A Tale of Two Exits: Scotland and Brexit

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Straight answers to straight questions: lessons from the Scottish referendum

1. In December 2014 I wrote a blog post entitled *A tale of two referendums* . The piece was written in the light of the September 2014 Scottish independence referendum and the year-long campaign which had preceded it. That experience had left me very sceptical about the wisdom and utility of referendums as a means of illuminating and resolving constitutional questions. I wrote:

> *" . . . referendums are no way to conduct politics in any mature multi-party Parliamentary democracy. They do not, after all, give straight answers to straight questions. Their very calling may be the result of political manipulation, and their results remain subject to radical political re-interpretation. They necessarily misrepresent difficult and complex political issues by reducing matters down to but one question, which can only be answered yes or no. They require certainty and finality in the face of the uncertain and the unknown. They do not allow for a multiplicity of voices or viewpoints. They leave no space for compromise. Information and properly informed discussion is lost in their barrage of unverifiable claims and unfalsifiable counter claims as to what the future holds from each opposing side in any referendum battle."*

2. I predicted that, as with the Scottish independence referendum:

> *" . . . similarly competing and irreconcilable claims will be made by the opposing sides in the campaign around the anticipated referendum on the United Kingdom's continuing membership of the European Union, following the coming general election. Those wishing the UK to break from the EU will doubtless extol the mythic virtues and heroic vigour of Albion unbound. Those advocating the UK's continued membership of the EU – like those who campaigned for Scotland's to stay in the (British) Union – will find it difficult to articulate a positive vision of Europe which will resonate with (particularly English) voters and will, instead, fall back on emphasising the economic dangers and market uncertainties which will come with our 'turning our back on Europe" and falling prey to those vices (at least, etymologically) associated with island life: isolationism and insularity."*

3. Nobody likes a smart-arse, of course. And the cry "I told you so" is perhaps up there with "We're doomed" as the two phrases most associated by so many south of the Border with the stereotypical picture of the gloomy self-righteous Caledonian. So I will refrain from their use now.

Asymmetric devolution: the invisible nation

4. Our island nation has become enveloped in a complexity of enriching political, economic, legal, ethical and cultural ties with our fellow European nations and peoples since the end of the Second World War. This great European peace has been fostered under the auspices of the European Union and the Council of Europe. The idea that that web of connexions should be rent asunder on the basis of sub-Trump sloganeering of "taking back control of immigration" to "make Britain Great again" is frankly depressing. Little Britain: big Europe.

5. The unacknowledged (or, perhaps, unrealized) problem, is that the reason the UK's continued membership of the EU – or indeed its membership of the Council of Europe – has, after years of fringe grumbling, now assumed

central stage (at least within the Tory party) is because of our asymmetric devolution. The anxiety that is really being expressed here is about the status of *England* – unrepresented in either the British union or the European Union. The invisible nation.

6. Owing to devolution within the UK and the new understanding it brings, I think we are beginning to appreciate that the United Kingdom is not a "nation state" but a "state of nations". What has not been taken into account in that, is England. Everyone else seems able to define who they are by not being English. The problem is that the elements of the English are now defining themselves by not being European. That is a retrograde step. It is against that background of that anxiety that I understand the calls for a "British Bill of Rights". It is instead an *English* Bill of Rights that it being sought, so that *Magna Carta* can take its place once more as the real fount of England's imagined liberties, rather than the foreign "unEnglish" imposition that is the European Convention on Human Rights. I don't have a problem with a new English Bill of Rights, as an assertion or recognition of England within the union, as long as the UK remains signed up to the ECHR because it keeps the (British and European) Unions together; it provide a uniform level of protection across the four nations of the British union, and keeps us integrated in that broader, post-Nuremburg European project that is the European Union.

