
REPORT

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SCOTLAND AND THE SLIPPERY SLOPE FROM DEVOLUTION TO THE INDEPENDENCE REFERENDUM AND BEYOND: SOME LESSONS TO BE LEARNT AND THEIR RELEVANCE TO CYPRUS AND ITS FELLOW MEMBER STATES IN THE EUROPEAN UNION



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Preface

This paper embodies various propositions and themes which the author has previously advanced on a number of occasions. These include:

- An article by the author entitled ‘The prospect of Scottish independence within the European Union’. (*This was published by the Cyprus Weekly on 27th May 2011.*)
- An unpublished paper by the author entitled ‘The prospect of partition in the United Kingdom: Should Cyprus say ‘OXI (“No”) and thereby help to guarantee the ‘Ενωσις (Union) between England and Scotland?’ (*This paper was first presented at a public lecture organised in London by the University of Cyprus in association with the Greek Cypriot Brotherhood on 22nd November 2012. The paper was re-represented at a round-table seminar organised by the European Rim Policy and Investment Council in Larnaca on Saturday 26th January 2013.*)
- An article by the author entitled ‘Turning The Tables: Can Cyprus and the Cypriot Diaspora in Scotland help to prevent the partition of the United Kingdom?’. (*This article was published online on 12th September 2014 by Agora Dialogue, an online journal, at <http://agora-dialogue.com/turning-the-tables-can-cyprus-and-the-cypriot-diaspora-in-scotland-help-to-prevent-the-partition-of-the-united-kingdom/> (accessed on 4th October 2014). The article was also published in print on 18th September 2014 by Eleftheria: The Weekly Independent Greek Newspaper of London.*)
- A presentation delivered by the author, with the same title as this paper. (*This was presented by the author at a roundtable discussion organised by the European Rim Policy and Investment Council at the Hilton Hotel in Nicosia, Cyprus, on Monday 22nd September 2014.*)

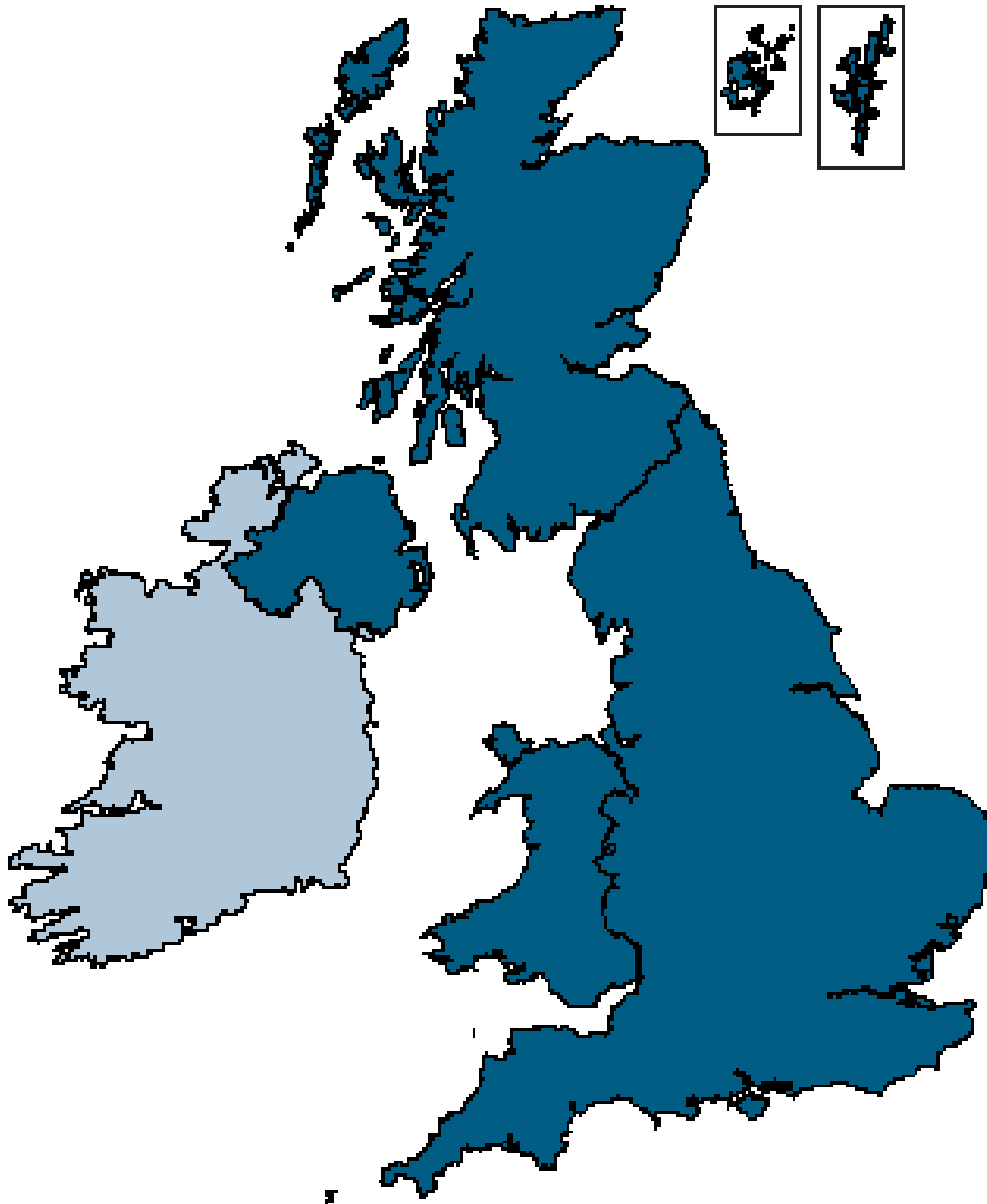
The author hereby records his gratitude to the following for providing platforms to enable him to project his thoughts: the *Cyprus Weekly*, the University of Cyprus, the Greek Cypriot Brotherhood, the European Rim Policy and Investment Council, *Agora Dialogue* and *Eleftheria*.

The author hereby makes a declaration of interest. The author has roots in two villages situated in Turkish-occupied northern Cyprus: Petra (the birthplace of his paternal grandfather) and Lysi (the birthplace of his maternal grandfather). In 2004, the author campaigned in favour of a ‘No’ vote in the referendum held in the Republic of Cyprus over the United Nations Plan known as ‘the Annan Plan’. In 2014, the author campaigned in favour of a ‘No’ vote in the independence referendum held in Scotland. As a citizen of the United Kingdom living in England, the author was not eligible to vote in either referendum.

The propositions advanced in this paper reflect the personal views of the author. Accordingly, his propositions and views should not be interpreted as being those of the University of Hertfordshire, the European Rim Policy & Investment Council or of any other organisation with which the author is associated.

