 90% of Irish Referendums held separately. It cites Finland where it claims the use of referendums is "commonplace". Finland has only ever held two major referendums: neither was combined with an election so again 100%. For completeness, all 8 of the UK's major referendums have been held separately

The UK Commission ignores this decisive European vote for separation and sides with Latvia and Slovakia who both combine elections and referendums for administrative ease and cost.

It then cites Australia without acknowledging that voting in Australian referendums is compulsory resulting in an average participation of 95%. Given this is a debate about voluntary participation in UK referendums and elections, it seems an important omission. Nor does the research attach sufficient importance to the minority of Australian referendums that are combined with elections and are in consequence dominated by those elections and the party positions.

Then it turns to US referendums without declaring the universe is skewed because there is no national (federal) referendum process. The Commission is right that the US routinely combines elections and referendums but most of the referendums are less important at least by the constitutional standard we are talking about in the UK. Moreover the information process is completely different being largely commercial and expensive made worse by a congested agenda with as many as 12 referendums on one ballot paper. Voters are forced to be much more dependent on “cues” rather than arguments. Unless an issue proves unusually controversial or runs an exceptional campaign, the arguments will not be heard. The Commission should not be using a US model that many in the US consider broken at the State level and want reformed.

## **Partial combination brings added problems**

Whatever the demerits of full combination across the whole referendum electorate at least they are shared equally amongst all referendum voters.

With the AV referendum, the UK Commission has introduced the idea of partial combination where the voters in the devolved nations (16% of the referendum electorate) consider then vote on both their general elections and referendum while the remainder of the UK consider the referendum alone, introduces yet more problems.

In 2002, I put the idea of holding the Euro referendum beside the devolved elections to Professor LeDuc, one of the world’s leading referendum academics. He could not recall one similar case of this differential treatment of the referendum electorate. He thought the UK proposal was “probably unique” and volunteered the opinion.

"The effects of this [combination] would not be uniform across the country. It would likely produce considerable distortion with regard to turnout, the nature of the campaign, and a variety of other matters that might be difficult to determine in advance. The referendum, if it occurs, would be a different sort of political event in England than it would be in Scotland, Wales and Northern Ireland. I can't think of a case parallel to that anywhere else."

There is one example. In Switzerland national referendums sometimes coincide with elections in some of its 26 cantons. Their experts say this is not regarded as a problem because it occurs within an established referendum culture and the average size of a

Swiss canton is only 300,000. Nor do they regard it as on the scale of a Scottish Parliament

Leduc is right. Partial combination is almost unique. It is also worse than full combination. To see why, we must first consider turnouts.

## Turnout in referendums

In countries where voting is voluntary not compulsory, turnout in referendums is much more volatile than general elections. If the referendum issue is seen as important or achieves salience because it is fiercely contested, turnout can be higher than general elections. Referendums in Norway on EU accession, in Switzerland on UN membership and Quebec on sovereignty are examples.

In the UK, the referendum on the Good Friday Agreement, a matter of life and death in Northern Ireland, had a turnout of 81% attracting 200,000 more voters than the nearest general election. In striking contrast, the referendums for powerless mayors in English towns attracted an average turnout of 25%.

In general most referendums either because they are minor in nature, not sufficiently contested or the importance is not immediately obvious to the voter, will produce lower turnouts than general elections.

By hitching less salient referendums to general elections the Commission is creating a tranche of quasi compulsory/involuntary/extra voters who otherwise would not participate in the referendum that will vary in size with each referendum issue. From now on I refer to this tranche as the *incremental* vote.

## The incremental vote in other countries

In the US there is a marked difference between turnout in Presidential elections (62%) and Midterm elections (40%). The result is campaigners “game” the preference of the incremental vote and put their referendum/initiative into the election most likely to advantage them.

New Zealand held two referendums on PR. The first in 1992 was standalone with a turnout of 55% (higher than the Welsh Assembly referendum) produced a substantial majority for change. The second referendum was combined with the 1993 General election raising the referendum turnout to 85%. The incremental vote split in an astonishing manner - 420 new No votes for *each* new Yes vote - an almost unique imbalance in a free vote.

As the general election had been called only 7 weeks in advance, there was insufficient time to mount an information campaign and the ferocity of the election overshadowed the referendum to the degree that campaigners were unable to get a word in edgeways. With voter information compromised, the second referendum became a classic example of the incremental vote showing great caution justifying the campaigners’ slogan “If you don’t know vote No”.

This experience led the UCL Constitution Unit to recommend in 1999 that the proposed referendum on PR in the UK be held as a standalone event.

## **Has the Commission become a player in UK referendums with combination?**

If the Referendum for the 1997 Welsh Assembly had been combined with a General election there would be no Welsh Assembly. Why? Because the non-voters divided 2-1 against the Assembly. The Commission's new policy would have done what the No campaign failed to do – brought out the No vote.

In the 1997 Scottish devolution referendum, there was no difference between the preferences of the non-voters and voters so an increase in turnout achieved by combination would have made no difference to the outcome on that score. But it would have affected the outcome in other ways that go to the heart of the matter. The cross party campaign and the positive trio of leaders, the central feature of the Yes Campaign would have been rendered impossible by the tensions of a General election, the referendum debate would have been clouded by talk of the independence option and overshadowed by the Election. As someone who was closely involved in the Yes campaign, we would not have lost the Parliament vote but it is entirely possible that there would have been a reduced yes vote, lost more parts of the country in the tax vote and failed to pass the 40% hurdle of 1979 referendum.

