

Unions and Constitutions



*How do you write a constitution for a state in which 45% of the population of one of its founding partners voted to leave a political Union which it helped to create over 300 years ago? It certainly is difficult, and probably impossible. Why should that be? **David McCrone** talks about unions and constitutions.*

In the first place, it is important to understand the nature of the 1707 Union which created 'Great Britain'. (For the purists, the 'United Kingdom' came about in 1801 when Ireland (all of it) joined the Union.) That Union was what the French call a '*mariage de raison*' such that Scotland got access to economic and political power in the unfolding British Empire, while England severed the old alliance Scotland had with France since the 13th century. It was a marriage which ultimately suited both nations, with Scotland retaining key institutions such as law, education, religion, local affairs, and leaving Westminster to deal with 'high' politics; taxation, warfare, and in the 20th century, welfare.

Famously having no formal and written constitution, the United Kingdom was able to tackle matters pragmatically, searching for a political solution for what otherwise would have to be handled by constitutional courts. Wars could be waged, colonies disengaged, power devolved according to whoever had power in the UK parliament. Lest that strike the reader as a somewhat reactionary stance, let us remind ourselves that in 1999 power could be devolved to Scotland, Wales and Northern Ireland without much trouble. Contrast that with the failure of Canada as a formally federalist state to accede further powers to Quebec in the 1987 Meech Lake agreement, because the other provinces vetoed the arrangement.

Truth to tell, a formal and written constitution cuts two ways. On the one hand, it curbs the centralising instincts of executive government. On the other hand, it constrains political action even where, as in the Quebec and Scottish cases, it is sensible to find solutions. The old adage applies: politics first, law second. When the UK failed to start out on the road to federalism in the late 19th century ('home rule all round') due to the intransigence of Unionism, what the UK got was what the late Neil MacCormick called 'asymmetrical quasi-federalism', with powers devolved but theoretical sovereignty retained to Westminster. It would still be possible for the UK to prorogue the Scottish parliament on those grounds, but it would be an act of mindless stupidity, and a quick way to an independent Scotland.

Scotland is 'different' because it has always been. Its institutional distinctiveness has grown since the Union of 1707, notably in 1886 with the formal establishment of the Scottish Office, in the post-war period with new economic institutions, and most obviously leading up to the creation of the Scottish parliament in 1999. It is this institutional leeway, the fact that it is a different 'civil society', with a strong sense of national identity albeit with an attachment also to being British, which has kept Scotland in the Union.

It has become a truism that there is a Scottish parliament because Scotland is 'different', notably in

terms of its political values and behaviour. The evidence? The Conservative party's share of the vote is half that of what it gets in England. Scots are deemed to be more 'left-wing' than the English; UKIP is weak, after all; and the dominant parties, Labour and the SNP are left-of-centre ideologically. So it seems that Scotland is left-wing; England is right-wing.



Unions and Constitutions (Credit Lawrence OP Flickr cc by 2.0)

Both parts of that equation are flawed. A majority in both countries believe that 'ordinary people do not get their fair share of the nation's wealth'. Almost half in both countries believe that the government should redistribute income from the better-off to the less well off. On the other hand, a majority in both believe that the dole is too high and discourages work. True, Scotland is marginally more left-wing in terms of social and political values than England, but that is not sufficient to explain the clear divergence in electoral politics.

So what is going on? The simple explanation is to say that in England the Conservatives get elected *despite* the centre-left values of the electorate, whereas Scots go with the flow. Hence, people in England voted for Mrs Thatcher and her successor *despite* their values, and not because of them. (Labour's perceived economic incompetence had much more to do with electoral failure, coupled with the oddities of majority rule.) In other words, the Scots and the English share similar values, although Scots are marginally more left-wing. The real difference derives from the system of party politics in the two countries which in turn shapes the political agenda. Thus, proportional representation in Scotland produces a multi-party system in which two social democratic parties, SNP and Labour, dominate. England, on the other hand, has first-past-the-post which sets up a dichotomous system, and is manifestly one creaking at the hinges.

Would a written constitution have created a more stable United Kingdom? We will never quite know, but each time it is raised as an afterthought, rather than at the moment when it is most needed. Thus, if in the late 19th century before Ireland left the Union, there had been a written constitution rather than simply the assertion of 'the crown in parliament', a federal UK might just have been possible. Similarly, in 1945 when the British state was being recomposed as a welfare rather than a warfare state, there might have been the chance for a modern constitution. The lack of one has allowed the Westminster 'crown' party to capture power, and this centralisation process in turn makes such a constitution less, rather than more, likely.

And so it goes in the aftermath of the Scottish referendum. To argue for a written constitution would seem, at least to the Scots, a barrier rather than an enabler of further social and political change, something which would lock them into the Union should they decide to leave it. If, perchance, a further referendum took place, this time to exit the European Union, and it led to 'Brexit', how would a written constitution assuage Scotland's desire to remain in the EU? Perhaps, to coin a phrase, a written constitution is a good servant but a poor master.

David McCrone is Emeritus Professor of Sociology, and co-founder of the University of Edinburgh's Institute of Governance. He is a Fellow of the Royal Society of Edinburgh, and a Fellow of the British Academy. He has written extensively on the sociology and politics of Scotland, and the comparative study of nationalism. His book, with Frank Bechhofer, '**Understanding National Identity**', will be published by Cambridge University Press early in 2015.

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