

Binary Ambiguities

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On Monday 15 October 2012 the First Minister of Scotland, Alex Salmond, and the Prime Minister of the United Kingdom of Great Britain and Northern Ireland, David Cameron, met in Edinburgh and signed an agreement to hold a single-question referendum on Scottish independence. The question to be put to the Scottish electorate on 18 September 2014 is, 'Should Scotland be an independent country?'

The agreement was a significant political achievement for Salmond and the Scottish National Party (SNP). However, Cameron had ensured that voters would be faced with a single and supposedly decisive question and would not be offered the option of an enhanced form of devolution short of outright independence. In the run-up to the Edinburgh agreement it was widely reported that Salmond wanted to include the latter possibility, popularly referred to as 'devo plus' or 'devo max', as an additional option for voters in the referendum (Gordon, 2012). Opinion polls also suggest that of the three options—the status quo, devo max, or outright independence—it is devo max that commands the support of a majority of voters in Scotland (MacNab, 2014). If so, the referendum, with its single binary question, will not give expression to the preference of the majority.

By posing the problem of Scotland's—and the UK's—future in binary terms, the referendum signposts two competing but similarly sovereigntist routes. The immediate reason for this setting of the constitutional sat nav is clear enough: Cameron's insistence that there should be a single question on the ballot paper. But it is worth reflecting on this outcome in a wider historical and political context. The 1990s, for example, saw the formulation and tentative emergence of a variety of non-, anti- and post-sovereigntist political geographies seemingly at odds with a worldview comprising a neat patchwork of non-overlapping fully sovereign state territories. The erasure of non-binary alternatives would have implications beyond the current debate about the future of the United Kingdom.

The policy of the SNP is to seek independence for Scotland within the European Union. By the mid-1990s the European Union had evolved from a free trade area of six member states into an increasingly diverse single market and quasi-polity of fifteen. The uneven development of Europe had been of concern to the framers of the founding Treaty of Rome in 1957, and with enlargement became an increasingly pressing issue. The Single European Act (signed 1986, effective 1987) coined

the term 'economic and social cohesion' to refer to objective of reducing regional disparities. While even the most straight-laced political geographer would have been hard-pressed to find much excitement in the operation of the European Structural Funds in the 1970s and 1980s, things started to get a lot more interesting in the 1990s. The Treaty on European Union signed in Maastricht in 1992 added new political depth to the process of Europeanisation, providing the basis for Economic and Monetary Union (culminating in the introduction of the Euro as a single currency) and establishing a Common Foreign and Security Policy, European citizenship and the Committee of the Regions.

This brave new polity in motion was overlaid on a political map of Europe whose post-Second World War stability and apparent legibility and simplicity belied a long and dynamic history of territorial flux and geographical complexity. The EU comprises states of many different sizes, but also of very different internal territorial constitutional arrangements. Federal, quasi-federal, devolved and consociational systems with differing internal distributions of competencies can be found next to unitary states. Pluri-national states (whether or not such pluralism is formally recognised), regional and national minorities, stateless nations, separatist movements, and remarkable linguistic diversity are all part of Europe's political palimpsest. The putative emergence, in the shape of the post-Maastricht EU, of a progressive rights-based institutional framework simultaneously tolerant of cultural and political diversity, yet impatient to reduce spatial inequalities led many to herald a transition to a novel political order. New terminology abounded as analysts sought to identify and make sense of the leading edge of the apparent re-ordering of European geopolitics. Notions of multi-level governance, hollowing-out, asymmetric federalism, post-national politics, fragmented and trans-scalar citizenship, post-modern and neo-medieval territoriality were all suggested as ways of capturing more complicated and contingent relationships between states, nations, citizens, sovereignties and territories (Anderson, 1996; Hooghe & Marks, 2001; Painter, 2008; Shaw, 1998; Soysal, 1997; Wiener, 1997). Among this proliferation of concept-making the idea of post-sovereignty seemed to have particularly far-reaching implications.

