

Overcoming the UK's constitutional crisis may require the development of more flexible relationships between the constituent nations

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By Democratic Audit UK

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*That the UK is in the midst of an ongoing constitutional crisis can no longer be doubted, with question marks hanging over Scotland's membership of the union, as well as the UK's membership of the European Union. **Sean Swan** looks at the parallels with a previous constitutional crisis, and makes the case for rethinking the relationships between the constituent nations of the UK along more flexible lines.*



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A century ago the UK was undergoing a constitutional crisis over the issue of Irish Home Rule. Various suggestions for thorough going reform were advocated, such as 'Federal Devolution' or 'Home Rule All Round', but all such reforms remained just talk and were overtaken by events when Ireland went critical in the period from 1916 to 1921. Once the Irish crisis had passed, all talk of general reform faded. The crisis settlement in Ireland collapsed within 50 years, the non-settlement in Britain is collapsing now.

The UK faces a constitutional crisis. Scotland remains unsettled. Recent polls indicate that a [53% majority now support independence](#) and the First Minister has raised the possibility of [a new referendum](#) on Independence.

Sixteen years after the Good Friday Agreement Northern Ireland continues to lurch from crisis to crisis, its [First Minister has resigned](#) and its politics remain totally dominated by the constitutional question. Even 'the people who have not spoken yet' are restless. England wants a referendum on EU membership and a constitutional revolution to create two classes of MPs in order to facilitate 'English votes for English Laws' in the absence of English devolution.

Whereas a written constitution creates a legalist regime presided over by a supreme court, an uncodified constitution is essentially a political constitution in which the legislature and the political parties inhabiting it rule. In an unwritten and political constitution such as the British one, political parties serve as the buckler binding the

diverse nations together. Today, however, the 'British' party system is in crisis – whether as cause or symptom makes little difference. It collapsed in Scotland in the last general election when the 'British' parties managed to win only three out of Scotland's 59 Westminster seats. And this change is taking on a permanent caste.

A recent opinion poll in Scotland put SNP electoral support on [62 per cent](#). The British Party system in Northern Ireland – to the extent it ever really existed – died in the mid 1970s along with the link between the Ulster Unionists and the Conservatives. Today, the second largest party there, Sinn Fein, refuses even to take seats in Westminster. And England? As [Gordon Brown put it](#) “instead of playing the British unity card the Conservatives decided to play at the general election the English nationalism card”. This sentiment, though this time arguing in favour of EVEL, was echoed by Tory MP [Jake Berry in the Commons](#) – “the biggest danger facing the Union is not Scottish nationalism, but English nationalism”.

Vernon Bogdanor has [already highlighted](#) the fact that “the difficulty we face in confronting our constitutional problems is that they are interconnected. The Scottish Question is intertwined not only with the English Question but also with the question of whether Britain remains in the EU, and with the electoral system”. Both he and Gordon Brown have called for a constitutional convention. At first glance, this appears a worthy idea. It is likely that, at least in the case of Gordon Brown, the inspiration for it comes from the [Scottish Constitutional Convention](#) which is seen as having helped paved the way for the creation of the Scottish Parliament. However there are two significant points about that convention which make it a poor model for any future UK constitutional convention:

1. It related only to one nation – Scotland
2. It was never attempted to ratify it by referendum.

Any future UK convention would run into all the same problems as have beset devolution. Firstly there is the question of composition, whether as one body indiscriminately drawn UK wide, or in some such manner as gave recognition and representation to each nation separately? Secondly how would it be ratified? By simple UK majority or would it require the assent of each nation? Would it not automatically become a second indyref in Scotland where nationalists might call for a 'no' vote on any settlement short of independence?

However there is nothing to indicate that Brown or Bogdanor's imaginings for any new constitutional settlement go beyond electoral reform, federalism and a written constitution. Such reforms fail to address the totality of the issues involved.

Firstly the issues on which Scotland potentially dissents from rUK are not readily addressed by federalism as they include economic policy, membership of the EU and the high politics of war and peace. The latter issue could only be addressed by some form of re-enactment of the 1703 *Act anent peace and war*, [which asserted that](#):

“No person being king or queen of Scotland and England shall have the sole power of making war with any prince, potentate or state whatsoever without consent of [the Scottish] parliament, and that no declaration of war without consent foresaid shall be binding on the subjects of this kingdom [of Scotland]”.

While this is compatible with confederalism, it is not compatible with federalism.

Secondly there is the issue of sovereignty. Technically parliamentary sovereignty endures in the UK, and most proposed alternatives would make the people of the UK sovereign. But neither scenario is any longer convincing. The Scottish Indyref made the people of Scotland sovereign. The referendum was an exercise in sovereign self-determination and could have no other meaning. The fact that Scotland voted to remain in the UK in no way negates this. Northern Ireland's sovereign right of self-determination has even more solid foundations, being fully conceded in the Good Friday Agreement

Even more problematically for those who would cling to theories of 'sovereignty' based on the Westminster Parliament or the people of the UK, [sovereignty in Northern Ireland](#) is actually shared with the people of the Republic;

"it is for the people of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a United Ireland, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland".

Nor is this the only extra-UK dimension. The Good Friday Agreement gives the people of Northern Ireland the "right to hold both British and Irish citizenship" and this right would "not be affected by any future change in the [constitutional] status of Northern Ireland". Put bluntly, the UK has an 'Irish dimension' (and vice-versa, Ireland has a 'British' dimension) and the two polities overlap. Any comprehensive settlement must involve the Republic. And where, exactly, do Jersey, Guernsey and Man fit into this picture?

Tom Nairn in *After Britain* describes the British Irish Council (a body created by the Good Friday Agreement in which the Dublin and London government, the governments of the devolved UK countries and of the Isle of Man and the Channel Isles, are all represented) as designed "to coordinate or supervise the future business of the archipelago ... a spectral body intended to profoundly modify – and possibly even to succeed – the United Kingdom".

There is the germ of an idea here. It represents not a cobbled together UK federal-ish constitutional compromise designed to facilitate another few decades of 'muddling through', but a larger vision of these islands which recognises that the nations within them are distinct and sovereign, yet are not foreign to each other. It potentially facilitates a larger and looser form of confederal identity – more on the lines of the Scandinavian set-up than the UK – in which the complex national identities of our nations could form more flexible relationships. It is only by addressing the current issues on some such broader horizon that they can be successfully resolved.

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