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Neil Walker: The Uncelebrated Union

Posted on August 11 2014

Last week's first televised debate of the referendum campaign revealed few surprises of tone or content, even if the outcome disappointed pro-independence hopes of a momentum-building surge in support. As expected, Alex Salmond concentrated on the core message of political self-determination, and the prospect of the new Scotland embracing a model of social and economic solidarity that London is increasingly unable or unwilling to deliver. With equal predictability, Alistair Darling for 'Better Together' insisted upon the precariousness of the pro-independence position on currency, placing this at the suggestive centre of a wider narrative contrasting the vulnerability of a fledgling Scottish polity to the reassuring solidity of the existing British state with its broader institutional shoulders and deeper pockets. It was not, truth be told, a good night for the 'vision thing'. Salmond seemed somewhat less energised and less sure-footed than usual in his portrayal of the promised land, perhaps inhibited by the artificial format of the TV duel and by the strong pre-debate expectations that his quick wits and populist style would win the day hands-down. For his part, Darling, true to form, simply chose not to let his political imagination off the leash. He stuck to a narrow brief, defending the status quo, or at least a soft focus version of it, and concentrating his fire on the supposed gaps and shortcomings of the 'Yes' case.

For Better Together, as has so often been the case over 30 months of campaigning, what was *not* said was more interesting and more revealing than what was. One particularly deafening silence, much commented on in the immediate aftermath, surrounded Darling's refusal, despite many repeated invitations from his opponent, to offer an explicit endorsement of the proposition that Scotland *could* be successful as an independent country. In an episode that rapidly descended into Paxmanesque political pantomime, and which hardly flattered either party, Darling's discomfort was that of someone torn between a desire not to offer a succulent soundbite to the 'Yes' campaign ('Darling makes case for independence'), and an anxiety not to appear dismissive of the potential of his fellow Scots.

There was, however, another telling silence, less apparent, quite unremarked in post-debate commentary, but ultimately of deeper significance. On more than one occasion, Darling referred to Scotland as 'part of something larger'. Yet when he did so, he omitted to give that larger entity a name. This might seem trivial. After all, everyone knows where and what he was talking about - who the 'we' are who, in his view, are and ought to remain Better Together. And so, perhaps, we should read nothing more into his silence than a (reasonable) assumption of the self-evidence of his object of desire. Yet that would be too simple an explanation. For Darling's reticence can also be seen as a mark of reluctance, even of unease. It betrays a sense that the state we are in is best left *understated*, so to speak; and that it might be to the symbolic disadvantage of the 'No' campaign to apply a label to the entity whose preservation they seek.

An appreciation of why this is the case takes us to the heart of the question of Scotland's constitutional future, not just over the vital final weeks of the referendum contest but also in the years to come.

What's in a name?

The awkwardness begins with the sheer range of candidate labels. Was Darling talking about - or rather *not* talking about - Britain, or the United Kingdom, or perhaps 'The Union'? As Aileen McHarg reminds us in a recent [post](#), these are not interchangeable terms, and the uncertain movement between them is a symptom of Better Together's indecision over whether and how to present a holistic case for the defence. The terms may refer to (more or less) the same geographical unit, but each speaks in a somewhat different register. Crudely, we may think of Britain as the cultural entity, the UK as the institutional entity, and the Union as the abstract idea - the constitutional key to what these islands hold in sovereign common. Clearly, those different registers - cultural, institutional and constitutional - overlap, and they also closely interact, but they do nevertheless reveal different levels of understanding of our wider political community. And, as we shall see, Better Together is not entirely comfortable operating at any of these three levels.

Take first, Britain. The long decline of Britishness as a dominant national identity from the 19th century high water mark of Protestantism and empire is well-known. As recently as 1970, asked to choose a single nationality as many as 39% of Scots identified as British. By 2013 that figure had fallen to 23%. The significance of this cultural fact in framing the referendum debate is often overlooked *just because* it is nowadays so well established. But it can hardly be overestimated. As the Edinburgh Agreement confirms, it is Scotland's referendum to decide, not Britain's, and the arguments on both sides - from Better Together every bit as much as the nationalists - always appeal first and foremost, and often enough solely, to the Scottish rather than to the British national interest in making their case.

