

CONSTITUTIONAL POLITICS: IS IT THE "SCOTTISH QUESTION" OR "THE ENGLISH QUESTION" ?

Two preliminary remarks, as it were scene-setting. Back home I have sometimes had to remind leaders of the new immigrant communities as well as foreigners, that the United Kingdom of Great Britain and Northern Ireland has been a multi-national state ever since 1707 – the Act or Treaty of Union between England and Scotland; and it has been a multi-cultural state even since the industrial revolution brought in, first, large numbers of poor Irish immigrants into the cities of England and Scotland, and later largish numbers of Jews fleeing persecution from Czarist Russia.

And it used to be said of the Irish question in British politics that every time someone came up with an answer, the question was changed – like a surreal citizenship examination conducted on-line. Now we Brits are not sure if it is a Scottish question, that Scottish politics has become so radically different from English; or an English question, that the traditional constitution of the United Kingdom based on the English doctrine parliamentary sovereignty no longer works in modern conditions.

The Scotland Act 1998 gave substantial devolved powers to a Scottish Parliament, some students of politics called it "quasi-federalism" but it was not real federalism. Historically federalism was for nearly all the former colonies but not for the homeland itself. Back in 1703 to 1707 when the Scots debated what were to be the terms of the Act of Union, they were well aware that the English intended – and got – not just a union but

an “incorporating union”. The old Scottish parliament was a single chamber feudal institution with a purported balance of three estates – aristocracy, church and merchant cities; but incorporating union meant being subsumed minimal representation into an unchanged Westminster parliament already asserting a doctrine of omni-competent sovereignty.

But even then all was not as it seemed. The Scots drove a pretty hard bargain so anxious were the English to shut out, in the middle of the wars in Europe against France, any possibility of the French allying with those Jacobite Scots who to keep independence would break from the Protestant succession and restore the House of Stuart. The negotiations over union left the Kirk, the Presbyterian Church, as the established church in Scotland, the end of Episcopalian dominance; Scotland gained entry into the protective commercial system of the First British Empire; and left their legal system intact and all local administration (which was the main presence of government in those days) in Scottish hands.

Scottish opponents of the Act of Union said that the Westminster Parliament could use its power and sovereignty to change the terms of what they called the Treaty of Union. English MPs thought the same who believed that their ministers had conceded too much. But this was a misunderstanding of the nature of sovereignty and power. Legal possibilities did not correspond with actual power. Political considerations always dominated. Bertram Russell once said that there were two senses of power: “power as unchallengability” – no one else can do it if we don’t; but also power as “the ability to carry out a premeditated intention”, which often meant a restraint of power, or devolving power to local agents. If England had used its superior power to impose English institutions on Scotland it would have provoked the very thing that made it want union: civil war with inevitable French intervention.

Forgive all this dehydrated theory and potted history. You have invited a professor. But two deeply rooted political points emerge that

are fundamental to possibility of the break-up of the union today. Firstly, the Scotland Act of 1998 did not arise from considerations of constitutional or even democratic theory, but from what was thought by the Labour government to be political necessity: to halt the growth of separatist nationalism in Scotland. Blair was no believer in devolution but he was aware that Labour's majority in the House of Commons contained 56 MPs from Scottish seats. There could easily come a time when a majority at all might depend on them, even if in 1997 no Conservative MPs were returned from Scotland ("a Tory free zone", we joked). Quibbling in cabinet in 1997 stopped when the Secretary of State for Scotland, the late Donald Dewar, told his colleagues tersely that if real powers were not granted, the Nats could sweep the board in parliamentary elections. Edmund Burke had asked ministers in 1775 to consider not whether they had a sovereign right to make the American colonists unhappy (by taxation), but whether they had not an interest to make them happy. Dewar's argument was a kind of knock-down version of Burke.

But the second historical consequence of the concessions in and around the 1707 Act of Union was that Scottish national identity and consciousness was not affected. Even nationalist historians note this. There was no English attempt to anglicise Scotland. Nationalist historians who lament the ending of the parliament fail to see that the Kirk was the greater carrier of national tradition and identity than the aristocratic parliament. English threats and bribery were aimed simply at parliamentary unity and maintaining the unity of the crowns.

