

THE FEDERAL TRUST
for education & research

Enlightening the Debate on Good Governance

**Scotland in Europe -
Independence or Federalism?**

ALEX WRIGHT



European Essay No.18

A Definition of Federalism

Federalism is defined as ‘a system of government in which central and regional authorities are linked in an interdependent political relationship, in which powers and functions are distributed to achieve a substantial degree of autonomy and integrity in the regional units. In theory, a federal system seeks to maintain a balance such that neither level of government becomes sufficiently dominant to dictate the decision of the other, unlike in a unitary system, in which the central authorities hold primacy to the extent even of redesigning or abolishing regional and local units of government at will.’

(New Fontana Dictionary of Modern Thought)

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Introduction

Quite apart from the impact of international terrorism on our lives, we are living through another revolution of global dimensions and are hardly aware of it. We go about our daily lives knowing there is no shooting in the streets, no subversive ideology circulating in the universities or stoking disaffection among the citizens. But there is a sense of unease, and some parts of the economy and the country experience it more clearly than others. Scotland is one of them, and this European Essay brings to the surface some of the elements of this unease, expressed at the level of political and constitutional argument. It is a specific reflection of one reaction to the revolution that is sweeping through much of the developed world.

Globalisation and a heightened sense of local identity are two sides of this same revolution. Global economic pressures encourage us to seek defence of our interests in ever-larger political structures such as the European Union. We sense that the nation state is growing impotent in many areas, even if we are often unsure of the powers of the larger unit to which it is giving way. Yet our heightened sense of local identity drives us in the opposite direction to stress the importance of local and regional structures in developing a response to global economic

pressures, structures that relate to us as individuals and which we still feel we can control in some way. These two forces are part of the same revolution, driven at great speed by unprecedented technological change and the vast increase in fluid international capital that has been generated by the success of the Western economic system in recent years.

The process of Scottish devolution shows these two dimensions with clarity. But Scotland is in this case just one region - or stateless nation as some would put it - within the EU where there are many others experiencing similar pressures and formulating similar responses. Some are in Germany, Spain, France and elsewhere, just as some are closer to home here in the UK. Wales has a slightly different experience, Northern Ireland yet another, and - as Alex Wright points out in this Essay - the English regions are next in line. In many ways the process is already well under way, with Government Regional Offices, Regional Development Agencies and Regional Assemblies already in existence, and with elections to the European Parliament based on lists for regions which coincide with those used for these administrative and proto-legislative structures. These are all part of our response to the global/local revolution.

The virtue of this Essay is the way it pinpoints the dilemmas and the practical solutions found by those trying to manoeuvre cautiously at political level to reconcile conflicting interests in this process. It starts with the 'given' of devolution - the Scotland Act of 1998 - and analyses how it has been put into practice by those responsible for its application in Edinburgh and in London. It outlines the possibilities and the limits for action by the Scottish Executive in relation to European affairs, scrupulously noting the UK Government's interests and reaction at different stages. It looks at the options for the Opposition in Scotland,

the SNP, and inevitably finds itself in speculative territory, asking if federalism for the UK may not be the 'last chance saloon' before potential territorial disintegration.

On the back of its careful description and analysis, this Essay prompts us to think our way through the federal territory into which it opens such a vista. There is as yet no adequate map for such a restructuring of the UK, although some features of the landscape have been noted above. *Modernising Britain* - the topic of a larger research project by the Federal Trust from which this chapter by Alex Wright has been drawn - is a major constitutional undertaking and not to be embarked upon lightly. Constitutional arrangements must have their organic roots as well as their legal texts, and in creating the latter we should not sever the former. Hence the caution with which the UK Government has gone about the task, and the importance of analysing the results, however early in the process. In the storm of the global/local revolution we need as much practical analysis of the steps being undertaken as we can get.

This particular Essay makes a useful contribution to that, just as the series as a whole is a useful contribution to the ongoing debate on the future of Europe, in which a federal dimension to the constitutional settlement to be found between the member states, the European institutions and the regions is clearly a major factor to be considered.

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October 2001



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Scotland In Europe - Independence or Federalism?