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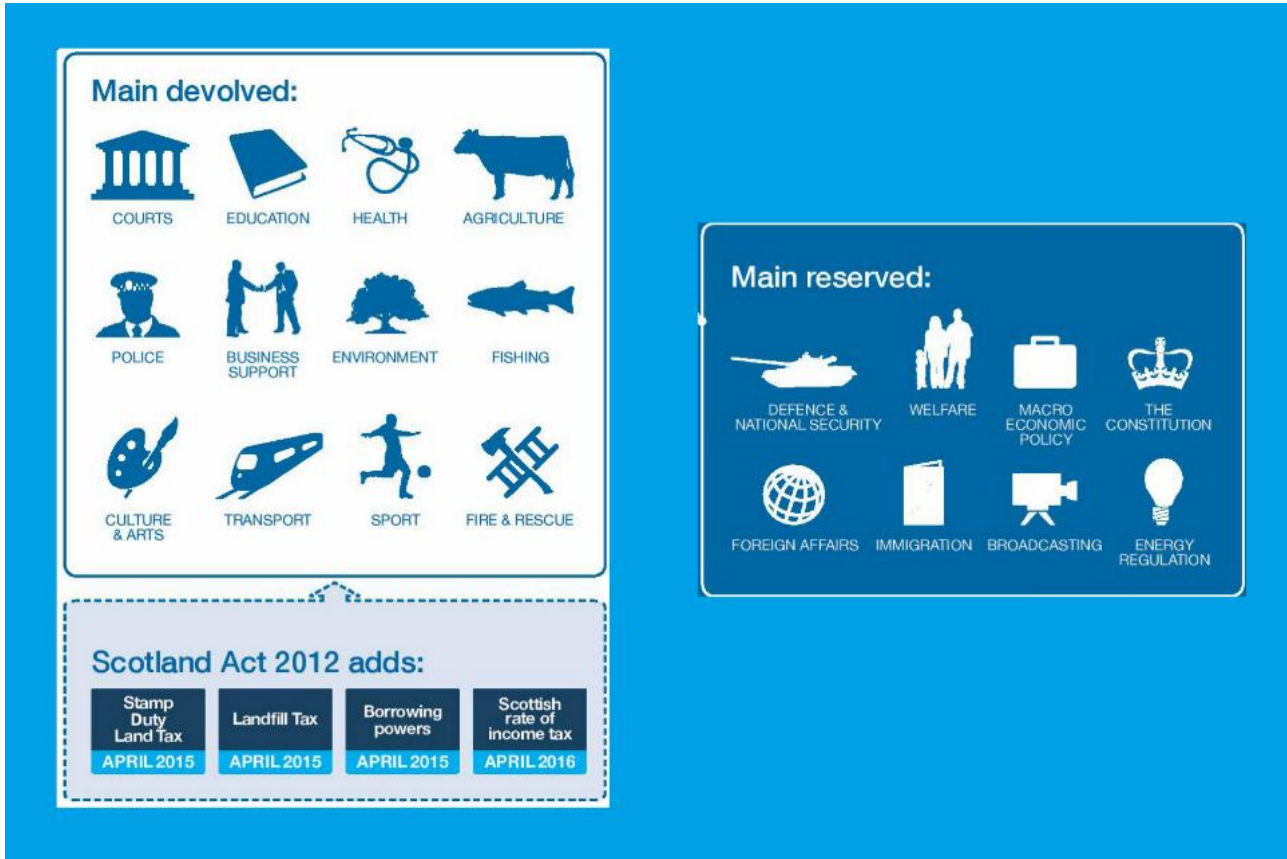
Image I: The United Kingdom of Great Britain and Northern Ireland (which embodies, in alphabetical order, England, Northern Ireland, Scotland and Wales)



Source of image: Office for National Statistics at:
www.statistics.gov.uk/resources/countrymapdropshadows01_tcm119-20796.gif
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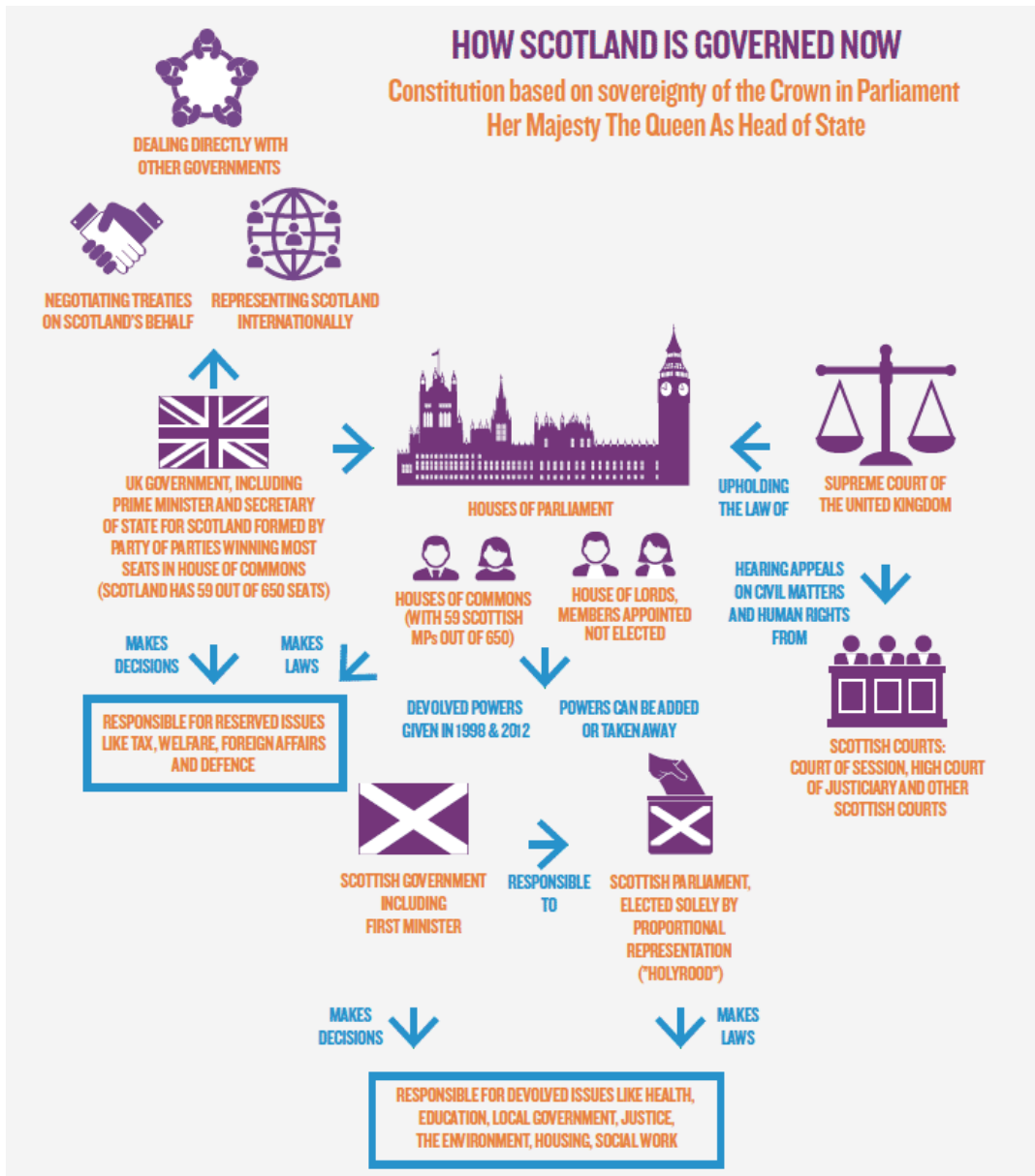
Image II: The implications of devolution in Scotland under the Scotland Act 1998 and Scotland Act 2012, as portrayed in 2014 by the Scottish Office of the Government of the United Kingdom



Source of above image: 'Scottish independence referendum – what's next?', Scottish Office of HM Government, 19th September 2014: www.gov.uk/government/news/scottish-independence-referendum-whats-next (accessed on 12 Sep 2014)

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Image III: ‘How Scotland is governed now’, as portrayed in 2013 by the Scottish Government (under the control of the Scottish National Party)



Source of above image: *Scotland's Future: Your Guide to an Independent Scotland* (The Scottish Government, Edinburgh, November 2013), page 398. Available online at: www.scotland.gov.uk/Resource/0043/00439021.pdf (accessed on 4th October 2014).

