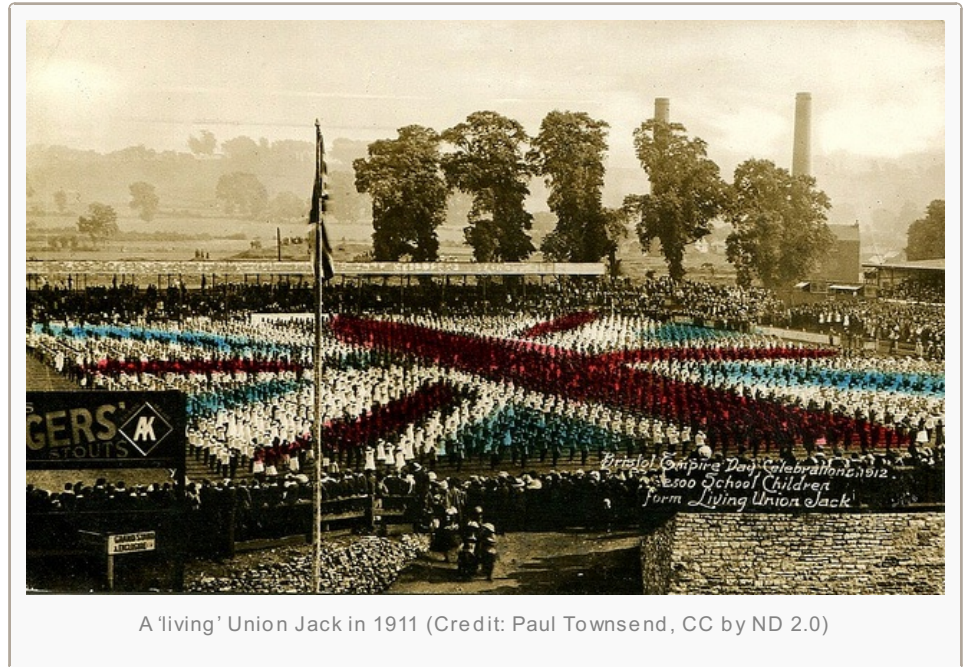


Yes or no, the Scottish independence referendum will have a lasting impact on the coherence of the multi-national state

By Democratic Audit

*The future of the Union is in doubt, with a 'yes' vote in the Scottish referendum on independence still a possibility. The ramifications for the residual union of England, Wales, and Northern Ireland are under-explored, with attention focussing mainly on the implications for Scotland. Here, **David Melding**, the Conservative Welsh Assembly Member for South Wales Central looks at the possibilities.*

The people of Scotland will determine their own constitutional future and that of the whole British people on 18 September 2014. This constitutes a fiduciary duty of the highest order. While there is little doubt that Scotland could sustain the weight and cost of a state apparatus, Wales and Northern Ireland would have little choice but to remain in a reduced and perhaps dysfunctional Union with England. Even finding a plausible name for that state formerly known as the United Kingdom of Great Britain and Northern Ireland might prove difficult (some have mischievously suggested 'Little Britain', others 'Great England'). More ominously, the peace process in Northern Ireland would be further tested by any fundamental reconfiguration of the UK.



A 'living' Union Jack in 1911 (Credit: Paul Townsend, CC by ND 2.0)

The Scottish referendum will be the most critical decision on state formation since the Supreme Court of Canada's judgement in August 1998 on the permissibility of a Québec secession. The Court ruled that Québec could not secede simply as a result of a referendum vote in favour of independence. It further held that the right to national self-determination in international law only permitted secession for a people suffering oppressive subjugation. Nevertheless, the Court did rule that a referendum in favour of independence would generate an obligation for the rest of Canada to negotiate with Quebec. There was, to summarise, neither an absolute right to secede nor an absolute denial of such a right. As Peter H. Russell has written:

"In going where no high court in a constitutional democracy has gone before – namely to the legal rules governing secession – it was also a landmark decision for worldwide constitutionalism".

Should the people of Scotland vote for independence it would set a dramatic precedent. It would promulgate the principle that nations and states are ideally coterminous and multi-national states are something of a compromise because the potential for national flourishing within them is limited. That indeed would be a 'landmark decision for worldwide constitutionalism'.