Alex Wright

Maximalists versus Minimalists

Even before the Scottish Parliament first re-convened in 1999, there was a measure of concern about how Scotland could enhance its influence in the EU. The 1997 White Paper, which set out the UK Government's proposals for a Scottish Parliament, devoted a whole chapter to the subject, and civil servants acknowledged privately that this was potentially a very thorny issue. In part that was a result of the SNP's 'independence in Europe' campaign; the implication being that Scotland's interests in Europe would be served better if Scotland became a member state of the EU in its own right. Furthermore, there was the perception amongst a swathe of Scottish interest groups that Scotland's influence in the EU was far too modest prior to legislative devolution. Consequently the onus lay with the unionist parties in Scotland - especially the Scottish Labour Party which was to become the major partner of the governing coalition - to demonstrate that Scotland's interests in the EU could be promoted and defended more vigorously than had been the case hitherto. But as the White Paper portended, and the Scotland Act (1998) confirmed, responsibility for foreign affairs - including relations with the EU - was to be reserved to the Westminster Parliament.

So there was good reason to suppose that involvement of the Scottish Executive (or 'Government') in EU affairs would be quite *minimal*, for instance:

- It would be concerned primarily with overseeing the implementation of EU policies and co-ordinating bids for EU funds.
- As regards the representation of Scottish interests, the Executive would be relegated merely to transmitting the Scottish view on a particular issue of policy upwards to whichever 'lead' department in London was responsible for representing the UK in the Council of Ministers.
- The handling of EU matters would be primarily an administrative affair, which would be left largely in the hands of Scottish civil servants.
- By virtue of its reserved status it would be inappropriate for there to be any substantive ministerial leadership in Scotland - there would be no minister with a 'European' or external affairs portfolio.

Conversely the Executive might opt for a more *maximalist* approach to the EU, the constituent elements of which would be as follows:

- One or more Scottish minister to hold an external affairs portfolio.
- The Executive to formulate a distinctively Scottish agenda which might not necessarily complement the UK's position on the European Union.
- The Executive to develop its own links with the EU's institutions and the governments of the member states.
- The Executive to join pan-European networks which are designed to enhance sub-state influence in the EU.
- The Executive to join other sub-state governments in demanding that the EU's regions and stateless nations have greater influence over decision making.

Given the legal constraint exercised by its reserved status, the maximalist perspective on Scotland's relations with the EU seems unlikely. But that leaves us with a conundrum. It could equally be argued that the minimalist scenario is simply not feasible either. It is unimaginable that the Scottish Executive could somehow avoid becoming intimately involved in European affairs, despite its reserved status.

- Scotland's interests in the EU can be quite distinct from those of the rest of the UK - there is no assurance that the UK Government could accommodate them satisfactorily when it formulates its own position vis-à-vis a given EU policy.
- EU policies can impact directly on areas of policy which had been devolved from Westminster to Scotland - Scottish ministers would have little option but to attempt to influence the EU directly from time to time.
- More contentiously perhaps, the EU is beginning to displace the UK as Scotland's primary locus of government. In part this can be attributed to the supranational characteristics of the EU which ensure that its legislation takes precedence over UK law. In addition there are occasions when the other member states adopted a particular policy which impacted on Scotland directly. Regardless of whether the UK government agreed to it or not - e.g. the EU ban on the export of beef products during the BSE crisis in the late 1990s - there could be times when the Scottish Executive might have little choice but to forge alliances with the governments of the other member states.
- The EU remains for the time being an evolutionary polity the outcome of which is of considerable importance to Scotland's future wellbeing. Scottish ministers cannot afford to ignore it because the consequences could be too great for Scotland. They therefore have little alternative but to formulate an EU strategy if they wish to remain in office.

Faced with such conflicting pressures the Executive found itself in an unenviable position during the early years of legislative devolution.

Legally it was duty bound not to breach the terms of the Scotland Act. Thus in theory it would not be responsible for foreign affairs. Yet, the EU's impact on Scotland was such that it was difficult to avoid becoming involved, not least because there was no clear dividing line as to what constituted domestic and what were EU matters. That then raised a number of questions. To what extent would the Executive attempt to move towards a maximalist approach? Would it hold back at first for fear of upsetting the UK Government in London and thereby avoid provoking a constitutional crisis during the early years of legislative devolution? If eventually it could no longer hold back, then to what extent would the Government in London *allow* the Executive a measure of leeway?