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Image IV: ‘How Scotland will be governed on independence’, as portrayed in 2013 by the Scottish Government (under the control of the Scottish National Party)



Source of above image: *Scotland's Future: Your Guide to an Independent Scotland* (The Scottish Government, Edinburgh, November 2013), page 39. Available online at: www.scotland.gov.uk/Resource/0043/00439021.pdf (accessed on 4th October 2014).

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Image V: David Cameron MP (left), Prime Minister of the United Kingdom and Alex Salmond MSP (right), First Minister of Scotland, upon the conclusion of the Edinburgh Agreement between the Government of the United Kingdom and the Government of Scotland on 15th October 2012.



Source of above image: 'Historic Edinburgh Agreement signed', Scottish Government Press Release, 15th October 2012 www.scotland.gov.uk/News/Releases/2012/10/referendum15102012 (accessed on 4th October 2014).

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Image VI: Map, dated 2013, which portrays the 28 Member States of the European Union, including the United Kingdom and the Republic of Cyprus

The European Union



Source of above image: European Commission Audiovisual Services: <http://ec.europa.eu/avservices/photo/photoDetails.cfm?sitelang=en&mgid=38#0> (accessed on 4th October 2014)

Introduction

The United Kingdom of Great Britain and Northern Ireland reached a constitutional watershed on Thursday 18th September 2014. On that date, a referendum was held in Scotland, but not in the other three parts of the United Kingdom, namely England, Wales and Northern Ireland. The referendum invited registered voters in Scotland to provide an answer to a seemingly straight-forward question: ‘Do you think that Scotland should be an independent country?’ In other words, voters were given a stark choice between voting ‘YES’ with a view to procuring the partition of the United Kingdom or voting ‘NO’ with a view to prolonging the 307-year-old Union between Scotland and the remainder of the United Kingdom.

The official result was announced by the Chief Counting Officer for Scotland on the morning of Friday 19th September 2014. A total of 84.6 per cent of eligible voters cast their votes. Of these, 1,617,989 or 44.7 per cent voted ‘YES’ and 2,001,926 or 55.3 per cent voted ‘NO’.¹ On the face of it, this was a reasonably decisive outcome which ensured the survival of the United Kingdom. Nevertheless, the referendum process has thrown the United Kingdom into an unsettling new era. In the short term, the United Kingdom faces a difficult period of constitutional reform as a result of a cross-party pre-referendum ‘vow’. In the long term, the prospect of another Scottish independence referendum taking place cannot be ruled out.

The Republic of Cyprus and other Member States of the European Union should draw appropriate lessons from the British experiment with devolution and the Scottish referendum process. Indeed, a primary purpose of this paper is to articulate some of these lessons. However, before these lessons are articulated, it is necessary to explain why the United Kingdom became subject to devolution in the first place and to consider why a referendum actually took place in Scotland on 18th September 2014.

The slippery slope from the introduction of devolution under the Scotland Act 1998 to the Edinburgh Agreement of 2012 and the Scottish independence referendum of 2014

On reflection, the independence referendum reflected the emergence of Scottish nationalism and the Scottish National Party (‘the SNP’). As such, the referendum was the by-product or unintended consequence of a radical and multi-dimensional programme of constitutional reform which was introduced during the period in which Tony Blair served as the Prime Minister of the United Kingdom from 1997 until 2007. This programme included the establishment of devolved organs of government in Scotland, Northern Ireland and Wales pursuant to the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Acts 1998 and 2006 respectively. Put another way, these Acts decentralised certain powers away from the established central government of the United Kingdom in London to the new devolved organs of government in Edinburgh, Belfast and Cardiff.

When the Scotland Bill received its Second Reading in the House of Commons on 12th January 1998, it was championed by the late Donald Dewar MP, the then Secretary of State for Scotland and, later, the first ever First Minister of Scotland under the devolution arrangements. Back then, Mr Dewar spoke of devolution in grand terms which suggested it was part of an overall strategy of decentralisation and democratisation. According to Mr Dewar:

‘The [Scotland] Bill will be welcomed by democrats everywhere. It is not simply about Scotland. Nor is it in any sense routine reform, tinkering with the detail of our political system. It [i.e. the Scotland Bill] goes to the heart of our democracy, and offers hope for the democratic process itself.

¹ The official referendum statistics have been published on the website of the Election Management Board, a statutory body, at: www.electionsscotland.info/ (accessed on 19th September 2014).

... In years to come, people will look back on it as a decisive step in the fight to modernise our constitution. The intention, the objective, is a new covenant with the people.’²

No less importantly, Mr Dewar reminded the House of Commons that the Scotland Bill was the corollary of a referendum held in Scotland on 11th September 1997; on that occasion, 74.3 per cent of registered voters agreed with the proposition that ‘there should be a Scottish Parliament’ and 63.5 per cent agreed with the related proposition ‘that a Scottish Parliament should have tax-varying powers’.³ To quote Mr Dewar once again:

‘The referendum [of 11th September 1997] was much criticised, and the subject of much hostility and doubt, even in my party, but it gave the country its chance to speak, and it was an example of trusting the people, of an exercise in direct democracy and of an occasion on which politicians practised what they preached. The people gave us a handsome majority, not in a blaze of razzmatazz but with a quiet determination that left no room for doubt that this is the settled will of the people.’⁴

The Scotland Bill was duly approved by Parliament and, in consequence, the Scotland Act 1998 was introduced. The Act generated a radical rearrangement of the constitutional apparatus of the United Kingdom. Indeed, as pointed out by Lord Walker of Gestingthorpe in *Martin v Her Majesty's Advocate* [2010] UKSC 10, a case which reached the Supreme Court of the United Kingdom: ‘The Scotland Act 1998 is on any view a monumental piece of constitutional legislation.’

In summary, the introduction of devolution under the Scotland Act 1998, as supplemented by the subsequent Scotland Act 2012, has had a number of profound consequences, some of which are outlined below.

- Devolution has paved the way towards establishment of *inter alia* the Scottish Parliament, the Scottish Executive (later renamed the Scottish Government) and the office of First Minister of Scotland.
- Devolution has preserved the status of Parliament in Westminster as the sovereign legislature of the United Kingdom.
- Devolution has enabled certain powers to be transferred from the United Kingdom’s organs of government in Westminster to the new Scottish Parliament and a new Scottish Government. Perhaps most importantly of all, the Scotland Act 1998 granted legislative competence to the Scottish Parliament in relation to education, the environment, fishing, health, home affairs, housing, tourism, sport and certain other fields of government.