In the mayoral referendums, the 33 referendums not held with general elections, the average turnout was 25% with a No vote of 52%. The two referendums combined with general elections had an average turnout of 61% and No vote of 60% turning a weak no into a strong no.

The Commission was responsible for none of the above referendums.

The AV referendum is the responsibility of the Commission. The proposed combination could deliver 700,000 *incremental* votes from Scotland, Wales and Northern Ireland into the UK referendum result. The assumption is that standalone AV referendum turnout in England might be 42% and that it will be raised to 52%, the average turnout in the last devolved elections.

Nobody knows the preference of these incremental votes. The No side reckon the extra votes come from countries likely to be less hostile to reform because they already use reformed voting systems. On the other hand, voters might feel that as they already have PR why vote for non-PR. Or the votes could be of “don't know: vote no” variety if the information campaign has been compromised by combination.

This incremental vote could, depending on the pattern of voting, reverse the UK result. In a close vote any majority below 53% would be questioned. It is surprising that the Commission has left the way open to a political or legal challenge on these grounds. After all close results like that in Wales in 1997 do occur.

But the bigger question seems to be: should the devolved vote in a UK referendum be given this boost by partial combination? Can it be fair in principle to have differential treatment of the UK electorate? The Constitutional Reform Bill seeks to reduce the inequalities in the size of electoral constituencies while this partial combination is, in effect, increasing them in the referendum.

## **The effect on the Scottish & other devolved general elections**

So far the comment has been on the integrity and fairness of the referendum campaign, I turn to the effect that combination will have on the devolved elections.

I have already described the various ways the AV campaign will be affected by being placed back in a party political arena. Either the politicians learn to play musical chairs in the studio as bitter foes of the morning then make common cause on AV in the afternoon or more likely, such campaigning will be inhibited. We can be certain that the AV referendum will not be the same political experience in the devolved countries as it will be in London.

This situation would not have arisen if Electoral Commission had taken its own advice. Its report on the media coverage of the Scottish General election of 2003 concluded that the “Scottish elections could never fully breakthrough to become the dominant public theme because there was always another big topic to compete with”. The point about the AV referendum is that it *need not occur at the time of the Scottish elections*: it is clashing because the Commission has given it a fair wind.

A year earlier in 2002, Anne Sloman, Chief Political Adviser of the BBC came to a similar conclusion. After conducting a UK wide inquiry for the BBC about the euro referendum clashing with the devolved general elections, she made her views clear to the politicians and the BBC that it was a bad move, condescending to Scotland, Wales and Northern Ireland and it would put broadcasters in an impossible position.

The devolved administrations are by definition subsidiary to Westminster. But this doesn't mean it is local government. The GLA is local government. Why the Commission, a British body should take such a London centric view of the devolved administrations is puzzling. If Swiss Referendum experts and the BBC can recognise the stature of the Scottish Parliament and the importance of its elections why cannot the Commission?

AV will not be the only referendum for there is a precedent in the making. Jenny Watson, the chair of the Commission made this plain recently in her evidence to the Commons Constitutional reform committee that as the Scottish Parliament is now “established” there is no good reason not to hold the postponed euro referendum at the same time as the Scottish General elections.

As the former chairman of the euro No campaign in London that was well advanced in its planning for the referendum, I can say such was the degree of international and UK media interest in the euro issue and the scale of the proposed campaign there is not the slightest doubt it would have dominated the devolved elections.

It is unlikely that a specialist issue like the AV referendum could overshadow the Scottish Elections to the same degree. Nevertheless the AV referendum will be heavily covered by the media not only because of its intrinsic importance but also because they see it as a “coalition breaker” and there are no other votes of any kind in London where the broadcasters are based. Normally as I have shown in full combination, it is the referendum that is overshadowed. But in partial combination because some much of our broadcasting is centralised in London, there is a real risk that the weight of AV coverage affects the Scottish and devolved elections as the euro certainly would.

It comes back to fairness: why should the Scottish elections and the referendum have to compete with each other? One or other will be diminished. If it is the AV referendum the vote including the incremental vote from Scotland will be less informed, if it is the general election the policy debate will have been partially obscured.

Finally I have deliberately not touched on issues of cost, convenience and administration as there are more qualified observers who can deal with these matters. But I cannot overlook the Arbuthnott committee’s conclusion that “decoupling [two representative] elections would reduce administrative complexity and enhance the electoral process”. Surely separating representative democracy from direct democracy is even more essential.

## **Conclusion**

This is not a simple matter of voting twice. There is a strong case for separating major referendums. The Commission needs to reconsider not only the AV referendum but its whole view of direct democracy and of devolution.

The UK has made considerable use of referendums in the last 13 years holding 5 major referendums and more than 40 minor ones on a variety of subjects and there is no sign that this is about to abate. The new Government has committed itself to referendums on any transfer of powers to EU and to a number of minor referendums. The EU Citizens initiative will be used within a few years. Lords reform, the euro, Scottish Independence and the Northern Irish Border lurk on the back burner.

If the country is embracing some degree of direct democracy it would be wise to put it on a sound basis now, not create new precedents of bad practice.

END

Nigel Smith

[nismith@voxsco.com](mailto:nismith@voxsco.com)