Post-sovereignty (Keating, 2001, 2002; MacCormick, 1999) arises when the absolute sovereignty of nation-states has been either attenuated or at least partly dissolved by the state's loss of practical functional autonomy and/or the rise of pluralised and dispersed forms of political authority. As Michael Keating put it: 'sovereignty still exists in many forms but [...] it is increasingly shared and divided and cannot be said to inhere purely in the state' (Keating, 2002, p. 11). The emergence of the idea of post-sovereignty rather begs the question of whether states were ever fully sovereign or

whether sovereignty was only ever a claim to political authority (Agnew, 2005). Nevertheless, by the turn of the millennium it was evident that globalisation, Europeanisation, new forms of cross-border co-operation, the international growth of social and religious movements and environmental change were challenging traditional state sovereignty in new ways.

In current debates over the future of Europe and the European Union, ideas of post-sovereignty, post-nationalism and plural citizenship remain in play to some degree, but they are on the back foot compared with the situation 15-20 years ago. The binary framing of the referendum question on Scottish independence can be seen as one symptom of the stalling, if not the reversal, of the trend towards post-sovereignty. This faltering of the post-sovereign turn may be attributed in part to the failure of two political projects—one recent and one much more long-standing.

The idea of post-sovereignty has most purchase in Europe where the European Union provides the institutional architecture through which shared, pooled and multi-layered forms of sovereignty could be developed. While that architecture remains intact and functional and in some areas continues to develop, the political project of ‘ever closer union’ towards a federal pan-European polity has become an increasingly distant prospect. Euro-scepticism may be particularly strong in the UK, or at least in England, stoked by rise of the populist anti-Europe and anti-immigration UK Independence Party and its charismatic leader Nigel Farage, but it is no longer only a British phenomenon. According to a 2013 policy memo from the European Council on Foreign Relations,

Euro-scepticism has now spread across the continent like a virus. As data from Eurobarometer shows, trust in the European project has fallen even faster than growth rates. [...] Back in 2007, people thought that the UK [...] was the Euro-sceptic outlier. Now, remarkably, the four largest eurozone countries have even lower levels of trust in the EU institutions than Britain did back in 2007. (Torreblanca & Leonard, 2013, p. 1)

This apparent loss of faith in the European ideal, or at least in its current institutional expression, has been accompanied by the re-assertion of the authority of national governments in EU decision-making. Take for example the changing political meaning of the concept of subsidiarity. Its formal meaning remains that decisions should be taken at the lowest level of government consistent with effectiveness. Once it connoted a ‘hollowing-out’ of the nation-state and the dispersal of authority ‘upwards’ to pan-European bodies (assumed to be necessary for effectiveness in many domains), and ‘downwards’ to regions and localities. It was taken as axiomatic by keen Europeanisers that nation states were too small for the big things and too big for the small ones. Today, by contrast the principle of subsidiarity is used to justify the retention of powers at the level of the member states,

unless there is clear justification for action at the European level. At the same time decentralisation below the level of member states is deemed, in accordance with the same principle of subsidiarity, to be a matter for member states' discretion! Nowhere is this clearer than in the decline and fall of the idea of a 'Europe of the Regions'.

Despite the widespread use of the term in the 1990s 'Europe of the Regions' was never a formal EU policy, though it was occasionally used as a shorthand in speeches and articles by EU officials. It was a term used in different ways by different political actors and commentators, sometimes descriptively to refer to emerging patterns of regionalism and regionalisation, sometimes normatively and/or romantically to promote a federalist vision for Europe's future in which the powers of member states would be reduced and those of regional authorities enhanced (Loughlin, 1996). The discussion about regions within Europe resonated with wider debates about the supposed declining importance of the nation state in the context of globalisation and the concomitant growth in the economic and political salience of cities and regions around the world (Horsman & Marshall, 1994; Scott, 1998). Those promoting a federalist future for Europe were encouraged by the formation of the Committee of the Regions, seeing in it an embryonic second chamber for the European Parliament with all that might mean for the political power and legitimacy of regional voices in European decision-making alongside, or perhaps even in place of, the member states in the European Council. It soon became clear, if there was ever any doubt, that the member states were not about to cede significant authority to a pan-European body of regions, and the Committee of the Regions was allocated the status of consultative body with very limited influence. Of course those arguing for greater autonomy or outright independence for Scotland did not consider Scotland to be a 'region'. Indeed, as Michael Keating noted, the SNP is 'perhaps the most classically sovereigntist' of Europe's minority nationalist movements (Keating, 2002, p. 8). However, the discourse of a Europe of the Regions sought to promote a possible future for Europe in which the relationship between statehood, sovereignty and territory would be disrupted in favour of some form of federalist system, even if the details of such a system were never worked out in full.