The Scottish Executive, the Scotland Office and the EU

Once the Scottish Elections had been held, the Scottish Office was succeeded by the Scottish Executive and the Scotland Office. In theory there is a fine demarcation line between the two. The Scottish Executive is responsible for devolved matters, the First Minister stands at the apex of its political leadership and he and his ministers are accountable to the Scottish Parliament. The Scotland Office's functions include responsibility for matters which are reserved to Westminster, it is headed by Scotland's Secretary of State who is a member of the cabinet and who along with his or her junior ministers is accountable to MPs at Westminster. Given that foreign affairs is a reserved power, it could be expected that the Secretary of State would play a leading role regarding Scotland's relations with the EU. Certainly the incumbent was a member of a UK cabinet committee on the EU, but apart from that to all intents and purposes to date the post-holders have adopted a low profile on European matters.

The Executive's room for manoeuvre was circumscribed by the Scotland Act, but the White Paper did offer some guidance. It affirmed that the Executive and Parliament would have an 'important role' with regard to those 'aspects of European integration which affect devolved areas.' However, for the most part it appears little has changed. Scottish ministers do not have the automatic right to attend the meetings of the Council of Ministers; they can only do so with the agreement of their colleague from the lead department in London. The White Paper affirmed that they could be 'involved' in EU Councils, but this does not seem to amount to a substantive change as ministers from the former Scottish Office had attended meetings in Brussels for years. The tone of the White Paper emphasised the need for the Governments of Scotland and the UK to also present a united front over foreign affairs; the Scots would be part of 'a UK team'. But it did mention that the Scottish Executive might wish to open its own links with other territories in the EU, implying that Scotland might enjoy some autonomy over foreign relations.

During the second half of 1999 civil servants formulated draft proposals for a Memorandum of Understanding, Concordats and a Joint Ministerial Committee (JMC). The Memorandum of Understanding maintained that in principle the UK and the Scottish Executive should have a constructive and collaborative relationship; in essence conflict between the two should be avoided. The Concordats, one of which dealt with international relations, went some way to formalising intergovernmental relations between the different layers of authority - albeit they were not legally binding. Subsequently a raft of 'functional' Concordats was agreed between departments in London and the territorial administrations (e.g. on fisheries). Although the JMC lacked executive authority, where necessary it could act as a forum for the resolution of disputes between the Scottish and UK Governments. If

that failed to settle the matter, then it might be brought before the Judicial Committee of the Privy Council.

On the one hand these arrangements appear to offer Scotland the means to challenge the actions and perhaps even the competence of the UK Government - something which is particularly salient as more and more power is transferred to the EU. On the other they appeared to constrain the autonomy of the Scottish Executive. This is particularly so in relation to the EU - for instance under the Fisheries Concordat Scottish civil servants are not supposed to receive direct approaches from the European Commission, and if they do then they are obliged to inform the Ministry in Whitehall. In effect the Executive should not embark on 'expansionism' - that is to say it should not involve itself in areas of policy where it has no right to be because they are the preserve of Westminster and the departments in London. Much of this related to civil service activity, because for the first time it would be answerable to different political leaderships, and in theory at least it had little desire to be caught up in turf wars between the Scottish and UK Governments.

The first twelve months of the Executive's existence were notable for its reluctance to adopt a high profile approach to external relations. There was no single minister responsible for 'Europe'; it was claimed that since the EU covered many areas of policy that were devolved to Scotland it made more sense for each of the 'functional' ministers to have a measure of involvement (e.g. finance or rural affairs). Yet it was difficult to avoid the impression that external relations was potentially controversial when legislative devolution was in its infancy and that consequently the Executive had chosen a minimalist approach. There was a degree of ambiguity over the existing constitutional settlement. Some (including apparently Donald Dewar, the then First

Minister) viewed it as part of a process ('stable but not rigid') but others - including Dr John Reid, the then Secretary of State for Scotland - argued that it was to be 'final.' If the Scottish Executive had embarked on a maximalist strategy towards external affairs when this was reserved to Westminster, that might have cultivated the impression that it supported the argument that the existing arrangements were temporary and that it was keen for Scotland to attain more autonomy.