The demise of the UK would strike a far heavier blow against the concept of multi-national states than the dissolution of the Soviet Union or Yugoslavia. Britain is the world's oldest liberal democracy and has set the benchmark for much constitutional practice in the English-speaking world and indeed beyond. If a multi-national state cannot endure in Britain, where can it prosper?

Even if we consider these thoughts over anxious, they should remind us that the referendum on 18 September 2014 will be no ordinary political moment. Although no guns will blaze, its impact on unionism and the coherence of multi-national states could be greater than any event since the American Civil War. The different visions Scottish nationalists and British unionists have for political life after the referendum must be shaped in the long shadow of this fiduciary duty. Let us briefly consider the alternative outcomes and their likely consequences.

A YES Vote

It would be incumbent on the Scottish and UK governments to conduct the necessary negotiations to secure separation with the maximum of goodwill and co-operation. Matters relating to defence and the sharing of the National Debt are likely to be the most difficult to resolve. However, the most productive development would be an agreement to form a confederation of sorts. A confederal Britain may share a common currency, a head of state, and a defence agreement. It could conceivably even extend to a transfer union. Alex Salmond has already advocated a social union which seems confederal in its essentials, and unionists should take care not to dismiss this concept in an attempt to up the anti. Here the fiduciary duty incumbent on nationalists and unionists seems clear. Nationalists should temper independence with confederal arrangements so that the risks involved in secession are minimised. This would surely reassure much of the international community (although by no means all of it). Unionists must acknowledge that a sense of Britishness would continue in a Confederation.

Northern Ireland and Wales would face immediate existential challenges if the Scottish people vote to secede. The whole peace process in Northern Ireland would need reappraisal in the light of Scotland's secession from the Union. Constitutional options would range from a new union between England, Wales and Northern Ireland (presumably on some federal basis) to preserve the nearest thing to a status quo; patently awkward options like a Northern Ireland state or condominium (with some form of involvement from the EU, Britain and the Republic of Ireland?) to perhaps an Irish union (presumably on some federal basis). Sketching out these options is itself an unsettling experience – but some response would be necessary to Scottish secession and need to be robust and expeditious.

A NO Vote

While it is probably the case that any YES majority, however small, would be seen as irreversible, a NO vote has to be decisive if the question of Scottish secession is to be resolved for a generation or more. To maximise the NO vote unionists need to tap the middle ground of Scottish opinion which seems to prefer more devolution to independence. The path to a new Union with enhanced Scottish autonomy on domestic affairs needs to be clearly marked out before the referendum campaign, and then advocated sincerely throughout the campaign itself. This approach would also have the advantage of being more positive in tone than simply urging outright rejection of independence. It is more important to promote a new Union rather than obdurately defend the old. Such a settlement, developing rather than simply preserving the UK and its devolved institutions, would also send an optimistic signal to other multi-national states facing demands for greater national autonomy within their borders. In my view, any coherent settlement to develop the UK post 2014 needs to use more explicit federal mechanisms.

There is a danger that those with long memories will recollect what happened in Scotland after the 1979 referendum. The Conservative Party – on the cusp of government – had stressed that a NO vote would not close the devolution question. In fact it did, at least for the Thatcher and Major administrations. Any hint of similar equivocation now is only likely to increase the YES vote in Scotland as voters in the middle ground who favour more autonomy but not independence send the unionist parties a ‘signal’ in the referendum. One way to resolve this and offer an adequate assurance of a new settlement would be, of course, to announce the establishment of a Constitutional Convention if the Scottish people vote ‘NO’. Whatever is done, the Scottish people must be reassured that the parties of the Union are sincere in wanting further development and reform. Otherwise, in sending the unionists a ‘signal’, the Scots may inadvertently vote for secession! This would surely be the worst of all outcomes.

Note: this post represents the views of the author and not those of Democratic Audit or the LSE. Please read our comments policy before posting.

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This post is part of Democratic Audit’s **Future of the Union** series, which explores the UK’s future prospects as a political union and the implications of constitutional and territorial changes. To read more posts in this series [click here](#).

