

Constitutional Politics

Is it the ‘Scottish Question’ or the ‘English Question’?*

Sir Bernard Crick

As a federal system, you may be interested in some of the problems that the United Kingdom is facing through the Westminster Parliament, with its English doctrine of the sovereignty of parliament, having granted a radical form of devolution to a Scottish Parliament.

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; 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 of 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

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institution with a purported balance of three estates—aristocracy, church and merchant cities; but incorporating union meant being subsumed with 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 the Episcopalian dominance of the Church of England; Scotland gained entry into the protective commercial system of the First British Empire; and the Act or Treaty of Union 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 who believed that their ministers had conceded too much thought the same. But this was a misunderstanding of the nature of sovereignty and power. Legal possibilities have never corresponded 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 law and power, sharing 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 England determined on union: civil war with almost inevitable French intervention.

Forgive all this dehydrated theory and potted history, but I believe that most difficult constitutional and political questions have deep historical roots (you have invited a professor). Two deeply-rooted political points emerge that are fundamental to the 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 a contingency, what was thought by the then 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, no *Kulturkreis*. 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 what Jeremy Bentham would have called 'nonsense on stilts': 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 the 1998 Act was relatively simple compared to its defeated predecessor in 1977. The existing powers of the Secretary of State and the Scottish Office, already a territorially devolved administration, were handed down 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 at Westminster (who do now have one seat in Scotland) are less than happy. And the predominantly right-wing 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 making a permanent Conservative majority at Westminster.

Another unintended consequence of piece-meal, ad hoc constitutional reform was that while the Scotland Act brought in proportional representation (PR) for Scotland, deliberately intended to create a lasting Labour/Liberal-Democrat coalition to contain the Scottish National Party (SNP), the consequence has been that since the 2007 election to the Scottish Parliament, the SNP is now the largest party at Holyrood and has 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 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 too Thatcherite. And I am bound to say, which earns me no love in my Labour Party, that Alex Salmond's social democracy, perhaps even, if 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 uncodified 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 consider the famous 'guarantee' to the Ulster Protestant Unionists in the *Northern Ireland Constitution Act 1973*:

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 moves 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 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.

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.

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 the Scottish National Party it may have been a profoundly mistaken tactic to denounce what he consistently named as 'Scottish nationalism'. For whereas only about a third of Scots favour separation or independence, nearly all Scots have a strong national 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.² 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 the 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, read 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 need to be so qualified as to be practically useless in understanding actual politics? 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"

² See Arthur Aughey, *The Politics of Englishness*. Manchester University Press, 2007—an Ulsterman with a wide and deep perspective.

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 and to build its existing civil society into a genuinely participative citizen culture (you are a wee bit closer to it than us). 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 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 and Edmund Burke would have it, tradition and habit. So Brown 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 quite possible, 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 it 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

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'.

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. An extract appeared as 'Diary', *London Review of Books*, 5 April 2007, pp. 38–39.

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

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 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 and enhancing 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.



Question — Gordon Brown has been carrying on about written constitutions and bills of rights and constitutional reform, and parliaments having to agree before we go to war and so on. What has led to that?

Sir Bernard Crick — I’m not sure. He is talking the talk but, as we say, will he walk the walk? I’ve grave doubts about this. There is a great deal of talk from Labour ministers and I think it’s a shadow of their old beliefs, not the socialist values so much as democratic values. They talk a great deal now about trying to increase participation in the community, but they are not talking about regional government, they are not talking about restoring powers to local governments, so it’s difficult to know what they are talking about. After all, England is a centralised regime of over 50 million people, without Scotland and Wales. There is hardly a state apart from China and South and North Korea that tries to govern so many people centrally without some form of radical devolution or some form of federalism.

It interests me here in Australia that historically the Brits felt that federalism was right for the colonies but never for themselves. They are going to try and pour millions into community participation but they are looking at trying to do this centrally over a country

of 50 million. I don't really believe it can be done. In the very early years of the Labour Government I had the honour to chair the committee that brought citizenship into English schools as a compulsory subject. That was based on active citizenship rather than good citizenship. Thank God the public thought it was all about good citizenship. I'm all for good citizenship but we went beyond that and said, no, active citizenship, and that's what is in the schools. Perhaps the next generation may think differently, but the structures through which kids with a participative urge can enter, when they come into voting age, are rather limited.

Question — A former prime minister of ours, Paul Keating, made a remark during the 1996 election, that when the government changes, the country changes. Ever since, that remark has been treated as though it was the ultimate wisdom by all sorts of political pundits, even to the point where John Howard said it during the election campaign of 2007. Do you think it's true or sensible to say that when the government of a country changes, the country changes?

Sir Bernard Crick — No. Not if one means by country the totality of society. Certain key policies may change. When Kennedy came in in the United States, there had been Harry Truman and his wife and daughter who had nice round chubby faces and suddenly with John Kennedy's wife, all women seem to have long, fine-boned features. Certain types come forward and are more apparent with changes of government.