When I first began to follow Scottish politics thirty years ago, even before migrating to Scotland, many a time I heard on political platforms the cry: "If we dinna have oor aine parliament agin, we will loose oor identity". I began to see that this was great nonsense: the very people saying it were so very, very Scottish, whether or not they were separatist

nationalists or simply full of national resolve to get the already devolved institutions of government under democratic control and accountability.

So under Dewar the drafting of 1998 Act was relatively simple compared to its defeated predecessor in 1977. The existing powers of the Secretary of State and the Scottish Office were devolved to a Scottish Parliament – the reserved powers remaining with Westminster were foreign affairs, levels of social service benefits and taxation – Scotland receives a block grant according to something called the Barnett formula. Education, local government, the legal code and administration remained as before in Scottish hands, as well as the administration of the National Health Service. There was one peculiar but politically highly important, exception: Westminster reserved to itself legislation on abortion. (The government benignly wished to save the Labour Party in Scotland from tearing itself apart).

However, while the extraordinary flexibility of the UK constitution allowed such an extraordinary constitutional change (as later, with different powers and institutions, for Wales and Northern Ireland too), the ad hoc political decision had unforeseen and unpremeditated consequences quite inconsistent with established parliamentary practice. The most obvious is the so-called “West Lothian question”. Any Scottish MP at Westminster, say from West Lothian, can vote on any legislation affecting England, but MPs with seats in the rest of the United Kingdom, predominantly English of course, cannot vote or debate on the devolved reserved matters. Not surprisingly Conservative MPs (who only have one seat in Scotland) are less than happy. And most of the London press agitate aggressively about this, almost Scotophobic, even though they rarely if ever report on actual Scottish politics. The two systems are drifting apart in mutual incomprehension. Some Conservatives favour an English Parliament, while some even favour, somewhat discretely as yet,

allowing Scotland to secede, thus a permanent Conservative majority at Westminster.

Another unintended consequence of piece-meal, ad hoc constitutional reform was that while the Scotland Act brought in PR for Scotland, deliberately intended to create a lasting Labour/Lib-Dem coalition to contain the Scottish National Party, the consequence has been that since the 2007 election to the Scottish parliament, the SNP is now the largest party at Holyrood and have formed a minority government. The Liberal-Democrats felt that they had suffered by being the junior partner in coalition with Labour and so refused coalition nationally with either of the main parties, even though at local government level they work with the SNP (as in Edinburgh itself) to shut out Labour. The SNP became the largest party not for its still strongly professed policy of “independence in Europe”, which only about a quarter of the Scottish electorate support, but for its seemingly popular its old style social democratic, welfare policies. The Labour Party in Scotland is not legally or institutionally a Scottish Labour Party. Many of its activists have come to find it too London dominated and many former Labour voters thought it too Blairish and thought Blair to Thatcherite. And I am bound to say, that earns me no love in the Labour Party, that Alex Salmond’s social democracy, perhaps even more discretely democratic socialism, is genuine not tactical.

But will this lead to independence? Salmond is prepared to take his time and establish a reputation for good government in a distinctively Scottish style and some distinctively Scottish policies. Compared to nationalism and unionism in Northern Ireland, passions are low if principles are strong; but the situation is fluid, uncharted waters for the constitutionless UK constitution, or some would simply say the incomplete and uncoded constitution. The key constitutional doctrine of the United Kingdom is still widely believed to be the sovereignty of

Parliament. The trouble with that is, as some super patriots are well aware, Parliament can abrogate its own sovereignty in such a way that it is politically highly unlikely that it could ever reclaim it. That is clear in the case of the Treaty of Rome and consequent legislation, but also listen to this from the Northern Ireland Constitution Act 1973 – the famous “guarantee” to the Ulster unionists:

It is hereby declared that Northern Ireland remains part of Her Majesty’s dominions and of the United Kingdom, and it is hereby affirmed that in no event will Northern Ireland or any part of it cease to be part of Her Majesty’s dominions and of the United Kingdom without the consent of a majority of the people of Northern Ireland voting in a poll held for the purpose of this section and in accordance to Schedule 1 of this Act.