Yet that is not to say that a cultural sense of Britishness is irrelevant to the debate. Only around a quarter of contemporary Scots assert an exclusively Scottish identity, the rest admitting at least to a residual sense of British identity, and more than one third regularly claiming their British identity to be as strong if not stronger than their Scottish identity. Migratory patterns further complicate cultural identity. Over 800,000 people born in Scotland live elsewhere in the UK, mostly in England; and according to the Scottish Government's recently published draft interim constitution, those members of that sizeable diaspora who presently qualify as British citizens (i.e., nearly all) would automatically join the vast majority of the 5.3 million Scottish residents as citizens of a newly independent Scotland, including the half million Scottish residents who were born in England.^[1] Ties of family, friendship and work link many people across the four nations well beyond this considerable population of internal migrants, and together with shared language and heritage, and a wide array of cultural institutions from the BBC to the British Lions, and from the royal family to the Trades Union movement, feed a resiliently self-reinforcing sense of affinity and common sentiment.

So while it is a dominant identity for relatively few, being British remains an integral part of the cultural self-understanding of most participants in the referendum. It follows that even if it is emphatically the Scottish rather than the British national interest that is at stake in this referendum, some attention must be paid to British values, and to the value of Britishness, as part and parcel of any attractive conception of that Scottish national interest. No-one understands this better than Alex Salmond, and that is why he has been so ready to extol and to endorse the enduring virtues of British culture to audiences both North and South of the border. It is also why he has been at pains to offer reassurance about Scotland's post-independence commitment to many aspects of 'social union', not least the 400 year old monarchical union. For Better Together, however, despite such nationalist concessions, this remains a delicate subject. Indeed, the generosity of the endorsement of a residual Britishness by Scottish nationalists, in particular by the nationalist leadership, can even serve to highlight Better Together's own difficulty in painting a more robust picture and a more confident sense of the place of British culture in Scottish political life, and so further expose the tension between culture and polity in any vision of a continuing British state.

What of the United Kingdom? Surely as we move from the cultural software to the institutions that supply the hardware of the modern state the 'No' campaign find themselves on firmer ground. For here we are talking about the deeply embedded and closely enmeshed political and economic infrastructure of a 300 year old state; about its common monetary and fiscal framework and financial institutions, its NHS and wider system of social welfare, its dense network of common regulatory agencies, its armed forces, its global diplomatic presence, and its membership of key international institutions from the EU to the UN Security Council, and from NATO to the G8 and G20. And certainly, the kernel of the campaign case for the status quo, as underlined by the formidable sweep and detail of the *Scotland Analysis* papers of HM Government and by the tendency of Better Together spokespersons to disaggregate the case for the UK into its many particular benefits, has been here; in the advantages that accrue from belonging to something tried and tested, bigger and more resourceful, and with a long established international position and global reputational capital.

There is much in all of this, and it may well provide the decisive platform for a 'No' vote on September 18th. Yet there is an obvious snag here too. For the stress upon results, what is sometimes called 'output legitimacy', leaves the 'No' side exposed to counterclaim, and also threatens to cast its overall approach in an unflattering light. To begin with, if it is the record of the British state which supplies the case for the defence, then it is bound to be the *entire* record, and, of course, there is much both in the UK's imperial past and in its long post-imperial decline and repositioning that can be singled out for criticism by those who are inclined to emphasise the downside; and once debate is joined at this level, there can be no copper-bottomed, position-independent way of demonstrating that one side's assessment of the balance sheet is superior to the other's.

In addition, a results-based assessment has a necessarily contingent quality. Success depends upon performance and performance depends upon the presence and maintenance of favourable preconditions. On the one hand, this leaves the defenders of the British state vulnerable to arguments that these conditions have been eroded and circumstances have changed; that the UK as an integrated project in some sense or other has been 'broken' or is on the verge of becoming so, whether because of declining financial and diplomatic muscle in a world still suffering the shock waves of the financial crisis, or a congealed neo-liberal consensus at the centre, or the prospect of a UKIP-fuelled marginalisation or exit from Europe. On the other hand, that same preoccupation with successful outputs, and with the conditions of success, also feeds what we might call the tendency towards counterfactual negativism in Better Together's portrayal of the Yes case. Whether on currency Union, or membership of the EU, or future defence contracts, the No campaign is drawn by its results-orientation to scrutinise closely the basis of the nationalist boast that they could achieve equivalent or better outcomes in another possible world. And while close scrutiny of hypothetical claims is understandable, and perfectly reasonable, it does also help fertilise the view, enthusiastically cultivated by the other side, that the No camp is motivated by narrowly instrumental considerations; that Project Fear and Mission Balance Sheet are its only and small-minded answers to the expansively regenerative politics of nationalism.

