

The Reform of the British Constitution and the Governance of the Four Nations following the 2014 Scottish Referendum

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Résumé

Le référendum de 2014 sur l'indépendance de l'Écosse n'a pas réglé la question du statut de la nation écossaise, mais il a en revanche renforcé la popularité et la détermination du *Scottish National Party*. Il pourrait par ailleurs donner un nouvel élan aux partisans d'une réforme de la constitution à l'échelle du Royaume-Uni. Une Convention constitutionnelle nationale semblable à celle qui a ouvert la voie à la création du Parlement écossais pourrait voir le jour, rassemblant les énergies et les propositions des quatre nations. Le projet de loi constitutionnel élaboré par le gouvernement écossais en 2014 (*Scottish Constitutional Bill*) aurait doté l'Écosse d'une constitution écrite à proprement parler. Les spécialistes britanniques des questions constitutionnelles pourraient s'en inspirer et étudier différentes options, y compris celle d'un modèle confédéral, voire même fédéral, pour le Royaume-Uni.

Abstract

The 2014 referendum on the independence of Scotland did not settle the question of the status of the Scottish nation, but unexpectedly enhanced the popularity and determination of the Scottish National Party (SNP). It could also provide a new momentum for UK-wide constitutional reform. There could be a national Constitutional Convention like the one that paved the way to the setting-up of the Scottish Parliament gathering energies and ideas from all four nations. The 2014 Scottish Constitutional Bill which was to be the blueprint for a new Scottish independent state provided Scotland with a fully-written constitution. British constitutional experts could build on it and examine various options including a confederal, or even, a federal United Kingdom.

Mots-clés : Constitution du Royaume-Uni – *Charter of Union* – Unionisme constitutionnel – dévolution – référendum écossais

Keywords: UK Constitution – Charter of Union – Constitutional Unionism – Devolution – Scottish Referendum

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Introduction

On 18 September 2014 the British Constitution was seriously challenged when one of the four nations forming the United Kingdom – Scotland – held a referendum on its potential independence from the Union. It could have transformed the country's constitutional arrangements and the whole Union in an irrevocable way by putting an end to the political and parliamentary union between Scotland and the rest of the country established in 1707 via an official Act of Union. A clear majority of Scottish people (55%), asked whether “Scotland should be an independent country”, rejected independence for Scotland whereas 45% expressed their attachment to an independent Scotland – especially young people aged sixteen and over who were allowed to vote for the first time, fully aware that their vote could make a difference. The Scottish Nationalists of the SNP, under the leadership of Alex Salmond, at the origin of the referendum, had never come so close to independence in spite of the negative outcome of their public consultation based on an agreement with the British Coalition Government of David Cameron.

Far from settling the ‘Scottish Question’ once and for all as the British Prime Minister had hoped, the 2014 referendum gave Scottish Nationalists a new momentum. This political trend was confirmed by their astonishing results at the 2015 United Kingdom General Election after a campaign very much dominated by the Scottish issue and by the charismatic new leader of the SNP – Scotland's First Minister – Nicola Sturgeon. She did not campaign on a new independence referendum but on a left-wing anti-austerity (SNP, 2015), anti-Trident message¹ and for a different type of Union based on a fundamental reform of Westminster politics. The SNP, at heart a separatist party, won almost every seat in Scotland (56 out of the 59 Scottish constituencies compared with only 6 in the 2010 United Kingdom General Election) to the detriment of the Labour Party in Scotland and at the national level since the latter relies heavily on them to form a majority in the House of Commons. The First-Past-The-Post voting system, which survived the 2011 national referendum on the Alternative Vote, awarded the SNP 95% of Scotland's seats for its 50% of the vote clearly amplifying the Nationalist vote. The United Kingdom is now faced with an unprecedented situation where for the first time ever the SNP has become the third party in the national Parliament. Scottish Nationalists have gained a stronger representation than the Irish Nationalists whose campaign for Irish Home Rule dominated British politics in the later nineteenth century up to the First World War, ending with the secession of the southern part of Ireland. Yet even if the Scottish Nationalists, emboldened by their recent victory, are determined to promote the interests of Scotland at the heart of Westminster and thus “make Scotland's voice heard at Westminster more loudly than it has ever been heard before” in the words of Nicola Sturgeon (SNP, 2015, 3), they are not the main opposition party (unlike the Labour Party now headed by Jeremy Corbyn). Moreover, they do not have a single member in the House of Lords since they have always refused to be part of the British Upper House for ideological and political reasons.

Scottish Nationalists are highly visible and indulge in loud clapping in the Commons in defiance of parliamentary etiquette. At the State Opening of Parliament, during the 2015 Queen's Speech, the former leader of the SNP, Alex Salmond, now an MP in Westminster, made a point of being seen by the TV cameras trying to reach a wider audience. More

¹Yet, as it is clearly stated in the party manifesto, the SNP wants to stop cuts in Scottish regiments and have new frigates and aircraft carriers built in Scotland.

seriously, Scottish Nationalists can gain potentially a significant power in the Opposition all the more so as in the UK “an opposition bench is as important to the functioning of the British constitution as the Government” (*New Statesman*, 2015). The SNP’s Westminster leader Angus Robertson can ask two questions at Prime Minister’s weekly Questions and the party has been allocated opposition debate time giving it an unprecedented UK-wide forum. Besides, it has a significant role in select committees, chairing the Scottish and the Climate-Change select committees. The irony is that the Scottish Nationalists who successfully campaigned on anti-Westminster politics have joined a Parliament they did not want to be associated with even if their leader at Westminster insists his MPs are determined to work constructively in the British Parliament (Helm, 2015). This statement from the SNP Chief Party’s Westminster Leader is unlikely to be to the liking of the British Prime Minister as, since they joined the House of Commons *en masse*, the SNP MPs have together with Labour MPs already defeated the current Government several times notably on fox-hunting – voting against the Government’s measures to relax fox-hunting regulations in England and Wales – and on English Votes for English Laws – opposing the double majority proposal for English-only legislation. MPs representing Scottish constituencies have thus abandoned a long-standing convention not to vote on English-only laws in Westminster that do not affect Scottish constituencies. It seems that they are determined to use their voting rights as Westminster MPs to the full.