Following Donald Dewar's untimely death in the autumn of 2000, Scotland's external relations strategy changed markedly. Mr McLeish, his successor, assigned the portfolio for the EU and external affairs to Jack McConnell who was also responsible for education; Nicol Stephen was to act as his deputy. Within a short while McConnell was calling publicly for greater powers for territorial governments in the EU, and Jim Wallace, the Deputy First Minister, argued in a speech in Barcelona, that they had to be more closely engaged in EU affairs. During March 2001 the Executive and the Convention of Scottish Local Authorities presented a joint submission to the EU on governance, part of which stated: 'We think it essential that the EU governance debate addresses the potential for giving a greater role to Scotland and the other regions with legislative powers.'

It was later announced that Scotland would have its own civil servants in the UK embassy in Washington. This announcement should not be over-exaggerated as it related primarily to trade and Scottish officials had long been active in the USA - but symbolically it was significant because of its high profile. Likewise McLeish set about undertaking a number of overseas trips, meeting the Pope and the American President.

Following the UK election in June 2001, Robin Cook was replaced by Jack Straw as Foreign Secretary. News reports indicated that there

was some alarm in the Scottish Parliament that Scotland's external affairs policy might be circumscribed by London and officials at the Foreign and Commonwealth Office (FCO) stressed that Scotland's participation in the 2004 IGC would be relegated to dovetailing into a pan-UK position. It would seem that by adopting a maximalist approach the Scottish Executive had taken a step too far.

There is clearly only limited room for manoeuvre if the same parties are in office in London and Edinburgh, but the situation is markedly different if they are not. Despite the existence of the Joint Ministerial Committee, the Concordats and the Memorandum of Understanding - all of which are supposed to underpin intergovernmental relations between Edinburgh and London - Scotland's needs might be perceived as divergent from the rest of the UK as far as EU affairs are concerned by a political party not identical with the governing party in London.

All in all, Scotland's relations with the European Union could well be one of the issues (another being devolution finance) that unravels the current constitutional settlement in the UK. Some informed commentators maintain that the existing situation is 'unstable.' If that were to happen, then legislative devolution may come to be seen as little more than a staging post to a completely new arrangement resulting perhaps in a federal UK, or an 'independent' Scotland in the EU, or maybe simply an 'independent Scotland' akin to Norway or Switzerland. The potential for change in the UK is mirrored at the European level, where the EU itself appears to be in transition from a confederation to a federation. Some argue that it is unlikely that Scotland could become a member of the EU if it ceded from the UK. In turn another way to resolve the pressures of European integration is that aspirations for greater Scottish autonomy could be 'accommodated' in a federal UK which was itself part of a federalised EU - in effect a 'federalised polity'.

The Next Step: a Federal or Federalised Polity?

There are a number of features of a federal polity which suggest Scotland would enjoy more autonomy in a federal system compared to the existing arrangement of legislative devolution.

- A federal system constitutionally 'entrenches' the powers of the various tiers of government. Legislative devolution was enacted by the Westminster Parliament and in theory Westminster could rescind the Scotland Act if it so chose or suspend legislative devolution (as has occurred from time to time in Northern Ireland).
- A federal system ensures that sovereignty is shared between the different tiers of government, whereas under legislative devolution, the Parliament at Westminster maintains that it is ultimately sovereign.
- A federal system has a supreme or constitutional court which can adjudicate in the event of constitutional disputes over competence, whereas under legislative devolution as it stands in the UK this is dealt with by the Judicial Committee of the Privy Council, the legitimacy of which is questionable on the grounds of potential bias in favour of the UK Government, and because of the absence of transparency.

Some suggest that a federal system could transform Scotland's situation. Instead of the Concordats and the Joint Ministerial Committee, relations between the Scottish and UK Governments would be structured in a more formal way. Concordats are essentially informal devices and the JMC lacks executive powers. They are little more than a continuum of the pragmatic approach which successive governments in the UK have adopted towards Scottish aspirations for more autonomy. As such, they are inherently flawed.