On the other hand, the Scotland Act 1998 has not generally empowered the devolved organs of government in Scotland to stray into areas such as defence, energy, foreign affairs, immigration and the fiscal, economic and monetary system.⁵

² Hansard, *House of Commons Debates*, 12th January 2014, column 19.

³ For details, see Richard Dewdney, *Results of Devolution Referendums (1979 and 1997)*, Research Paper No 97/113, House of Commons Library, Westminster, 10th November 1997.

⁴ Hansard, *House of Commons Debates*, 12th January 2014, column 21.

⁵ For an authoritative overview of the impact of the Scotland Act 1998, please refer to Chapter 8 of *The Cabinet Manual: A guide to laws, conventions and rules on the operation of government* (Cabinet Office, London, First Edition, October 2011). A copy exists online at:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf (accessed on 3rd October 2014).

In relation to judicial matters, the Scotland Act 1998 has had some impact on the Scottish courts, which had pre-existed the introduction of devolution. That said, the Supreme Court of the United Kingdom – established as the successor to the Appellate Committee of the House of Lords in 2009 under the Constitutional Reform Act 2005 – has not only assumed a number of appellate duties in relation to Scotland but it also became responsible for adjudicating on legal and constitutional questions relating to Scottish devolution.⁶ In consequence, the devolved organs of government became subject to the jurisdiction of the courts.

All in all, devolution under the Scotland Act 1998 has had the effect of preserving the status of Parliament in Westminster as the sovereign legislature of the United Kingdom, decentralising certain powers away from Westminster to Edinburgh and changing the political landscape of Scotland and the United Kingdom of which it forms part.

In the absence of a ‘written’ or ‘codified’ constitution for the United Kingdom and in view of the principle of parliamentary supremacy, it was within the powers of Parliament in Westminster to enact the Scotland Act 1998 and, thereby, to engage in an unprecedented scheme of constitutional engineering. However, it is one thing for Parliament to act within its powers and quite another for Parliament to act wisely or in the interests of the United Kingdom as a whole. As predicted during the late 1990s by several observers – including the late Michael Cummings, one of the greatest cartoonists of the twentieth century, in a cartoon published in *The Times* on 1st March 1997⁷ – Parliament opened a Pandora’s Box; and, as Ernest Bevin once wittily claimed, the problem with opening a Pandora’s box is that ‘you never know what Trojan horses will jump out.’⁸

The Scotland Act 1998 did not dampen the ambitions of the Scottish nationalists within the pro-independence Scottish National Party, let alone stunt the growth of Scottish nationalism which, until the 1960s, was scarcely present in modern-day Scotland. On the contrary, the Scotland Act 1998 had precisely the opposite effect, for it fuelled Scottish nationalism, elevated the ambitions of the SNP and enabled that party to rise to power in Edinburgh. In that regard, a key milestone was reached in May 2011. In the elections held in Scotland in that month, the SNP secured a majority of seats in the Scottish Parliament and, thus, the SNP gained exclusive control of the Scottish Government.

Against this electoral background, Alex Salmond MSP, the leader of the Scottish National Party and the First Minister of Scotland, claimed to have a democratic mandate to take certain steps with a view to achieving independence for Scotland. As Mr Salmond pointed out on 22nd October 2011, at the annual SNP Conference, ‘the community of the realm of Scotland presented to us the greatest ever mandate of the devolution era – an absolute majority in a PR [Proportional Representation] system – a system specifically designed to prevent such a thing ever happening.’ Mr Salmond went further. He reminded his audience that ‘the SNP does stand for two fundamental aims – and these are enshrined in our constitution – independence for Scotland and also the furtherance of all Scottish interests.’⁹ For Mr Salmond, these were not mere words. They amounted to a call to action.

⁶ See, for instance, the publication of the Supreme Court of the United Kingdom entitled *The Jurisdiction of the Supreme Court of the United Kingdom in Scottish Appeals: Human rights and the Scotland Act 2012*. A copy exists online on the website of the Supreme Court at: <http://supremecourt.uk/docs/jurisdiction-of-the-supreme-court-in-scottish-appeals.pdf> (accessed on 3rd October 2014).

⁷ The cartoon has been stored in the British Cartoon Archive at Kent University under reference number PC0978. An electronic copy may be viewed on the website of the said Archive at: www.cartoons.ac.uk/record/PC0978 (accessed on 3rd October 2014).

⁸ Ernest Bevin, the Foreign Secretary from 1945 until 1950, as quoted by Lord Falconer of Thoroton QC, Hansard, *House of Lords Debates*, 10th February 2006, Column 951.

⁹ A transcript of the speech appears on the website of the SNP at www.snp.org/blog/post/2011/oct/alex-salmond-delivers-keynote-speech (accessed on 30th September 2014)

With an election victory under his belt, Mr Salmond set out to achieve the ‘two fundamental aims’ of the SNP. To this end, on 15th October 2012, Mr Salmond produced a tangible outcome – the conclusion of the Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland, otherwise known as the Edinburgh Agreement.

The opening provisions of the Edinburgh Agreement encapsulated its core objectives:

‘The United Kingdom Government and the Scottish Government have agreed to work together to ensure that a referendum on Scottish independence can take place.

‘The governments are agreed that the referendum should:

- have a clear legal base
- be legislated for by the Scottish Parliament
- be conducted so as to command the confidence of parliaments, governments and people
- deliver a fair test and a decisive expression of the views of people in Scotland and a result that everyone will respect’¹⁰

The upshot of the Edinburgh Agreement was stark: there was to be a ‘single-question referendum’ in Scotland and the Scottish Parliament was to ‘legislate for that referendum’.¹¹ It was, therefore, implicit in the Agreement that the Scottish Parliament was to be in the driving seat of the referendum process and that the people of Scotland enjoyed a separate right to self-determination.

The referendum – relating to the question of whether or not Scotland ‘should be an independent country’ – was eventually held on 18th September 2014. Even though a majority of 55.3 per cent voted in the referendum to save the Union, 44.7 per cent voted in favour of independence. As a result, Scotland finds itself divided into two camps and it remains a distinct possibility that another independence referendum may take place in the not too distant future. In the meantime, the United Kingdom faces further constitutional upheaval as the leaders of the three main parties in Westminster seem to be committed to implementing a joint pre-referendum ‘vow’ to concede ‘extensive new powers’ to the devolved organs of government Edinburgh.¹² Indeed, on the day that the referendum result was unveiled – 19th September 2014 – Prime Minister Cameron interpreted the outcome as a ‘green light’ to act in accordance with the ‘vow’, but subject to a ‘fair’ deal for England, Wales and Northern Ireland. To quote from the Prime Minister’s statement of 19th September 2014:

‘[N]ow it is time for our United Kingdom to come together, and to move forward. A vital part of that will be a balanced settlement – fair to people in Scotland and importantly to everyone in England, Wales and Northern Ireland as well. ... So there can be no disputes, no re-runs – we have heard the settled will of the Scottish people. Scotland voted for a stronger Scottish Parliament backed by the strength and security of the United Kingdom and I want to congratulate the No campaign for that – for showing people that our nations really are better together. I also want to pay tribute to Yes Scotland for a well-fought campaign and to say to all those who did vote for

¹⁰ A copy of the Edinburgh Agreement appears on the website of the Scottish Parliament. See: www.scotland.gov.uk/About/Government/concordats/Referendum-on-independence (accessed on 30th September 2014).