If you're talking about changing values, moral change, well why not? But you're talking about generational change, you're not talking about parliamentary timetables. This is what irritates me when party leaders start talking about changing values: all the evidence that we know show that the changes of values are very slow and generational.

Question — I have been reading the Scottish story with Scottish history so I came here primed, and what did I hear? I heard Erin Go Bragh! This comes from the Scottish Gaelic; I use this constantly myself, because of my origins. My people came here in 1835, and every government we've had has yet to achieve a thing that I call an Australian language. Do we speak Australian as the Scots undoubtedly speak Gaelic?

Sir Bernard Crick — All I'd say about Erin Go Bragh is that Ireland must be free if you're looking for the ideal state. About a quarter of those who vote for Sinn Fein and are Catholic in Northern Ireland, still say they favour the Union. I think they favour the union of Ireland but they want to know what's in the package, like the Scots in 1707. They are not mad nationalists: 'My country right or wrong, Ireland shall be united what ever the cost.' No, they are family men and they are sensible people and they're thinking in practical, pragmatic terms. If the terms of a union are good terms they will take them.

Question — I have a question about language also. There has been some controversy recently about the rather expensive digital TV that's just been announced for Scottish Gaelic. I know Welsh is very important for the Welsh identity. I wondered if you had a few words about the role of Gaelic?

Sir Bernard Crick — I think I share the view of my Scottish friends that it's a pity to see an old culture vanish, in the way that you have the cultural debate here about Indigenous or Aborigine culture, and a very difficult debate it is, because it is not actually helping people live in a way that is compatible with modern health and the

modern world. This doesn't arise in Scotland because the Gaelic speakers are living in a perfectly normal way and they are bilingual anyway, so it's a question of preserving language. It's a question of how much expense it is worth. So there is a pragmatic political argument in Wales. There was a panic way back in Macmillan and Heath's time in the late 50's and 60's when the Welsh Plaid Cymru, the party of Wales, began to displace Labour and Liberals in Wales. They got six or seven seats, and to put it very crudely I think they were bought off with massive subventions for Welsh television, and legislation allowing county by county votes so that half the education in schools, half the subjects could be taught in Welsh, the other half had to be taught in English.

I remember an old leader of the Welsh Nationalists saying to some of us at a conference (in the bar, admittedly): 'You know Bernard, the trouble with most of my fellow party members is that they cannot count, because if we had independence there are a majority of non-Welsh speakers and they would not stand for all this stuff in courts and Parliament and having to speak Welsh.'

I think at heart the Welsh Nationalists have got what they want, in the sense of a massive protection of the language. I had a hand in the new immigration tests in Britain, and the statute stated, as the old statute did, that there must be a test conducted in English, Welsh or Scottish Gaelic. There was a rumour two years ago (and I think I know who started it: a witty member of my old committee, a Muslim Welsh woman) that claimed that somebody had turned up wanting to be examined in Welsh. The new government of Wales, tremendously strong on bilingualism, were in an absolute panic because nobody had thought of translating the immigration test, or the 68-page handbook. I'm joking, but a multicultural society is already dug in there in statute. In political terms, Scottish Gaelic is quite unimportant, although not surprisingly the Gaelic speakers tend to vote Nationalist; but it is only in the very small, very thinly populated areas of the highlands and islands.

Question — Are any proposals for devolution in England dead, specially after the failure of the ham-fisted referendum in North East England?

Sir Bernard Crick — The Deputy Prime Minister, who did believe very strongly in devolution I think, was just hung out to dry by his colleagues to be absolutely blunt. There wasn't a concerted government campaign in favour of trying it on the North East first, even though the North East do have I think a stronger sense of identity than some of the other administrative English regions. There are six regions administratively. It is not a real question politically.

An idea of the early Study of Parliament Group in 1972 was that there should be regional committees of the House of Commons, and very surprisingly this was revived last year by the government I think desperate to make some sense of talking about devolving powers without actually devolving very much power. So there would be these Westminster committees. It was all drawn up; the clerks were nearly going bananas about how to do it because in parliamentary rules you have to have, as here, a governing party majority on each committee. Well, what self-respecting Conservative would want to serve on the North Eastern committee, and what self-respecting Geordie or MP for Newcastle would want to go down in the South East? These committees could have been an endless source of trouble. They were supposed to be looking at regional administration but when you look at English regional administration many of the

boundaries are not the same for different functions of government. There are a lot of civil servants out in the regions. The practical difficulties and also the difficulties I think of manning these committees and getting political balance meant the whole scheme was pulled at literally 24 hours notice.

It is a theoretical solution. My old friend John MacIntosh, passionate for Scottish devolution in the early 1970s when there was very little public opinion behind it, tried to answer the West Lothian question by saying well if there were elected regions in England it would be much easier to tolerate Scotland having its own reserved powers. But it's a curiosity now, there seems to be no strong regional sentiment in England behind it. I mean, it's the theoretical answer but it's not practical politics. Alas, I'm thinking of stuff I wrote advocating regional government in England in the 70s. I'm embarrassed at it now.