Despite the existence of a Scottish Parliament, Scotland remains politically dependent on the UK Government. That may not appear

contentious, but it is. Pragmatic arrangements *can* be valuable by virtue of their potential for flexibility. However, the fact that there is a measure of in-built flexibility can also be disadvantageous. It ensures that the party in government at Westminster is pivotal to Scotland's welfare. This relates especially to the allocation of financial resources, but it also includes relations with the EU and the rest of the world. Prior to Mrs Thatcher's premiership the relationship between Scotland and the UK was pragmatic and it was based primarily on the willingness of both the UK Government and the administratively devolved Scottish administration to compromise. Scottish ministers were relegated to the role of 'bargain hunters' within the UK polity and the bulk of their lobbying took place behind closed doors in Whitehall. By their intrusion into Scotland's political arena (e.g. the introduction of the poll tax, the weakening of the powers of local government, the creation of quangos) both she and John Major revealed just how little autonomy Scotland really possessed. Consequently, whilst Scots had been more hesitant about constitutional change in the referendum of 1979 they overwhelmingly supported it in 1997.

Under the existing constitutional arrangements there is too much reliance on there being a government in London that is both willing and able to respond to Scotland's needs. If another party held office, that could change. Yet, even Tony Blair's 'devolutionist' credentials are open to challenge on the grounds that the constitutional reform programme related more to winning the 1997 election than assigning more autonomy to Scotland. Would Scottish aspiration for autonomy be resolved by a federal system? Providing a federal arrangement was based on equity between the levels of government, this should prevent a UK Government from interfering in Scotland's affairs and it would also ensure that Scotland's (relative) autonomy would be secure.

Federal systems are regarded by some as the most propitious forms of government by virtue of their capacity to accommodate territorial diversity. For one commentator,

'The genius of federation lies in its infinite capacity to accommodate and reconcile the competing and sometimes conflicting array of diversities having political salience within a state. Toleration, respect, compromise, bargaining and mutual recognition are its watchwords and 'union' combined simultaneously with 'autonomy' is its hallmark.'

If a federal system is to succeed, or for that matter if it is even to come into existence, a number of preconditions need to be satisfied. First there needs to be some agreement on the part of the actors involved that it is desirable - there has to be a 'federally inclined political culture' - effectively one that is committed to 'power sharing', 'political restraint', and 'some orientation towards the involvement of large numbers of people in the political process'.

Second, it is likely to be more successful if all the component parts are of roughly the same size - e.g. in terms of population, landmass, GDP. One territorial unit should not be dominant.

At the time of writing there does not appear to be any strongly articulated desire on the part of the UK's citizens for a federal polity. Moreover, to date in Scotland the constitutional debate has focused on Union versus Independence. England is overwhelmingly larger than the other territories of the UK. How could there be parity with Scotland or Wales or Northern Ireland when the 'English' comprise roughly 85 per cent of the population of the UK?

One possible solution would be for England to be sub-divided into regions (e.g. the North West, the North East, the Midlands, the South East and the South West). If that were to happen, then perhaps there could be a form of qualified majority voting within a federal UK whereby

the votes of the English regions equalled those of the Celtic nations, possibly including the Channel Islands and the Isle of Man. But even so, the South East remains the largest and most economically active part of the UK. Would such a scenario be acceptable to its citizens?

Although much was made of a 'Europe of the Regions' during the late 1980s, what we actually have is a Europe *with* regions. In practice, for the most part European integration has the potential to exacerbate inter-governmental relations between the state (i.e. UK) and territorial levels. In Scotland's case it extended the chain of communication between decision makers and citizens and - prior to legislative devolution at least - it reduced the extent to which Scottish institutions and organisations could influence public policies which affected Scotland (i.e. those policies which fell under the EU's competence). The reason for this was relatively straightforward; whereas before the UK joined the EU the Scottish administration dealt directly with those who governed the country from London, it now had to use the departments in London as a conduit to influence the Council of Ministers or the Commission in Brussels.

The same problem applies to federal systems. For example in Germany, the Länder recognise that as more and more power is assigned to the EU, this impinges on their autonomy. After the Single European Act new mechanisms were agreed between the Länder and the Federal Government to ensure that they had a greater say over how the Federal Government voted in the Council of Ministers, and their concern influences the post-Nice debate as well. Some considered Germany's 'co-operative federalism' a possible pace-setter for Scotland. The German constitution was amended in 1992 so that the Länder would be more directly involved in the Council of Ministers in those areas of policy that applied to their responsibilities. Others have their

reservations, however. One reason is that when deciding on how the Federal Government should respond to a legislative proposal from the EU, the Länder vote by simple majority not by unanimity - in effect no single Land has the right of veto.