What a guarantee! Northern Ireland is not constitutionally an integral and perpetual part of the United Kingdom, but a conditional one. And the British-Irish Intergovernmental Agreement of November 1985 pledged *both* governments to the establishment of a United Ireland if the consent of a majority in the North was forthcoming.¹ But British governments of both parties, authors of these pragmatic and essential move in resolving the Irish question, see no connection with the Scottish question. Perhaps this is because the Scots are not thought likely to proceed through violence.

In last year’s election campaign for the Scottish Parliament (fixed term election, by the way) Alex Salmond said something very important but so puzzling to the media in its basic simplicity that it was largely

¹ See “The Sovereignty of Parliament and the Irish Question” and “On Devolution, Decentralism and the Constitution” in my *Political Thoughts and Polemics* (Edinburgh University Press, 1990).

ignored. He said : “Independence is a political not a social matter.” Indeed a political matter, if the electorate want it ultimately they should have it and can take it politically. But “not a social matter”? Enigmatic, but I think that was meant to reassure voters that independence would not distance families and friends from each other north or south of the border, nor privilege employment and office-holding to real or true Scots, still less disenfranchise immigrants (whom Scotland badly needs), even English immigrants. Any idea in SNP thinking of an ethnic test for Scottish citizenship was long ago abandoned – well, long enough ago. “Independence” is, indeed, compared to the old SNP concept of “separation”, a relative term both economically and socially.

This makes, I believe Gordon Brown’s banging on about Britishness—of which some echo may have reached these shores—both mistaken and irrelevant. In a speech last year to the TUC he used the term, according to the *Guardian*, 34 times and in his speech to the Labour Party conference the BBC counted about 80 strikes – not always to define it, of course—but “our British” this and that attached to all kinds of aspirations and objects (“British jobs for British workers” unhappily slipped out).

If he was gunning for Scottish National Party it may be a profoundly mistaken tactic to denounces, as he often repeated, “Scottish nationalism”. For whereas only about a third of Scots favour separation or independence, nearly all Scots have a strong national a consciousness of being Scots, both more articulate and more clear than the English have had of Englishness. For my fellow English usually confuse it completely with being British – although in the last decade this is beginning to change. Anyway Brown probably bangs on about Britishness mainly because he is worried that “middle England” may think he is too Scottish. But the trouble is that he really does seem to want us to believe that unity of the United

Kingdom is in danger, in relation to immigration not just to devolution, if there is not a stronger, widely held sense of Britishness. Listen to the mission statement or *sloaghan* he had drafted for a conference hosted by the Treasury, no less, back in November 2005:

How “British” do we feel? What do we mean by “Britishness”? These questions are increasingly important in defining a shared purpose across all of our society. The strength of our communities, the way we understand diversity, the vigour of our public services and our commercial competitiveness all rest on a sense of what 'Britishness' is and how it sets shared goals.

May I, somewhat impudently or imprudently, tread this again altering one word?

How “Australian” do we feel? What do we mean by “Australian-ness”? These questions are increasingly important in defining a shared purpose across all of our society. The strength of our communities, the way we understand diversity, the vigour of our public services and our commercial competitiveness all rest on a sense of what “Australian-ness” is and how it sets shared goals.

Do each of us really need “a shared purpose” and “shared goals”?

Such language is, I submit, a tired rhetorical echo of the old destructive nationalism of central Europe and the Balkans. Is this really how states hold together, especially in the modern world of, whether we like it or not, a global economy where all notions of national sovereignty needing to be so qualified as to be practically useless in understanding actual

politics²? This idea of national purpose is what Goethe called “a blue rose”. To search for it can prove damaging already as well as frustrating. Both Thatcher and Blair openly spoke of restoring our British sense of national importance, a hangover from the days of Empire and the Second World War – which, of course, we won, with a little help from the USA, the USSR and the Commonwealth. And this search to “put the ‘great’ back into Great Britain” has meant the American alliance with too few reservations made or questions asked. Is a heightened sense of Britishness and a clear national purpose needed to hold the Union together? Perhaps my country just needs good government and social justice. National leaders should be careful when they invoke “our common values”, still more if they think they can legislate for them.