¹¹ To quote from the salient passage of the Edinburgh Agreement: ‘The governments have agreed to promote an Order in Council under Section 30 of the Scotland Act 1998 in the United Kingdom and Scottish Parliaments to allow a single-question referendum on Scottish independence to be held before the end of 2014. The Order will put it beyond doubt that the Scottish Parliament can legislate for that referendum.’

¹² David Cameron MP, Nick Clegg MP and Ed Miliband MP, ‘The Vow’, *Daily Record*, 16th September 2014, page 1.

independence: ‘we hear you’. We now have a chance – a great opportunity – to change the way the British people are governed, and change it for the better.’¹³

It goes without saying that the Prime Minister did not have an electoral mandate from the voters of the United Kingdom before he committed himself to the cross-party pre-referendum ‘vow’ and to the promises embodied within his post-referendum statement quoted above. Not surprisingly, therefore, the ‘vow’ has been criticised by nationalists and unionists alike. Indeed, the most memorable critique was the one articulated by Dennis Canavan, a prominent figure in the ‘YES’ campaign, on 17th September 2014. Mr Canavan described the ‘vow’ as looking ‘like something written on the back of a fag packet at the fag end of a long campaign.’¹⁴

To repeat, devolution has opened a Pandora’s Box.

Does the recent constitutional history of the United Kingdom have any relevance to the Republic of Cyprus? If so, can any salient lessons be drawn and applied to Cyprus and other parts of the European Union?

In immediate response to the above pair of questions, it must be emphasised that noticeable differences exist between the United Kingdom and the Island of Cyprus. To begin with, whereas the inter-related principles of majoritarian democracy and self-determination have been applied in Scotland, they have not been properly applied in the Island of Cyprus at any point in its history. In the 1950s, during its final decade as the colonial ruler of Cyprus, the government of the United Kingdom blunted the will of the majority of Cypriots by objecting to the application of self-determination in Cyprus via *Enosis*, i.e. the Union of Cyprus with Greece; the United Kingdom cited the perceived wishes of a Turkish Cypriot minority which amounted to 18 per cent of the population.¹⁵ By contrast, the government of the United Kingdom has not cited the existence or perceived wishes of any minority in Scotland as a means of checking the principles of majoritarian democracy and self-determination. Prior to the referendum, the government of the United Kingdom recognised that if a simple majority of those voting in the referendum agreed with the proposition ‘that Scotland should be an independent country’, then negotiations would begin with a view to procuring the partition of the United Kingdom.

Another noticeable difference between the United Kingdom and the Republic of Cyprus is that Scotland is not subject to a military occupation; nor is Scotland administered by an illegal break-away regime. For its part, Scotland was an independent state before the Acts of Union 1707 which facilitated the Union of England with Scotland. No less importantly, Scotland has been governed by lawfully established devolved institutions under the Scotland Act 1998. By contrast, the so-called ‘Turkish Republic of Northern Cyprus’

¹³ ‘Scottish independence referendum: statement by the Prime Minister’ as published on the website of HM Government: www.gov.uk/government/news/scottish-independence-referendum-statement-by-the-prime-minister (accessed on 13th October 2014).

¹⁴ Dennis Canavan, as reported on BBC News on 17th September 2014. Mr Canavan is a former Labour MP who served as chairman of the board of the ‘Yes Scotland Campaign’.

¹⁵ The high point of this policy was reached on 19th December 1956 when the Secretary of State for the Colonies, Alan Lennox-Boyd MP, affirmed that:

‘As regards the eventual status of the island, Her Majesty’s Government have already affirmed their recognition of the principle of self-determination. When the international and strategic situation permits, and provided that self-government is working satisfactorily, Her Majesty’s Government will be ready to review the question of the application of self-determination.

‘When the time comes for this review, that is, when these conditions have been fulfilled, it will be the purpose of Her Majesty’s Government to ensure that any exercise of self-determination should be effected in such a manner that the Turkish Cypriot community, no less than the Greek Cypriot community, shall, in the special circumstances of Cyprus, be given freedom to decide for themselves their future status. In other words, Her Majesty’s Government recognise that the exercise of self-determination in such a mixed population must include partition among the eventual options.’

Hansard, *House of Commons Debates*, 19th December 1956, Column 1268.

has never been an internationally-recognised sovereign state; the ‘TRNC’ is nothing more than the illegal subordinate local administration of Turkey, the latter of which is the occupying power in northern Cyprus with primary responsibility for the illegal invasion, occupation, ethnic cleansing, segregation and colonisation of that area. Hence, for instance, the wording of United Nations Security Council Resolution 541, which not only denounces the purported Unilateral Declaration of Independence (‘UDI’) in northern Cyprus as ‘incompatible’ with the Treaty of Establishment 1960 and Treaty of Guarantee 1960, but affirms that ‘the attempt to create a “Turkish Republic of Northern Cyprus” is invalid’.¹⁶

Notwithstanding the palpable differences outlined above, the Republic of Cyprus and its fellow members of the European Union have much to learn from recent British constitutional history and from the process resulting in the independence referendum held in Scotland on 18th September 2014. Indeed, it makes abundant sense for the Republic of Cyprus to draw appropriate lessons from the mistakes made by the United Kingdom, all the more so bearing in mind the status of the latter as the former colonial ruler of Cyprus, as one of the three ‘guaranteeing Powers’ of the Republic of Cyprus, as the sovereign power in two sovereign base areas on the Island of Cyprus and as a partner of the Republic of Cyprus in the United Nations, the European Union, the Commonwealth and other international organisations. Accordingly, the remainder of this paper will be devoted to a consideration of some the salient lessons of history which have a particular bearing upon the Republic of Cyprus.

The first lesson of history reflects an immortal truth: if and when power is transferred away from the central government of a sovereign state to one or more of its regions pursuant to devolution or federalisation and if such a transfer of power is accompanied by the establishment or maintenance of an internal border of one description or another, then adverse consequences may follow.

History suggests that upon the devolution of power away from central government or upon any federalisation of a sovereign state, the inhabitants on each side of an internal border may develop politically, economically and culturally in different ways to one another. In consequence, their ties of common citizenship may become diluted and the authority of the organs of central government may be weakened. This point was eloquently made in a thoughtful article entitled ‘Borderline personalities’ which was published in *The Spectator* magazine on 13th September 2014. The author, Sean Thomas, compared the division of the Tyrol between Austria and Italy with the post-devolution division of the United Kingdom. Mr Thomas articulated this lesson of history in terms which would evidently apply if the Republic of Cyprus is ever transformed into a ‘bi-communal’ and ‘bi-zonal’ federation with Turkish-speaking Turkish Cypriots in constitutional control of their own ‘constituent state’ in the north and Greek-speaking Greek Cypriots in constitutional control of their own ‘constituent state’ in the south:

‘Once you put a frontier in place then two peoples, however alike, will grow apart, even if they use the same language. A phoney partition becomes real over time. Eventually the cultures diverge so far they can never be truly rejoined.’¹⁷

In this context, secessionist or separatist movements are much more likely to come to power in countries which are divided by an internal border. As Philip Stephens accurately observed in the *Financial Times* on 12th September 2014: ‘Alex Salmond, the leader of the Scottish National Party [until he announced his resignation on 19th September 2014], has reawakened the allegiance of the tribe’.¹⁸ More worryingly, in some quarters of Scotland, the rise of Scottish nationalism has been accompanied by a noticeable increase in

¹⁶ United Nations Security Council Resolution 541, as adopted on 18th November 1983.