A second reason why the development of Keating's 'post-sovereignty' or Anderson's 'post-modern territoriality' has faltered may be because, as we might put it with apologies to Bruno Latour, we have never fully been modern (states). From this perspective, full sovereignty for an independent Scotland would mark, or at least enable, the fulfilment of properly modern nation-statehood for the first time for any part of the UK.

In the run-up to the referendum, dates have heightened political significance. Two have been particularly prominent: 1314 when Robert the Bruce defeated Edward II at the Battle of Bannockburn, and 1707 when the Act of Union led to the formation of the Kingdom of Great Britain. However, the implications of a third should not be underestimated. In 1688 the Dutch protestants William and Mary succeeded to the English throne in the so-called Glorious Revolution, becoming King and Queen of Scotland in 1689 on the invitation of the Scottish parliament. The revolution established a constitutional monarchy with parliamentary sovereignty, codified in 1689 by the Bill of Rights in England and the Claim of Right Act in Scotland. The following decade saw the publication of the major works of the English philosopher John Locke, which set out the philosophical foundations of liberalism, including constitutional limits on state power, the rule of the law, the role of private property, and religious toleration.

Although written earlier in secret, Locke's ideas provided an intellectual rationale for the revolution, and 1688 is often presented as marking the birth of the modern state, characterised by the end of absolutism, the establishment of parliamentary sovereignty, and a decisive shift from aristocratic to bourgeois power. From this perspective, the early adoption of constitutionalism, in tandem with early industrialisation, enabled a full and largely peaceful transition to modernity in contrast to the violence of the French revolution. If the Jacobite risings in support of the heirs of the deposed James VII of Scotland (and II of England) and William's war to secure the protestant ascendancy in Ireland, which culminated in the Battle of the Boyne in 1690, call into question the assumption that the revolution was a peaceful affair, its modernising credentials are also suspect.

In a series of articles in *New Left Review* in the 1960s and 1970s, Tom Nairn and Perry Anderson argued that Britain has never become a fully modern state. It never completely made the transition from absolutism, and early industrialisation contributed to the failure of modernisation. According to the Nairn-Anderson thesis, as it became known, the 17th century revolutions including the English civil war and the events of 1688 constituted premature and incomplete bourgeois revolutions. The English bourgeoisie never fully took over the state and the monarchy and the aristocracy continued to exercise significant power. Until very recently, members of the nobility automatically inherited seats in parliament along with their titles, and a small number of seats in the House of Lords continued to be reserved for hereditary peers. Although the powers of the House of Lords are limited, this is a quite extraordinary state of affairs for a European 'democracy' in the twenty-first century. Even today the non-hereditary membership of the upper chamber is appointed rather than elected. While the monarch personally has very little formal constitutional power, the powers

formerly exercised by the hereditary head of state are now vested in government ministers in the form of the royal prerogative. The prerogative allows the Crown to declare war and peace, annex territory, recruit to the armed forces, grant pardons and award honours without reference to Parliament. There are other areas of British institutional life that do not seem to accord with textbook models of constitutional liberal democracy. These include the absence of legal guarantees of the freedom of the press, a lack of effective democratic oversight of the security services, numerous legacies of imperialism, and archaic patterns of land ownership that have significant implications for wealth distribution, housing provision, planning and access to recreation. Despite initial hopes that the self-styled modernisers of New Labour elected as the UK government in 1997 would address these issues, constitutional reform has been patchy, notwithstanding the introduction of devolved government in Scotland, Wales and Northern Ireland.