Which brings us third, and finally, to the idea of Union. Can this idea - this most abstract rendition of the state we are in - supply the deep constitutional code that holds the cultural pieces of Britain together, and which makes the institutional framework of the UK and its attendant benefits more than the sum of its parts? In some respects, the idea of Union offers an unlikely candidate for this task. As Colin Kidd has ably demonstrated,^[2] the history of unionism in these islands is not a singular one, but a complex tapestry of sometimes divergent, sometimes interfluent themes. In particular, the banal conception of Union and unionism - especially well-known in Scotland and Ireland - as shorthand for the single, consolidated and historically both largely centralised and imperially expansive British state, is only one part of the story. The other main version of unionism has been generally less prominent over the modern era, yet it is both etymologically persuasive and more consonant with the everyday meaning of the term. It begins with a much earlier pre-1707 Scottish impulse to address relations with the large English neighbour on the basis of presumptive equality, continues through various iterations over the centuries of legal Union, and has acquired renewed resonance in very recent times. On this alternative view, unionism is counterposed not to nationalism and to the independence of the component parts, but to an idea of English empire over the territory of the British Isles and beyond. The two versions of unionism, then, do have in common the preservation of the British state, but while in the first version the state prevails by denying or disdaining nationalist sympathies, in the second and more progressive version it prospers by accommodating and in significant measure embracing such sympathies.

Arguably, it is the second version of unionism that supplies a more persuasive, if still only partial, reading of recent British constitutional history. Unarguably, it is the second version that must be deepened and amplified if the Union is to prevail in the longer term. The distinctive components of this progressive unionism are both structural and ethical. In structural terms, the Union offers a very special model of constitutional design, incorporating a rare idea of constitutional authority. The Union state is understood - at least ideally if not always strictly as a matter of historical record - as a conditional compact between sub-state national authorities, each of which retains or (in the less idealised version) rescues and regains some core of constituent power - some claim of national right - to revisit the terms and the very existence of Union. The Union state, then, emerges and matures through a process of evolution and according to the shifting balance of constitutional forces, rather the unfolding of a single master project. Equally, its form always remains provisional, open to further development rather than a matter of finality. And its shape is inevitably asymmetrical, reflecting the different composition and aspirations of its national parts - what Michael Keating calls its 'plurinational' rather than its 'multinational' pedigree^[3] - rather than the careful symmetry of the units we find in classical federalism. Last, and most fundamentally, the Union state, progressively understood, must draw a distinction between constituent power and constituted authority - or between (plural) political sovereignty and (singular) legal sovereignty. The coherence of the polity requires that a particular settlement of legal authority hold firm at any particular time and cannot lightly be overturned, but the need to respect the equality of the national parts also requires - whether or not as part of a formal constitutional amendment procedure - that this settlement remain open to revision in a way that allows and respects the renewable expression of popular sovereignty (normally indicated through referenda) by these national parts.

The ethical dimension of a progressive unionism is perhaps even more under-articulated, but it has recently been given thoughtful articulation by Gordon Brown.^[4] Brown insists that it is a necessary rather than a contingent feature of the British state, as well as a distinct advantage over an independent Scotland, that it be a 'Union of social justice.' That is to say, there should be and should remain an 'insurance policy' between the national parts enabling, through common fiscal instruments, whatever redistribution is necessary to guarantee common standards of welfare across the UK as a whole wherever and whenever resources and risks are otherwise unequally divided. Clearly, this inclusive commitment to a basic threshold of social justice requires some measure of common investment in values such as

egalitarianism, community spirit and social responsibility - social democratic standards that Brown reminds us are, by any historical measure, as much English as they are Scottish, Welsh or Irish - but it also requires this to be matched by the deep political tolerance of diversity necessary to give effect to the structural dimension of Union. That is to say, a progressive unionism must find a way of reconciling solidarity with respect for different forms of cultural life and their political expression. And in so doing it must recognise and manage the following difficulty; that each cluster of values is both the condition of and a constraint upon the other. Solidarity is required for a settled order of political pluralism to prevail, but the more pluralistic - the more diversely accommodating - the polity, the greater the challenge there is to generate such solidarity. Equally, without robust recognition of national diversity in today's Britain, the trust and respect necessary to sustain cross-national solidarity will not be forthcoming, yet the political arrangements necessary to deliver the solidarity dividend themselves set limits on how far political diversity can be accommodated.