¹⁷ Sean Thomas, ‘Borderline personalities: Is national character real? If so, how is it formed?’, *The Spectator*, 13th September 2014, page 16.

¹⁸ Philip Stephens, ‘The world is saying no to Scottish independence’, *Financial Times (online edition)*, 11th September 2014: www.ft.com/cms/s/2/443a23d6-3841-11e4-a687-00144feabdc0.html#axzz3F4bkxVjj (accessed on 3rd October 2014).

xenophobia, anti-English sentiment and a disrespect for the tradition of free speech which has characterised British democracy; emblematic of this was the treatment meted out to Jim Murphy MP, the Scottish Labour politician and Member of Parliament for East Renfrewshire, during his ‘street tour’ in favour of a ‘No’ vote.¹⁹ At times during his ‘street tour’, Mr Murphy was not only subjected to witty heckling, which is part of the democratic tradition, but he also experienced unpleasant verbal abuse, which is not. Mr Murphy claimed that this abuse was ‘co-ordinated’²⁰ but, whether it was or not, this abuse had the effect of impeding his right to freedom of expression and displaying the ugly side of nationalism in general and Scottish nationalism in particular.

As a deeply controversial Prime Minister from 1979 until 1990, Margaret Thatcher was widely reviled in Scotland, which she ruled from London with an iron fist in the years before devolution. Indeed, her autocratic governance and the antipathy this generated in Scotland helped to stimulate the growth of Scottish nationalism. Be that as it may, she was surely right when, on 9th September 1997, she issued a strict warning in response to the then Labour government’s commitment to devolution. In an article entitled ‘Don’t wreck the heritage we all share’, Lady Thatcher argued prophetically as follows:

‘The support of the SNP for what is proposed also shows that while the Government pretends that devolution will help keep the UK together, those who have set the agenda for change (and who intend to keep on setting it) are hell-bent on separation and will not be appeased.

‘As the case of the Quebec parliament in Canada confirms – and as the assertiveness of the European Parliament reminds us nearer home – directly elected assemblies which claim to represent the interest of peoples are naturally driven to assert ever wider claims.

‘And, of course, the opportunities for conflict between Westminster and the Scottish parliament are legion.’

Lady Thatcher proceeded to conclude with a prediction: ‘separation is the destination towards which the present devolution proposals lead.’²¹ Lady Thatcher chose her concluding words with the scrupulous care that no doubt owed much to her professional background as a barrister. After all, in the light of the recent referendum result, Scotland will not now secede from the remainder of the United Kingdom, but it will grow even further apart from the United Kingdom. Scotland seems destined to become ever more separate from the United Kingdom.

In view of the inter-twined lessons of history noted above – and for multiple other reasons beyond the scope of this paper – the author must issue a warning. Notwithstanding the relevant United Nations Security Council Resolutions, it makes no sense for the Republic of Cyprus to be transformed from being a nominally unitary if *de facto* partitioned sovereign state into a ‘bi-communal’ and ‘bi-zonal’ federation consisting of ‘two political equal communities’.

Needless to say, the primary if unspoken rationale behind the establishment of such a federation in Cyprus is to lend a semblance of legitimacy to the invasion, occupation, ethnic cleansing and segregation of the Republic of Cyprus which was procured by Turkey in 1974. However, if Scotland can grow apart from the remainder of the United Kingdom within less than 15 years of the introduction of devolution pursuant to the Scotland Act 1998, how on earth are the two proposed ‘constituent states’ in a ‘bi-communal’ and ‘bi-zonal’ federation in Cyprus to avoid a similar fate? By the same token, if the United Kingdom can be snapped into

¹⁹ ‘Scottish independence: MP Jim Murphy resumes campaign tour’, BBC News Online report, 5th September 2014: www.bbc.co.uk/news/uk-scotland-scotland-politics-29019715 (accessed on 5th October 2014).

²⁰ Some of these scenes were filmed and placed on YouTube where they may be viewed.

²¹ Lady Thatcher, ‘Don’t wreck the heritage we all share’, *The Scotsman*, 9th September 1997. A copy has been archived on the website of the Margaret Thatcher Foundation at: www.margaretthatcher.org/document/108373 (accessed on 3rd October 2014).

pieces as a consequence of devolution and in spite of the English language, which is the common language spoken across the United Kingdom, how can a post-settlement Cyprus remain intact if, under any settlement, it is federalised along ‘bi-communal’ and ‘bi-zonal’ lines with Turkish-speaking Muslims in effective constitutional control of the north and Greek-speaking Christians in effective constitutional control of the south?

If Turkish Cypriot secessionists gain control of the proposed Turkish Cypriot ‘constituent state’, will they seek to follow the precedent established by the Scottish National Party and instigate an independence referendum with a view to breaking away from the federation? Is this why Dr Eroglu and his predecessor have repeatedly spoken about forming a ‘new partnership state’? After all, a partnership, can only survive for as long as all partners want it to.

A second lesson of history is one which is well known but rarely applied. It is this: dangers flow from any policy of appeasement.

After Tony Blair became the Prime Minister of the United Kingdom in 1997, his administration did not respond to the perceived deficiencies in the governance of Scotland and the concomitant increase in Scottish nationalism. Instead of improving the governance of Scotland by means of the existing organs of government in London, Mr Blair engaged in the appeasement of Scottish nationalism by introducing devolved administrations. Far from whetting the appetite of the Scottish nationalists, that appetite has been exacerbated by each act of appeasement. Indeed, for the Scottish National Party, the Scotland Act 1998 did not represent the culmination of a process of constitutional reform within the framework of the United Kingdom. For the Scottish National Party and the Scottish Government it controls, the Scotland Act 1998 represented a milestone *en route* to independence, not a destination in its own right.

In hindsight, the cartoonist Nicholas Garland was prophetic when, on 25th July 1997, following the Labour Party’s victory in the General Election of May of that year, he portrayed the prospect of devolution as part of a slippery slope which might eventually lead to the independence of Scotland. (This is the cartoon which has inspired the title of this paper.²²)

For his part, the Prime Minister of the United Kingdom since 2010, David Cameron MP, has engaged in wave after wave of appeasement. He responded to the victory of the Scottish National Party in the Scottish elections of 2011 by signing the aforementioned Edinburgh Agreement of 2012 and thereby paved the way towards the independence referendum of 18th September 2014. Then, during the final days of the referendum campaign, Mr Cameron jointed other senior politicians within the three main parties in the United Kingdom – the Conservative, Labour and Liberal Democrat parties – in a desperate effort to prevent a vote in favour of independence by engaging in a new act of appeasement. This effort was embodied within the aforementioned cross-party ‘vow’ to respond to a ‘NO’ vote in the referendum by rushing legislation through Parliament – in Westminster – to increase the powers of the organs of government in Edinburgh and, in effect, to transform the United Kingdom into a federal or quasi-federal sovereign state.

