

Why multi-option referendums don't work for major issues.

From all the fevered talk of multi-option referendums, one would never guess that they are very rare indeed. Of the World's 12,000 referendums, 98% are simple YES/NO binary referendums. Of the few hundred multi-option referendums, most deal with minor issues like a new national anthem for Australia in 1977 or local licence prohibition in Scotland in 1920. Since 1945, only ten have been used for major issues and only five of these to alter national status like Scottish Independence. And none for a seceding State.

Why is the binary so popular and multi-option so rare? The reasons are not hard to find and should make us resist the Scottish Government's invitation to add 'devo max' as an option.

The YES/NO (binary) referendum provides a simple debate in which the proposed change is pitched against the existing and familiar. Two arguments are made and heard by all interested voters. It always produces a majority though sometimes like any vote, the outcome can be tied. Occasionally it is boycotted by one side, rigged by governments or overshadowed by a general election but usually it produces a settled outcome. And there is a definite pattern - the argument for change must be strong.

It is precisely this clarity that critics dislike calling it polarisation. What they seek is a more deliberative, nuanced debate. They have a point. All over the world reform referendums face the same problem. Huge majorities dislike the status-quo but there is no agreement on which reform should oppose the status-quo. Unfortunately for the critics simply transferring the cleavage in opinion to a multi-option referendum is rarely the solution.

The reformers problem is well illustrated in the Australian republican referendum of 1999. Public opinion wanted to substitute a President for the Monarchy. On the ballot paper was a proposal for an indirectly elected President. The other 'off ballot' reform group wanted a directly elected President but instead of standing quietly aside they campaigned with the monarchists to defeat the more modest reform.

Scotland risked this outcome in 1997 by putting only one reform on the ballot paper. That was a political decision of the Government of the day. But we can see from experiences like Australia that keeping other reforms off the ballot paper might not keep them out of the debate. The great contribution of the SNP in 1997 was that it remained silent on the merits of Independence and campaigned for Devolution. Independence was for another day.

Some persist in describing the 1997 referendum as multi-option but they are guilty of selective reading. Technically it was a three option referendum. The fourth option - a tax power without a parliament - was not a '*possible outcome*' in the words of current referendum law. But there were only two campaigns and nine out of ten voters treated it as a binary vote. For all practical purpose it was a binary referendum – and it felt like one.

Theoretically holding a multi-option referendum looks like a way out of the reformers dilemma. In practice, the complexity of the ensuing debate and the problem of interpreting nuanced results have almost extinguished the World's use of multi-option referendums for major issues.

Isn't a binary debate on Independence quite big enough?

The debate prior to the vote is the central democratic feature of a referendum.

Academic studies show these debates matter. Although in some referendums voters simply endorse a proposal, in others opinion moves much more than in an election. But having served in several campaigns and observed many more, I know it is difficult to fulfil the democratic ideal even in a binary referendum. A challenge widely underrated by partisans, academics, regulators and media alike.

Look at the likely elements of Independence debate.

- **Sheer size and complexity.** In terms of referendums, the issues don't come bigger or more complex than peacefully seceding from a 300 year old Union in which Scotland despite its distinctiveness is far more integrated than Ireland was in 1922. To the central debate about the viability and character of the new State and its sovereign rights and responsibilities must be added new cross-border arrangements and shared services and the unpicking of much practical detail at least some of which will prove controversial.
- **No prior agreement.** The lack of a pre-negotiated document is a major disadvantage. The SNP White paper, however comprehensive, simply marks the start of negotiations that will not be completed till long after the referendum. Elsewhere the outcome of negotiations would require a further ratification vote and should here too. The lack of an agreement greatly increases the scope for misinformation from both sides and confusion for voters.
- **No prior process.** The 1998 referendum in Northern Ireland was preceded by the Multi-Party talks and the one in Scotland in 1997 by the Scottish Convention. Both helped prepare the media and opinion formers for the debates to come. There is no similar process here as Inter-Governmental talks will be after the referendum.
- **Transition debate.** In most referendums the transition effects are barely considered. Vote for a new electoral system and somehow it comes seamlessly into being. This will not be the case for Independence. Voters will check out their place in the new State but will also want to know how they will be affected as old arrangements run down and new ones take time to settle in a transition that could take years.
- **Rest of Britain debate.** So far the debate is cast in Scotland/England terms but an independent Scotland means a reduced and more London-centric Britain. As this fact sinks in to Wales, Northern Ireland and the regions of Northern England expect a parallel and linked debate about the consequences for the rest of Britain. And UK institutions must be expected to explain the implications for both sides of the border. This dual debate may present a problem for broadcasters and voters.
- **RoB campaigners** This referendum will see for the first time in the UK, the practice of 'out of State' campaigns. In both the US and Switzerland, it is normal for Federal or

National business and civic groups to campaign in State and Cantonal referendums on issues with wider implications for them. These voices need space in the debate.

Another source of confusion seems to have receded. The hint that the referendum could be held at the same time as a general election seems to have been ruled out by the choice of the 2014 date.

So a binary referendum debate for most voters will prove quite enough to digest. Those who wish to inject a third option into the debate that is of a different order and with different consequences need to recognise that it risks producing more noise than nuance.

The difficulties presented by multi-option debates

Clarity is replaced by various degrees of confusion depending on the number of options and their complexity. There are multiple often overlapping arguments which the media find hard to represent distinctly and which voters understandably have difficulty in separating in their own mind.