The case for the Union state as an answer, however complex, to the internal pluralism of the British state is strengthened by its suitability to the wider political environment. The Union idea may represent a departure from the constitutional orthodoxy of the modern state, but its more decentred and negotiated understanding of sovereignty and its provisional and iterative approach to constitutional agreement reflects and adapts to recent developments in geopolitical circumstances. For the broader constitutional picture in a globalising age is not simply of a two-level power system, but of a multipolar pattern. Constitutional authority in and for the Union today is in fact balanced precariously not just amongst London, Edinburgh, Cardiff and Belfast, but also between these sites and Dublin, Brussels (EU political institutions), Luxembourg (EU Court of Justice) and Strasbourg (European Court of Human Rights). Legal jurisdiction in this densely interconnected environment, therefore, comes not in organically compact blocks but is salami-sliced across a range of political settings. In turn, that multipolar authority system has encouraged a more general underlying condition of 'constitutional unsettlement'.^[5] With so many constitutional sites co-implicated, and with no undisputed 'authority of authorities' to plan or co-ordinate their interaction, the course of constitutional change becomes unpredictable, with the resolution of each arena of negotiation and disputation heavily dependent upon similarly unresolved questions in other arenas. So, as we have seen, uncertainty about Britain's future in the EU, and to a lesser extent the ECHR, and similar doubts about an independent Scotland's European prospects, have become staples of the referendum debate, just as, reciprocally, the referendum result will significantly affect the stakes and influence constitutional (re)negotiation in all these other areas.

All in all, the idea of the Union state, especially under the flexible arrangement of the unwritten constitution, seems a good fit for this fluid scenario. In particular, with its recognition of the inevitability of power-sharing, and in its emphasis upon the open-ended political treatment rather than the definitive legal resolution of diverse constitutional claims, the Union state can speak a language of relative rather than absolute authority, of shifting rather than final settlement, that is appropriate to our time and place.

The Union's new vows

There remains, of course, a gap between such a progressive unionism in theory and the Union in practice. The Union today remains largely uncelebrated, as double-edged a source of comfort and inspiration for the defenders of the state we are in as are the ideas of Britain and the United Kingdom. In part this is because of the legacy of traditional unionism - the banal, knee-jerk version that rejects rather than encourages accommodation of political and cultural nationalism below the state. In part, too, it is because the difficult work of rethinking the Union in a more rounded fashion requires a kind of cross-party engagement and reasoned, inclusive dialogue that has not found an easy place in the referendum campaign. Significant progress has been made. The Scotland Act 2012, negotiated between Westminster and an SNP-led Holyrood, is gradually rolling out more fiscal powers and new fields of competence to the Scottish Parliament, while the three main pro-Union parties have all published plans for further constitutional reform, and have agreed to develop these under a joint platform post-referendum. But much of this activity has been reactive, a second agenda behind the main priority of fighting the referendum in more critical and defensive mode.

Yet if the new progressive unionism outlined above is to be taken seriously as a long-term solution to Scotland's constitutional question, then it must do more. The structural and ethical questions it asks offer new opportunities to the political imagination, but they also pose significant challenges. More work is needed not just to convince sceptical nationalists that their aspirations can be accommodated, but also to commit effectively to the procedures of 'joined up' constitutional reform the Union needs if it is to integrate concern for the Scottish question and for the sub-state national question more generally, with all the other aspects of the multipolar constitution.

The task of achieving and sustaining a long-term commitment among Unionists to progressive unionism should not be underestimated. Nor should anyone understate the difficulty of selling to a wider audience such a project, whose core message is a rejection of the false clarity of some versions both of nationalism and of traditional unionism, in a manner that is itself sufficiently clear and appealing. One thing is certain, however. If the British/UK/Union state is to succeed in promoting a grown-up and sustainable constitutional model for the 21st century, it has to get used to declaring its own name and aim in public.

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^[1] See further, N. Barber, ['After the Vote: The Citizenship Question'](#); J. Shaw, 'Citizenship in an Independent Scotland: Legal Status and Political Implications' CITSEE Working Paper 2013/34.

^[2] Colin Kidd, *Union and Unionisms* (2008)

^[3] Michael Keating *Plurinational Democracy; stateless nation in a post-sovereign era* (2001)

^[4] Gordon Brown, *My Scotland, Our Britain* (2014)

^[5] N. Walker, "Our Constitutional Unsettlement" [2014] *Public Law* 529-548.

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