Thus, as far as relations with the EU are concerned it is difficult to see whether a federal UK would enhance Scotland's influence in the EU or not. Although the EU did flirt with regionalism for a while, in the end it rested with each member state to determine how its territories were represented in the EU. The net result was that many citizens of the EU's territories perceived that they were inadequately represented by their 'national' governments. In sum the problem lay not with representation itself but the manner in which it applied to a privileged circle of states which were members of the EU. Germany is not the only country that has suffered from this deficiency. The same applied to Spain concerning the EU's agricultural policy; there had been criticism of the central government 'arrogating to itself functions that properly belong within the competence of the Autonomous Communities.' That could well explain why some Länder are calling for entrenchment of the powers of territorial governments in an EU constitution at the next European IGC in 2004 - the underlying aim being to constrain the EU and by default the member states from subsuming any more of the Länder power.

'Regions' and the 2004 IGC

As far as the 2004 IGC is concerned there is little sign that territorial empowerment is at the forefront of the member states' plans. In an address at Humboldt University during May 2000, Joschka Fischer, the German Foreign Minister, called for a 'European federation'. He observed:

'European integration can only be successfully conceived if it is done on the basis of a division of sovereignty between Europe and the nation state. Precisely this is the idea underlying the concept of 'subsidiarity' a subject that is currently being discussed by everyone and understood by virtually no one.'

The paradox could not be more stark - there is no mention of territorial governments. Subsidiarity in this instance relates to the EU/member state relationship - not with decision making being devolved to the most appropriate level. The following month, in a speech at the Bundestag, Jacques Chirac, the President of France, affirmed the continuity of the 'national state':

'Neither you nor we are envisaging the creation of a super European state which would supplant our national states and mark the end of their existence as players in international life. Our nations are the source of our identities and our roots. The diversity of their political, cultural and linguistic traditions is one of our Union's strengths. For the peoples who come after us, the nations will remain the first reference points.'

From a French perspective this is relatively straightforward inasmuch as there is eventually one French nation (though the Bretons might disagree). The UK on the other hand is a multi-nation state. Although Chirac referred to 'clarifying the division of responsibilities between different levels of the European system' there is no reason to suppose that this refers to territorial empowerment. If anything, such a scenario would be unlikely from a French perspective - at the time of writing France is now more centralised than the UK and when Scotland sought membership of a pan-European inter-parliamentary body, allegedly it was blocked by the French.

Tony Blair trod a similar path in his speech in Warsaw the following October: the nation states remain pre-eminent, and he rejected any notion that there should be a constitution. He argued instead that

there should be a 'statement of principles' - which would not be too far removed from the unwritten constitution in the UK, much of which is based on custom and precedence. He therefore called for a second chamber of the European Parliament comprising 'representatives of national parliaments', the task of which would not be to engross itself in the minutiae of legislative scrutiny but to 'help implement the agreed statement of principles.' Although 'national parliaments' could include Scotland, the position of the FCO is not encouraging. As mentioned earlier, Scotland belongs in the UK camp; it is not a player in its own right in the EU.

The dilemma confronting the EU's leaders as they themselves acknowledge is that the EU lacks democratic legitimacy. This is exacerbated by the absence of an EU government that is directly elected by the EU's citizens. Hence the call for a European federation, and for a pioneer group of member states forging ahead in closer integration. But this development pays scant attention to the EU's regions and stateless nations, which for the most part have been the victims of European integration. The EU itself is at a momentous point in its evolution - Economic and Monetary Union and the next Enlargement will have substantive ramifications not only for the member states but also for its regions. The European Commission itself warned in its Agenda 2000 paper, that in the aftermath of these events some regional territories would be affected adversely and that there was a risk of 'economic and political tensions'.

In the absence of any substantive reform of the EU which enables them to participate directly in its decision making, some argue that it might make more sense for regions and stateless nations to secede from their states, with a view to joining the EU as states in their own right. So in some respects this represents a pistol to the EU's head.

