

Designing institutions as if identity mattered: England and the UK

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Debates on the position of England within the UK have been dominated by questions of institutional design. These include various models for an English Parliament; options for the design of a system of English Votes for English Laws; the implications of 'devolution deals' and 'metro mayors'; the function and composition of the House of Lords.

This piece approaches the England – UK question from a different perspective: the links between territory, identity, and structures of governance. I suggest that these undercurrents are essential to understanding intra-UK relationships. However, study of them has been largely neglected within the UK debate. In Martin Loughlin's words, "the great achievement of British statecraft is to have kept such new-fangled constitutional issues as identity, citizenship and the precise conditions of political association off the political agenda".¹

This piece argues that, to understand the forces shaping the relationships between the components of the United Kingdom, it is necessary to engage with and unpack those links. They cannot be taken as social facts or inert components within constitutional debates: they reflect distinct interests and understandings in the different parts of the United Kingdom. The idea of the 'state of unions' implies differing perspectives on the UK that are rooted in differing concepts of identity. Most scholarship has steered clear of such concepts: but I suggest that institutional fixes cannot be adequately discussed without taking them into account. Differing interpretations of English identity, and their institutional implications, demonstrate the limited attention to these matters in the UK context.

The future of unionism

James Mitchell coined the phrase 'state of unions' to capture the idea that different members of the UK viewed the Union in different ways.² One impact of devolution in 1999 was to extend these different perceptions from the cultural sphere into the politico-administrative sphere. But they remained almost entirely tacit. They are visible in the contradiction between the UK state's continuing adherence to the doctrine of parliamentary sovereignty, and its creation of powerful, autonomous sub-state governments with a developing constitutional personality. UK politicians have made repeated political commitments to the permanence of the Scottish, Welsh and Northern Irish legislatures. Intergovernmental relations have been kept to a minimum. The clash of perspectives has been avoided by repeated 'payoffs' of additional powers, with the devolved and UK governments negotiating in a manner unfamiliar to a traditionally centralised polity.

Brexit will bring this clash into the open. Many of the powers returning from the EU are currently devolved. If the nascent plans for a 'UK single market' come to fruition, central government may seek to legislate to retain returning powers, removing them from the devolution settlements. Ministers' statements to date - that "no decisions currently taken by the devolved administrations will be removed from them"³ - suggest they are keeping this option open. This would reverse the trend of continued devolution of power. Or the devolved bodies' consent may be sought for the eventual outcome: and this could become a bargaining chip as the UK develops new trade

¹ Martin Loughlin, "The end of avoidance", *London Review of Books* 38:15, 28 July 2016

² James Mitchell, *Devolution in the UK*, Manchester University Press, 2009

³ HM Government, *The United Kingdom's exit from, and new partnership with, the European Union*, 2017, p.18

relationships outside the EU. But whatever the outcome, it cannot avoid a transparent struggle between competing constitutional outlooks on the 'state of unions'.

We will therefore see power relations in the UK exposed and challenged in the near future: and we will see where they lie on the continuum between a mooted 'new territorial constitution' and what Jennifer Todd calls a 'narrow British sovereigntism'.⁴ Claims of the 'plural and contested nature' of the UK constitution have thrived in part due to the scarcity of explicit discussions of intra-Union relationships. Two honourable exceptions are the recent reports from the Bingham Centre and the Constitutional Reform Group, but their recommendations are confined to the legal / political sphere.⁵ I suggest that any such discussions cannot avoid embodying perspectives linking territorial identity and governance, a relationship that is rarely discussed in the UK: and that understanding these should be a key component of any proposals for future institutional changes.

England resurgent?

Territory and identity have been more readily addressed in short think-pieces from a variety of sources. In the run-up to the triggering of Article 50 on 29 March 2017, notifying the withdrawal of the UK from the European Union, a slew of press articles associated Brexit with England and Englishness. Paul Mason coined the term "England plus", capturing a sense of England as the UK's 'core state'.⁶ This outlook straddles the cultural and constitutional spheres: thus Martin Loughlin argues that the UK Parliament was "an English parliament which representatives of the Celtic regions have been invited to attend".⁷ For Richard Wyn Jones, "local differences with this Greater English state can be tolerated, but it is toleration within limits".⁸

The conflation of England and Britain highlighted by these remarks is a well-known feature of any discussion of English national identity. But this is not purely a matter of constitutional literacy: the conceptual confusion runs deep. Two personal anecdotes serve as examples. At a public lecture in 2014, in the lead-up to the Scottish independence referendum, the chair began an intervention with the words "If we lost Scotland...". Who 'we' were, and why 'losing' was at stake, was unclear. And the confusion recurs at more banal levels. In my local leisure centre, in early 2017, I observed a sign stating "Due to fake [bank]notes circulating in this area we are no longer accepting Scottish or Irish notes". Sentiments of this kind mirror the uncertain intra-Union relationships in the constitutional and institutional sphere.

Scholars based in England have by and large avoided unpacking the cultural / identity-based roots of jarring statements of this kind. Though there has been a recent upsurge in interest in 'Englishness', its links to economic and constitutional inquiry have been limited. Analysis of territorial relations in the UK mainly consists of descriptions of centralism, the 'British system of government', or political economy work highlighting forms of privilege enjoyed by London and the South-East of England.