In July 2004 Brown gave the British Council Annual lecture on Britishness and invoked *values*, our British values:

The values and qualities I describe are of course to be found in many other cultures and countries. But when taken together, and as they shape the institutions of our country these values and qualities – being creative, adaptable and outward looking, our belief in liberty, duty and fair play – add up to a distinctive Britishness that has been manifest throughout our history, and shaped it.³

“Liberty, duty and fair play” – well some Scots are beginning to play cricket, of a kind. By such banalities and abstractions my party leader plants both feet firmly in mid-air. Worse, when Brown gives specific

² See “The Sovereignty of Parliament and the Irish Question” and “On Devolution, Decentralism and the Constitution” in my *Political Thoughts and Polemics* (Edinburgh University Press, 1990).

³ Speech of 8 July 2004 on “Britishness”, the British Council Annual Lecture. See also his speech of 14 January 2006 to the Fabian Society’s Conference on The Future of Britishness.

historical examples, they are all – yes all – taken from English history.⁴ He clearly wants us to believe that a heightened Britishness is *necessary* to hold the Union together rather than simply a rational calculation of mutual interest and advantage, as Adam Smith would have seen it, or as, David Hume would have it, tradition and habit. So he attacks the SNP in Scotland with the wrong weapon. He plays into their hands by confusing nationalism as tradition and national consciousness with nationalism as separatism. If there is a threat to the Union, I agree with the writer Neal Ascherson, it is less likely to come directly from the Scottish electorate than from English insensitivity or even provocation (if, as is likely, the Conservatives get back in).⁵

Two of Brown's colleagues put the matter better than he in a recent Fabian pamphlet neatly called *A Common Place*. Said Ruth Kelly and Liam Byrne: "Britishness is like an umbrella under which different identities can shelter."⁶ That is a good, homely metaphor (I think their speech writer borrowed it from me). But Brown speaks as if his British broly can only shelter one identity. I'm sure he doesn't really believe that. He almost denies himself. But leaders should say what they really believe, if they are to be truly respected and trusted.

Penultimately, let me return to Alex Salmond's remark about independence being a political and not a social matter. Some years ago I was waiting in a corridor for an officer of the House of Commons when he happened to come by. He asked me in good humour whether I would return to England when Scotland got its independence. I replied that I would *probably* have voted against independence in the final referendum, but would then want to be near the head of the queue in Glasgow to get a Scottish passport. He expressed pleasure and surprise. Well, I said, "I

⁴ As Simon Lee has clearly but cruelly shown in his "Gordon Brown and the 'British Way'," *Political Quarterly*, July-September 2006.

⁵ Neal Ascherson, "Homo Britannicus: Scotophobia" an Orwell Memorial Lecture delivered at Birkbeck College, 13 February 2007.

⁶ Ruth Kelly and Liam Byrne, *A Common Place*, Fabian Society 2007.

really don't believe that independence can bring all the good some hope for nor all the troubles others fear". He laughed. I may be imagining but it sounded to me more like a laugh of recognition than a mocking laugh, what Berthold Brecht once called "the laughter of free men." Significant social and economic interrelations most often usually survive separations, both nationally and domestically.

Finally, let me say how honoured I have been at this invitation, and also how flattered that in a speech mainly on Australian identity addressing the National Press Club here in this Parliament House on 25 January 2006, the then Prime Minister Howard said: "I believe in our unique democracy because I believe passionately in the virtue of politics. The political philosopher Bernard Crick put it well when he said 'The moral consensus of a free state is not something mysteriously prior to or above politics: it is the activity (the civilising activity) of politics itself.' But I must in all honesty draw from what he quoted a rather different conclusion than he did. I believe that the cohesion of states like Australia, Canada and the United Kingdom depends not on the state attempting to define and to heighten national feeling but more simply on maintaining a just and caring democratic politics; then immigrants may come to like it and identify with a national spirit, a spirit that can grow on one over time and be strongly felt but is best left undefined – especially by Prime Ministers snatching for strong straws.