7. The unexpected victory of the Tory party in the last general election could also be seen to be another expression of this anxiety about England and Englishness. The Conservative party election campaign expressly played into fears that the UK would be governed by Scottish Nationalists, propping up a minority Labour Government but at the price of holding the England to ransom for yet more powers, more money, more special treatment for Scotland within the union. Voting in a Conservative majority in May 2015 avoided that fate, but still left the problem of England unresolved. English votes for English laws is not enough. Instead, there is a semi- or sub-conscious desire for somewhere and somehow to express a respectable – i.e. not racist or semi-fascist – English nationalism. People want to show they are not ashamed of being English, that Englishness is *not* captured in images of drunken football fans rioting abroad. I fear, therefore, that what this EU referendum has become is a form of displacement activity, a chance for the English voters to affirm their Englishness. That is, perhaps, one way of explaining why the opinion polls show such a difference in voting intentions between Scotland and England on the issue of Brexit. Scottish voters seem to be comfortable with remaining in the EU – perhaps because Scotland remains a country which is more characterized by the emigration of its native-born, often taking the high road that leads to England (the "noblest prospect for a Scotchman" as (Samuel) Johnson had it) rather than by large scale influxes of other European free movers seeking work north of the border.

And for Scotland?

8. Thus we have the phenomenon of Scotland's current First Minister, the SNP's Nicola Sturgeon MSP, wholeheartedly campaigning for a Remain vote. While Scotland's immediately past First Minister, the SNP's Alex Salmond MP, asserts that a vote by an English majority for the UK to leave the EU against a Scottish vote for the UK to remain in the EU will constitute a mandate for another Scottish independence referendum to be held. This time, if the rest of the UK were allowed to vote in it, I suspect that we would find that the English would vote "yes" for Scottish independence, regardless of what the Scots want (a situation similar to break up of Czechoslovakia when ultimately the Czech Government insisted on Slovak independence, rather than allow for the still further devolution sought by Slovakia).

9. So I think Sir John Major is right: a vote in favour of Brexit will ultimately mean that England leaves not just the European Union but repudiates the British union.

10. In the event of England voting for Brexit and Scotland voting to stay in the EU, the question is whether the other EU Member States would accept Scotland (perhaps even in an enforced confederation with Northern Ireland, assuming a majority of its divided populace expressing a wish to remain within the EU) as a new or continuing EU Member State. The idea of Scotland (and Northern Ireland) being recognized for purposes of EU membership negotiation as the *continuing UK* (England and Wales having, on this analysis chosen to secede – as Greenland did from Denmark – to form a new entity outside the EU) is that the scenario involving (a significant) part of a Member State leaving the EU would not establish any precedent for regions seeking to secede from existing *continuing* Member States (for example, Catalonia and Spain) to have any right or expectation of entitlement to their own independent EU membership.

11. From a broader geo-political perspective one could see that Germany, for example, might well see some benefits in a divide and rule policy and encourage the breakup of the United Kingdom by offering a sweetheart deal for Scotland and Northern Ireland to remain in. It would mean that England and Wales would remain physically and psychologically encircled by the territory of the EU rather than open to the Atlantic. North Sea and Irish Sea oil and gas would remain assets within the EU and their benefits more readily exploited for common EU use given that an independent Scotland will have a much lower bargaining power in the EU than it had as part of the United Kingdom.

12. Doubtless the SNP would seek to ensure that independence was a "safe option", with Scotland's independence from the rest of the UK to come about only if Scotland's continuing place within the European Union had been suitably secured and all the uncertainties (whether about keeping the pound or joining the Euro or joining the Schengen area or staying as part of any continuing British and Irish common travel area) had been resolved. On this scenario of Scotland's independence from the British union being simultaneous with Scotland's accession to independent membership of the European Union (and the rest of the UK's withdrawal from Europe) the holding of the new status of Scottish citizenship would bring with it the benefits of being an EU citizen. For example, the siting of corporate headquarters in Edinburgh rather than London would be presented as allowing companies full access to the single European market which might be denied to those who choose to remain based now outside the EU in the rest of the UK.

13. The question for the SNP however is: would a post-Brexit/little Englander UK Prime Minister, such as Boris Johnson (no relation?), be willing to allow for such a "velvet divorce"? This scenario need never be faced up to if we all (or just a majority of us) vote to stay in, and therefore keep Britain in Europe. But, whatever the result, the question of how England is to be recognised and protected within Britain has to be properly and coherently addressed and answered.