Much of the British media has weighed in to endorse what is in effect the proposed federalisation of the United Kingdom. A prime example is an article composed by James Forsyth, the political editor of *The Spectator*. On 13th September 2014, he wrote: ‘Devolution has proven a disaster. It has proved to be the perfect breeding ground for the SNP. ... The answer must be a move to a more federal United Kingdom.’²³

²² The cartoon has been stored in the British Cartoon Archive at Kent University under reference number PC2302. An electronic copy may be viewed on the website of the said Archive at: www.cartoons.ac.uk/browse/cartoon_item/anytext=garland%201997%20devolution?page=4 (accessed on 3rd October 2014).

²³ James Forsyth, ‘The unionists have been too afraid to make a proper case’, *The Spectator*, 13th September 2014, page 10.

Mr Forsyth has correctly diagnosed the problem but – in common with the political establishment in Westminster – he is prescribing the wrong remedy.

All of the above is deeply relevant to the Republic of Cyprus. Since the Turkish invasion, successive presidents of the Republic of Cyprus have engaged in a similar pattern of step-by-step appeasement, albeit in markedly different circumstances sustained by an ongoing military occupation of a substantial part of the Republic. However, the end product has been exactly the same in both the Republic of Cyprus and the United Kingdom: an ostensibly unitary sovereign state finds itself trapped in a process partly of its own making which may result in its constitutional transformation from being a unitary state into an inherently fragile federation which may eventually pave the way towards formalised partition.

As it is so easily forgotten, let us recall this lesson of history yet again: dangers flow from any policy of appeasement. Such a policy does not normally pay dividends and it can backfire in spectacular fashion. It suffices to recall the policy of appeasement exhibited by the United Kingdom towards Hitler's Germany during the mid-to-late 1930s.

A third lesson of history is that states which become constitutionally or geographically carved up along religious, sectarian, ethnic or other lines are prone to partition or other forms of division.

For many British citizens, the Scottish independence referendum has served as a 'wake-up' call, all the more so as it has come in the wake of a recession in the United Kingdom partly caused by a financial crash involving a number of banks, including the Royal Bank of Scotland and Halifax Bank of Scotland (HBOS). In the memorable words of the historian Dominic Sandbrook:

'[T]he campaign has been a terrible warning about the curse of nationalism and the dreadful dangers of a new politics based on crude populist appeals to the powerless and the alienated. ... [T]he deeper lesson of the referendum campaign – especially when you consider the rise of separatist movements in Catalonia, Ukraine and elsewhere – is that the threat of nationalism is just as real today as in the era of the two world wars.'²⁴

With the above thoughts in mind, it is no accident and no coincidence that, following its illegal unilateral declaration of independence in 1983, the illegal regime in the Turkish-occupied area of Cyprus has not been known as 'The Republic of Northern Cyprus' but the so-called '*Turkish* Republic of Northern Cyprus'. In view of this name and bearing in mind that the 1960 Constitution of the Republic of Cyprus defines a Turkish Cypriot as a Moslem, it may be said that the so-called 'TRNC' is not only the product of nationalism, but of Islamism as well. Indeed, the 'TRNC' shares some of the hallmarks of the so-called 'Islamic State of Iraq and the Levant'. For example, each is the product of armed aggression and ethnic cleansing, each is unrecognised internationally and each represents an affront to the United Nations Charter and the rule of law generally.

Thanks to the outcome of the referendum, Scotland has not chosen to become independent and the Scottish Government has hitherto failed to make any unilateral declaration of independence. Be that as it may, Alex

²⁴ Dominic Sandbrook, 'From Glasgow to Barcelona Europe is returning to the crude nationalism that caused such misery', *Daily Mail (online edition)*, 20th September 2014: www.dailymail.co.uk/debate/article-2763047/From-Glasgow-Barcelona-historian-DOMINIC-SANDBROOK-fears-Europe-returning-crude-nationalism-caused-misery.html (accessed on 12th October 2014).

Salmond has fuelled speculation that a Scottish unilateral declaration of independence may loom on the horizon.²⁵

In the meantime, both the United Kingdom and the Republic of Cyprus may be heading in the direction of federalism, possibly as a staging post to partition. This is in spite of inherent fragility of federations and the sorry history of federations in recent years. Witness, for instance, the disintegration – in admittedly different circumstances – of Czechoslovakia, Sudan, the Union of Soviet Socialist Republics and Yugoslavia.

In view of the above, it is bewildering that the constitution of Belgium has been repeatedly touted as a precedent to be drawn upon as a means of building the constitutional future of Cyprus. To all intents and purposes, Belgium is already split in two and it is a failed state in all but name. As recently as 2010-11, the divisions in Belgium meant that it proved impossible to form a new government for as many as 541 days (i.e. 19 months), an unwanted world record.²⁶

Looking to the future, the Republic of Cyprus should perhaps draw inspiration from Iceland and Malta, two island states which have avoided partition, rather than Ireland, which has been partitioned and the United Kingdom, which has come perilously close to being partitioned.

A fourth lesson of history is that nationalists incline towards manipulating election laws and, thereby, electoral rolls to their advantage.

As part of the referendum process and as a by-product of the policy of appeasement mentioned above, the Scottish Government engineered legislation in the Scottish Parliament which manipulated the vote in a cunning and self-serving way. On the one hand, the Scottish Parliament generally granted a vote in the referendum to all residents of Scotland, including citizens of European Union and those aged 16 or 17; in general elections across the United Kingdom, only those aged 18 or above are eligible to vote. On the other hand, the Scottish Parliament denied the vote to 800,000 or so Scots who were born in Scotland but who were resident – at the time of the referendum – in one of the three other parts of the United Kingdom namely England, Wales and Northern Ireland.

No less importantly, the residents in England, Wales and Northern Ireland have not been invited to participate in a referendum over whether or not they ‘think that Scotland should be an independent country’. Many residents of England, Wales and Northern Ireland, including the Scots living within these three parts of the United Kingdom, felt a profound sense of bitterness at being denied an opportunity to venture their views by means of a referendum. All of which meant that in the eyes of many citizens of the United Kingdom, the referendum was unfair.

In different circumstances, the referendum held in the Turkish-occupied north of Cyprus in 2004 was likewise unfair. After all, the vote was granted to settlers, colonists and illegal immigrants who had arrived in the north in breach of the immigration laws of the Republic of Cyprus. Turkey had allowed or encouraged them to do so contrary to **Article 49** of the Fourth **Geneva Convention** relative to the protection of civilian

²⁵ See, for instance, Simon Johnson, ‘Alex Salmond says No voters were 'tricked': The First Minister goes back on his promise to accept the referendum result and raises the prospect of Scotland unilaterally declaring independence’, *Telegraph (online edition)*, 21st September 2014: (accessed on 3rd October 2014).