With more and more states set to join the EU - some of which are smaller geographically and in terms of population than Scotland, for example - there seems a strong case for some of the EU's sub-national territories to join as well. But if this became something of a landslide what would happen to the existing member states? It is partially for this reason that some view a federal polity as resolving the conundrum vis-à-vis territorial empowerment, the sovereignty of existing member states, and specifically the competence of the UK. But would federalism in the UK be little more than an attempt to 'buy off' Scottish independence? And if it is, will it succeed given the twin tensions of European integration and territorial diversity?

One view is that there will neither be a Europe of the Regions, nor a fully-fledged European federation comprising the member states. Instead a more likely scenario is 'selective confederation'. That tallies with the Scottish National Party's position on the EU, based on the continuity of a confederal EU, whereby the states retain sovereignty. Although that seems increasingly illusory as European integration progresses, it is worth looking at a brief analysis of 'independence in Europe' or perhaps even 'independence' as being Scotland's possible final constitutional destination.

Scottish 'Independence' in Europe?

The SNP manifesto for the June 2001 elections stated:

'The SNP stands for Scotland in Europe. The Scottish National Party believes that membership of the European Union will give Scotland real advantages. It will secure for Scotland a voice at the heart of Europe, with full membership of the important decision and policy-making bodies.'

The SNP's 'independence in Europe' campaign has served its purpose in so far as it has ensured that the government of the day, first in London, and now in Edinburgh and London, has had to demonstrate that it could adequately promote and defend Scotland's interests in the EU. As European integration has gathered pace an open-ended commitment to the EU became less realistic for the party and even in the 1990s its manifestos maintained that its approach related to a 'confederal' EU - e.g. the member states must retain a veto.

The notion that Scotland would be an 'equal partner' in the EU is integral to SNP European policy - the implication being that the Union with England has been fundamentally unequal. If the EU were to become a federation in the sense that it becomes a state in its own right, then there could be opposition from within the SNP over what would look like jumping from one union to another. If the EU were to progress down that road then the SNP may simply opt for a more radical form of independence on the lines of Norway or Switzerland. If such a strategy were to come to dominate SNP thinking, it would be ironically aligning itself with the Scottish Socialist Party, which has already adopted this line.

Scotland is not alone in its concern over the potential loss of influence. European integration has posed a series of political and constitutional challenges to regions. Scotland's interests in the EU can be quite distinct from the rest of the UK. Under the existing constitutional arrangement there is no assurance that Scotland's distinctive interests will be respected. As far as the EU is concerned, the current debate about moving from a confederal to a federal polity ignores for the most part the sub-national territorial dimension. If the EU's sub-national territories were to be excluded from participating more directly in EU decision making at the 2004 IGC, then it would be perfectly rational

for them to press to secede from their states and apply to join in their own right. Scotland, therefore, might be no more than one in a line of territories from within the EU opting for 'independence' in Europe.

* * *

From a neo-functionalist perspective European integration is the product of collaboration between trans-national political and economic elites. For the most part, the EU's citizens have had a minimal impact on its evolution. As the EU moves from confederation to federation its future stability may well depend on its democratic legitimacy, and that can best be constructed from the bottom up. Sub-national or territorial governments have the potential to act as the EU's building blocks - something that ministers in the Scottish Executive have already implied. Do the EU's leaders have the vision to recognise this? And if so will they be willing to allow their territorial governments to participate in the EU as more equal partners? A federal polity could be the 'last chance saloon' before territorial fragmentation. As the Secretary General of the Assembly of European Regions put it earlier this year: 'The role of regional democracy and of regional parliaments and governments is only waking up. Our time has finally come. The debate will be about sharing sovereignty at a European level, and about the use of national sovereignty at the beginning of the century, and what the contribution of real, bottom-up democracy will be.'

MODERNISING

central, devolved, federal? edited by Stanley Henig

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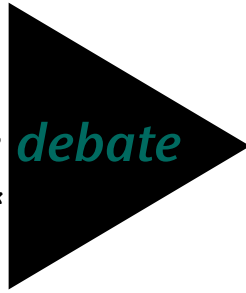
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