⁴ Jennifer Todd, "[Contested Constitutionalism? Northern Ireland and the British-Irish Relationship since 2010](#)", *Parliamentary Affairs* 70:2, 2016

⁵ Bingham Centre for the Rule of Law, [A Constitutional Crossroads: Ways Forward for the United Kingdom](#), 2015; Constitution Reform Group, [Towards A New Act of Union](#), 2016

⁶ Paul Mason, "[Can England avoid a meltdown of national identity?](#)", *Guardian*, 20 March 2017. The phrase 'core state' comes from Mitchell (op. cit.).

⁷ Loughlin, op. cit.

⁸ Richard Wyn Jones, "[England's idea of unionism is not shared in the rest of the UK](#)", *Irish Times*, 21 March 2017

Administration and culture

I suggest also that administrative practice since 1999 has given the Union sharper institutional expression; and that this itself feeds back into views of the relationships between the Union's constituent parts. Parliamentary procedures have shifted in such a way as to express more clearly the presence of four territorially distinct members of the UK: English Votes for English Laws is merely the latest, and most explicit, example. Further devolution to Scotland, Wales and Northern Ireland has been implemented through inter-governmental negotiations in the manner of sovereign states. Welsh devolution has been shored up by a number of permissive court judgments. All of these changes embody perspectives on UK constitutional relationships which remain largely unarticulated; and these perspectives have important roots within the cultural sphere.

For instance, in their most recent paper on the West Lothian Question, Mike Kenny and Dan Gover say "there is now a potentially high political cost for bringing in unpopular legislation to bear upon territories where a weak UK government does not have a majority".⁹ I agree with this statement, but it only makes sense if the UK is regarded explicitly as a voluntary union of national units, with discrete rights and expectations. It would make little sense if applied to North-East England, for example. But the latter claim in turn depends on a complex cultural claim - that the North-East is 'only' a region whilst the three devolved areas are 'territories' - that is rarely examined.

How might the interplay between perceptions of culture and identity, and the relationships embodied by administrative arrangements, influence political developments in England? An English Parliament might be justified by reference to England being the least institutionally visible of the four 'members' of the UK. English Votes for English Laws provides a 'double veto' on English matters. This means that law agreed by English MPs could be rejected at UK level: this may come into very sharp focus given the Parliamentary arithmetic in 2017. The Barnett Formula ties new public spending for Scotland, Wales and Northern Ireland into decisions made for England, not the UK. Examples continue of 'devolution illiteracy' - conflating English and UK matters - on the part of UK Ministers and political party manifestos. As Kenny and Gover note elsewhere, EVEL provides no distinct voice - or right of initiative - for English MPs in the House of Commons.¹⁰

Alternatively, the expression of local identities within England might outweigh any concern to distinguish England and Britain institutionally; and it might therefore provide support for greater local governance reform within England. The 2012-14 'Future of England' surveys suggested that English and British identities remain relatively fused, and the 2015 British Social Attitudes survey showed support for an English Parliament falling below 20% and support for sub-national governance rising to 22%.¹¹ This is thin evidence for an insurgent English nationalism. But certainty either way would be misplaced: we know very little about the attitudes and ideas that sit behind expressed desires for any of the governance reforms that have been proposed for England in recent years.

The importance of 'identity'

Future research could usefully explore the linkages between institutions, governance and nebulous concepts as 'culture' and 'identity'. These are not easy concepts to unpack, but I suggest that they

⁹ Michael Kenny and Daniel Gover, "[EVEL won't worry the new government - but the West Lothian question may well do](#)", Constitution Unit blog, 19 June 2017

¹⁰ Michael Kenny and Daniel Gover, [Finding the Good in EVEL](#), Constitution Unit (UCL), 2016

¹¹ Charlie Jeffery et al., [Taking England Seriously: The New English Politics](#), 2014; British Social Attitudes 33, [Politics](#), 2015

are an under-appreciated - and fundamental - influence on intra-Union relations. By comparison, the representation of cities and regions at Westminster, the status of the House of Lords, and English Votes for English Laws are second-order questions. Enduring answers to them will not be found purely in designs originating with institutional 'crayonistas'.¹² Both the history of English regionalism and the perennial debate on local government restructuring demonstrate amply that proposals for change that do not engage with such issues, nebulous though they may be, can expect sharp opposition.

At the same time, institutions are critical actors in governance. Scholars based in Scotland, Wales and Northern Ireland have warned for some time of the perils of governing devolution with under-developed institutions.¹³ The institutions that manage the future relationships between the Union's constituent parts will embody certain perspectives on that relationship. If the Anglo-British perspective on the 'state of unions' dominates at the expense of more plural understandings, this could set the stage for continued dispute and instability.

Any attempt to bypass these matters is unlikely to produce a positive outcome for any of the participants. It would leave the field to centrifugal political forces, threatening the future dissolution of the Union in a fit of absence of mind. It is telling that, in the field of ethnic and minority relations, huge efforts towards multiculturalism and integration have been made in the UK during the last 40 years: territorial relations have, if anything, travelled in the opposite direction during that time. Whatever the future of the 'state of unions', there is merit in exploring how identities and institutions interact in a more systematic way than has happened to date.

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¹² This word is used in the world of railway enthusiasts to describe individuals who propose new railway lines with no regard for use value, cost or physical geography.

¹³ See, for instance, Stephen Tierney, "Federalism in a Unitary State: a Paradox too Far?", *Regional and Federal Studies*, 19:2, 2009, 237-253; Charlie Jeffery, "Devolution in the United Kingdom: Problems of a Piecemeal Approach to Constitutional Change", *Publius* 39:2, 2009, 289-313