²⁶ Bruno Waterfield, ‘Belgium to have new government after world record 541 days’, *Telegraph (online edition)*, 6th December 2011: www.telegraph.co.uk/news/worldnews/europe/belgium/8936857/Belgium-to-have-new-government-after-world-record-541-days.html (accessed on 12th October 2014).

persons in time of war states Article 49 of the Fourth Geneva Convention relative to the protection of civilian persons in time of war.²⁷

For the Republic of Cyprus and other member states of the European Union, the primary lesson to be drawn is that enormous care should be taken to ensure that a country's constitution sets out the precise circumstances under which constitutional amendments may be made and any referendum may take place. Any new constitution should generally preclude constitutional reform, save in accordance with the strict procedures and other requirements of the constitution.

A fifth lesson of history is that there are merits associated with a referendum which focuses on the acceptability or otherwise of a philosophical proposition.

As already noted, the referendum in Scotland centred on a short philosophical question: 'Do you think that Scotland should be an independent country?' This question has followed the pattern which has been set in the United Kingdom over recent years during which a number of referenda have been held. All of those referenda dwelt on a particular philosophical question and – as in the case of the referendum over whether or not to change the voting system at general elections – a 'No' vote stopped the proposed change dead in its tracks.

Interestingly enough, in the days leading up to the referendum in Scotland, Lord Terrington sent a thoughtful letter to the editor of *The Times* which was published on Monday 15th September 2014. According to Lord Terrington:

'The residents of Scotland are being asked to vote for or against independence with virtually no data to guide them. If they [i.e. the residents of Scotland] vote "yes" on Thursday should there not be a further referendum, once the negotiations are complete, to test whether the terms are acceptable? Without such an option, many may come to regret their original choice.'²⁸

All of which brings to mind the so-called 'double referendum' held on both sides of the cease-fire line of the Republic of Cyprus in 2004. This hinged around the acceptability or otherwise of a draft plan stretching over many pages which had been composed – in secret – over the preceding years with a view to transforming the Republic of Cyprus into a 'bi-communal' and 'bi-zonal' federation, the final version of which was not published until the day before the referendum.

When all is said and done, however, the recent history of Scotland has underlined a phenomenon of recent history: the referendum has emerged as a valuable implement in the tool-box of democracy, provided it is used fairly, reasonably, lawfully and by means of a secret ballot. In this regard, the commentator Janet Daley put her finger on the nub of the matter in the immediate aftermath of the Scottish independence referendum:

'As it turned out, virtually all of the polling in recent weeks had been wrong. In the end, the vote wasn't very close: it was a clear and decisive No. Whatever poll respondents had said – or been afraid to say – about their intentions because they felt coerced or intimidated by the aggressive tactics of the other camp, when it came to it, they were free to do as they pleased.

²⁷ Under this provision: 'The occupying power shall not deport or transfer parts of its own population into the territories it occupies.'

²⁸ *The Times*, 15th September 2014, page 21.

‘This is a salutary lesson in the limits of militant political activism: you can bully people in the street, shout them down at public meetings and dissuade them forcibly from displaying posters or banners you don’t like. ... ‘The inviolable privacy of the polling booth puts paid to all that: the ordinary citizen, who may well have had his anger and resolve strengthened under fire, gets his revenge.’²⁹

Conclusions

The recent history of the United Kingdom has exposed the dangers associated with any decentralisation of power away from the central organs of government. Irrespective of whether such decentralisation takes place pursuant to devolution or federalisation, the follies of federation may be summarised under five headings which may be conveniently depicted as the ‘Five Fs’: fragmentation, factionalism, favouritism, friction and fragility.

- Decentralisation results in the constitutional **fragmentation** of a sovereign state. Hence, devolution has fragmented the United Kingdom into four parts and the current ‘peace process’ in Nicosia may result in the fragmentation of the Island of Cyprus into four parts – the proposed ‘Greek Cypriot Constituent State’, the proposed ‘Turkish Cypriot Constituent State’, the United Kingdom’s Western Sovereign Base Area and the United Kingdom’s Eastern Sovereign Base Area.
- Decentralisation may give rise to increased **factionalism** with the population of each fragment of a sovereign state owing their primary allegiance to their own particular fragment rather than to the sovereign state of which all fragments form part. If the Republic of Cyprus becomes a ‘bi-communal’ federation, Greek Cypriots and Turkish Cypriots may owe their primary allegiance to their respective constituent state.
- Decentralisation may give rise to allegations of **favouritism** i.e. that one fragment of the sovereign state being treated more favourably than the other. For example, a number of MPs representing constituencies in England have complained that whereas Scotland, Wales and Northern Ireland are each endowed with devolved organs of government, England is not. Indeed, on 20th September 2014, the *Daily Mail* greeted the referendum result with a front-page headline exclaiming: ‘NOW HOME RULE FOR ENGLAND!’ Further resentment is caused by the so-called Barnett formula which means that HM Treasury in London allocates proportionally more money to Scotland than to England.
- Decentralisation may generate **friction** between the various fragments of a sovereign state. It suffices to note that in accordance with the devolved legislation of the Scottish Parliament, Scottish and other EU students, except those from England, Wales and Northern Ireland, are entitled to free tuition at Scottish Universities.
- As a combined result of the above, decentralisation may ensure that a sovereign state is inherently **fragile**.

²⁹ Janet Daley, ‘Scottish referendum: A useful lesson in the limits of fiery activism In the inviolable privacy of the polling booth, the ordinary citizen gets his revenge’, *Telegraph (online edition)*, 20th September 2014: www.telegraph.co.uk/news/uknews/scottish-independence/11110426/Scottish-referendum-A-useful-lesson-in-the-limits-of-fiery-activism.html (accessed on 5th October 2014).

On the one hand, therefore, the United Kingdom has been spared the ordeal of being partitioned *de jure*, but it faces a constitutional future which may be characterised by federalism or quasi-federalism. On the other hand, the Republic of Cyprus is striving to overturn its *de facto* partition by embracing federalism built upon ‘bi-communalism’ and ‘bi-zonalism’. In response, it may be contended that both these sovereign states have no tradition of federalism and, for this and multiple other reasons, both are heading in the wrong direction. Unless they change direction, each state will end up in a constitutional quagmire of its own making with even more layers of bureaucracy, but much less effective governance. Such a state of affairs is the last thing that citizens, established businesses or potential investors want to see. In short, if federalism or quasi-federalism is accomplished in either the United Kingdom or Cyprus, a Pandora’s Box will be opened with potentially divisive or otherwise destructive consequences for all concerned.

As lawyers know all too well, it is far better to pre-empt the emergence of any dispute than to allow one to burst into the open. To quote a dictum coined by one practising solicitor: ‘Very often the best form of alternative dispute resolution is dispute avoidance’.³⁰

All of which brings us neatly to the final lesson of history. It is the most simple of all and it is this: prevention is better than cure.

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³⁰ Nicholas Cheffings, ‘In place of strife’, *Law Society Gazette (online edition)*, 6th October 2014: www.lawgazette.co.uk/analysis/comment-and-opinion/in-place-of-strife/5043826.fullarticle (accessed on 10th October 2014). The said article was composed by Mr Cheffings with domestic disputes about property – not Cyprus – in mind.