Critics of the Nairn-Anderson thesis have pointed out that it implicitly adopts an ideal model of societal development, involving a shift from monarchism to republicanism (as in France and the USA) and the development of an independent intelligentsia, a self-confident national bourgeoisie and a radical socialist working class. For example, EP Thompson questioned the need to set up a 'normal' model of modernisation against which England can be found wanting (Thompson, 1965). Nevertheless, we do not have to accept the idea of a conventional model to find value in the diagnosis of the specificities of English and then British societal development.

If the stalling of the European project and the waning of the idea of a Europe of the Regions might indicate that the moment of post-sovereignty has passed, the incomplete or failed modernisation of the British state implied by the Nairn-Anderson thesis suggests that it may be yet to arrive. In one sense the sovereigntist route offered by a binary referendum question provides an opportunity to complete the modernisation of the state. In 1989, the three hundredth anniversary of the Claim of Right Act was marked by the signing in Edinburgh of a new document, "A Claim of Right for Scotland", by a large majority of Scotland's MP, MEPs, and regional, island and local councils, as well as a wide range of political and civic organisations. The new document had no legal force, but made explicit the continuing link between the events of 1688-9 and the constitutional concerns of late twentieth century, and initiated the political process that led eventually to the re-establishment of the Scottish Parliament in 1999. In 2012, at the start of the consultation on the referendum, the Scottish parliament voted to support the main principle of the Claim of Right, with only Conservative MSPs opposed:

That the Parliament acknowledges the sovereign right of the Scottish people to determine the form of government best suited to their needs and declares and pledges that in all its actions and deliberations their interests shall be paramount, and asserts the right of the Scottish people to make a clear, unambiguous and decisive choice on the future of Scotland.

The 2013 White Paper setting out the SNP's proposals for an independent Scotland foresees a shift from a constitution based on the 'sovereignty of the Crown in Parliament' to one based on the 'sovereignty of the people of Scotland', while retaining the monarch as Head of State. Scotland would have a written constitution to be prepared through 'an open, participative and inclusive constitutional convention [...] designed by the people of Scotland, for the people of Scotland' (Scottish Government, 2013, p. 351). The White Paper leaves open the fate of the royal prerogative which would (presumably) be determined by the convention, but does promise democratic control of the security and intelligence agencies. It also includes chapters on all major substantive policy areas, including finance and the economy; health, wellbeing and social protection; education; environment; and energy. The extensive scope of the 650 page document has led opponents to criticise it as a manifesto, rather than a set of constitutional proposals. However, as James Mitchell has pointed out, that is a misunderstanding:

From one perspective, welfare is seen as a matter for the political parties to argue over and not a constitutional issue. This is a dated view of constitutional affairs. The days when a constitution was concerned with institutional politics – the relations between different levels of government and between legislatures, executives and the judiciary—are behind us. Modern constitutional deliberation is concerned with rights – the negative rights of earlier times but also increasingly with positive rights. If a constitution is to do more than outline formal institutional relations then welfare matters need to be incorporated into debate. (Mitchell, 2013)

The form of citizenship is a core constitutional question and citizenship includes not only civil and political rights, but also social rights. The question of sovereignty is thus as much about the right to pursue a broadly social democratic future rather than an exclusively neo-liberal one, as it is about national identity. Ironically, by forcing the referendum question to be posed in binary, sovereigntist term, the UK government may have pushed many on the centre-left in Scotland towards voting in favour of outright independence as the only way to sustain the prospects for social justice and a well-resourced welfare state and avoid semi-permanent austerity.

However, although the binary question appears to block the path to 'devo-max', all three main unionist parties, including now the Conservatives, have come out in support of at least some further devolution in the event of a no vote, and if the vote is close the political pressure for additional

power for the Scottish parliament will be intense. Equally, while a yes vote would lead to full formal sovereignty, an independent Scotland would be likely to exhibit features of post-sovereignty, at least if the Yes Campaign fulfils its objectives of currency union with the remainder of the UK and membership of the EU. The Scottish Parliament's restatement of the Claim of Right more than three centuries after the Glorious Revolution invoked the right of the people to make a clear, unambiguous and decisive choice on the future. The outcome of the referendum may turn out to be clear and decisive, but the ambiguities of post-sovereignty are unlikely to disappear.

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