Those who say leaving ‘devo max’ off the ballot paper disenfranchises voters need to understand that placing it on the ballot may disenfranchise just as many by over complicating the debate. It is no use having a debate that only professors can participate in - a referendum is a device for all the people as everyone must live with the consequences. (While sounding democratic in principle, the practical effect is quite the reverse).

If Independence can be criticised as a partly defined proposal, ‘devo-max’ is no more than a broad principle. But remember that while we may vote on broad principle, we are governed in detail. ‘Devo max’ needs to reach a steady state in which both the detail and the potential consequences have been defined and settled before being offered to voters. Hammering it into shape in a TV studio in the heat of a referendum serves the voter very badly.

It is a standard wrecking tactic in US referendums for one side to place a similar but weaker option on the ballot paper beside the proposal they want to defeat thus creating an informal multi-option referendum. It works.

Forcing another option into the Independence debate will be split one side in two. The arguments on one side become more disparate instantly making the other more dominant. But the biggest loser will be the floating voters now confronted with more confusion than clarity

The experience of Puerto Rico demonstrates that multi-option debates can be inconclusive. For over forty years it has sought to decide between US Statehood, Independence or some version of the status-quo. Three multi-option referendums over these years have failed to settle the matter so last year a US Presidential Commission recommended abandoning multi-option referendums in favour of two binary referendums held three months apart.(Transferring the cleavage to a multi-option referendum hasn’t solved this debate).

Who wins a multi-option referendum?

In binary referendums one side always reaches a majority 50% + with all votes based on real intentions of voters. Occasionally as in Wales in 1997, the result is close. Some thought needs to be given to how any close result would be interpreted.

But in multi-option referendums votes splitting votes between three or more options, frequently means no single option attracts 50%+. Even the best supported option is a minority. Of the World's ten major post-war multi-option referendums, seven failed to produce absolute majorities and this looks a possible outcome in Scotland.

When this occurs, the count may use one of several preference voting systems (PVS) to establish a majority winner. Different PVS counting systems produce different outcomes as well as encouraging tactical voting. The result is that the real intention of voters in a multi-option referendum may be hard to divine.

Each voter should understand the effect of their vote and not wake to an unexpected consequence. The Governments seeks a decisive result but is possible to reach a decisive result using PVS that does not settle the issue if the PVS itself is controversial and rankles long after.

There was an adverse reaction to the SNP 2010 proposal for counting the votes. There was a similar reaction last year when another PVS – the AV system – intended to create 50% majorities for the 400 MPs who are elected on minority votes, was roundly rejected. The SNP 2012 Consultation is now silent on the matter.

In my view it is placing too big a burden on any these systems to decide the fate of Scotland and the other nations of Britain in a multi-option referendum.

The obvious alternative simply bypasses the use of PVS. A second binary referendum decides between the top two minorities or the top minority goes head to head with the status-quo regardless of its minority rank (unless SQ is the top minority). Electoral experts should advise on the method. If few of us understand PVS, at least everyone understands a knock out competition.

A second round binary referendum after the multi-option referendums was the solution adopted in Newfoundland, Guam, and New Zealand (and now recommended by a Presidential Commission for Puerto Rico in 2012). It brings the clarity and focus of the binary back to the final debate before a decision is made. There is also time for reflection as the second round has never been less than 8 weeks and could be 60 weeks after the first referendum.

The World's experience of multi-option referendums since 1945

Multi-option referendums work for minor issues. Perhaps because issues such as locating a dam are clear cut and less complex, the difficulties are seen to be less acute and more easily tolerated. Switzerland makes good use of them within a well-developed direct democracy culture. Nevertheless we should not get carried away. Even minor multi-option referendums form only a small proportion of the whole universe of referendums.

They may be of use in consulting on major issues but this has been little tested. For making a decision on big issues they seem inadequate.

On major non-status issues, they solved constitutional reform in Benin and electoral reform in New Zealand. In Sweden, the minority outcome on pensions was accepted while the minority on nuclear power produced a stalemate leaving government to do what it wanted.

Multi-option referendums can claim to have solved only two territorial status issues - Newfoundland and Guam - both have populations about the size of Dundee. And both required second referendums to come to a decision. They provided stalemate in Puerto Rico and the wrong answer in Singapore (because the desired option was left of the ballot paper). That is the total record over seventy years. It is certainly not enough to justify their use in Scotland.

No multi-option has ever been used for a seceding state. Secession referendums are much more difficult than accession referendums because the voters are going from the known to the unknown.

The Way ahead

The Scottish Government should stick to a binary referendum and stop encouraging a ‘devo max’ option.

The binary referendum remains the preferred technical way of dealing with Scotland’s status. We should play to its strengths in a step by step use of binary referendums starting with the biggest issue - Independence. The status of Jura in Switzerland was settled in 1974 by a just such a series of votes.

If Independence fails to achieve a majority, it is open to any party including the SNP to interpret the result as supportive of further devolution and bring forward a devolutionary proposal to another binary referendum in a few years’ time.

Devolutionists should stay their hand in 2014 just as the SNP did in 1997. They need to work harder on ‘devo max’. If the words mean what they say, the policy will almost certainly invoke a UK referendum of consent in a way that Independence does not. The debate about symmetrical devolution in the UK lasted one hundred years and was simply bypassed in 1997 by a tolerated asymmetry. However the degree of devolution apparently envisaged in ‘devo max’ is bound to raise, once again, the question of symmetry within the UK. It could be quasi-federal or regional but these options will need to be examined before another devolutionary proposal can be put to the voters.

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