Meanwhile, against all predictions and to the surprise of the incumbent British Prime Minister, David Cameron, the Conservative Party won a majority, though a slender one, in the House of Commons in the 2015 United Kingdom General Election. Though officially unionist, the Party is generally associated with England and the promotion of English interests as this is where its main electorate is to be found. So the One Nation message that David Cameron delivered on the day after the election was not always interpreted as a ‘One Union’ State but as a One Nation – the English Nation – message, forming therefore a source of potential conflicts with the Scottish Nationalists of the SNP. He was partly elected on a promise to introduce English Votes for English Laws that he delivered the day after the 2014 referendum on the independence of Scotland once it had become clear that there was a majority of votes against an independent Scotland. It is all the more likely as, for the first time ever in British history, the four component parts of the UK have different majorities: Conservative in England, Labour in Wales, Nationalist in Scotland and Unionist in Northern Ireland, following the 2015 UK General Election. It is thus a period of great turmoil in the long-established British constitution. Every aspect of it is subject to intense debate. A vital key to almost every issue is the rise of nationalism in Scotland and to a lesser extent Wales, and the possibility of the UK ceasing to be a unitary state. Yet, there can be no understanding of the current debates about the future of British constitutional arrangements in the wake of the 2014 referendum on the independence of Scotland without first looking back at history.

The birth of the Union: an unbalanced constitution from the start

The British constitution did not originate as a clearly defined project unlike the French Constitution but developed in the same haphazard way as it had started. “It came into existence as the outcome of a series of historical contingencies” (Oliver, 2006). Like the English Common Law it has always been a work in progress. It all started with England² – the original founding nation – to which three additional nations congregated at different times and under different circumstances. So one nation, the English nation, dominated the constitutional arrangements from the start. It did not develop as a unitary state based on unity and indivisibility like sixteenth-century France under François I but rather as a Union state or an asymmetrical multi-nation state with some degree of autonomy allocated to its four different nations.

Devolution³ as a principle of providing local community government had been on the British public agenda since the Kilbrandon Report in 1973. If an attempt at devolution failed under the Labour Government of James Callaghan following unsuccessful referendums in Scotland⁴ and Wales in 1979, it was taken up by another Labour leader, Tony Blair, in his party manifesto in 1997 as part of a package of constitutional reforms aiming at modernising and democratising the UK Constitution by bringing the government closer to the people. Yet, as Dawn Oliver pointed out “the reasons for devolution were different for each of the three now-devolved areas of the UK” (*ibid.*). In Northern Ireland its purpose was to reconcile the two religious communities, in conflict for centuries. It was based on nationalist sentiment in Scotland⁵ and the will to give Scottish people their own representative body – their own Parliament – along the lines of the Scottish Constitutional Convention assembled to that effect, whereas the issue of the separatist Welsh identity – as embodied in its own language – and legislation such as the *Welsh Intermediate Education Act 1889* and the *Disestablishment of the Church Act 1920* provided the background to the Welsh devolution process. So devolution in Scotland appeared as a kind of compromise to calm down nationalist claims and avoid independence. Devolution was never intended to be a transfer of sovereignty but limited transfers of executive and/or legislative competences – the democratically elected devolved assemblies or parliaments being considered as subordinate institutions. So there is still one sovereign Parliament which can legislate for the whole country which is the British Parliament. Besides, England, Scotland, and Wales are not sovereign states but nations and Northern Ireland only a region. Yet, the devolution process revived by the Labour Government of Tony Blair through the three Acts of Parliament on devolution enacted in 1998 – respectively for Scotland, Wales and Northern Ireland – was to further aggravate and

² As Vernon Bogdanor explained in a lecture he delivered at a conference on “The Future of the Union” organized by the Legatum Institute on 10 November 2014 in London, “the formation of the UK came about largely as a result of the expansion of England through a process of conquest, treaty, and negotiation” (Bogdanor, 2014).

³ For the purpose of the current analysis, the definition of devolution provided by Vernon Bogdanor in his 1979 landmark book *Devolution* will be used: “a process that involves the dispersal of power from a superior to an inferior political authority and which consists of the transfer to a subordinate elected body on a geographical basis, of functions at present exercised by parliament”.

⁴ Of course Scotland approved devolution in March 1979 but not by a big enough margin under the Cunningham amendment which required 40% of the electorate to endorse it.

⁵ In the 1974 General Election, the SNP secured 30% of the Scottish vote and 11 out of its 71 seats in Westminster.

indeed intensify the asymmetrical character of the Union and strengthen Scottish and Welsh consciousness, while having a chequered success in Belfast at Stormont.

In the last seventeen years or so the United Kingdom has become a very different type of Union. The flexibility of the British constitution, long considered as a major asset, has led to constitutional changes driven mainly by political motives and not always to the benefit of the people. One might wonder whether the current constitutional arrangements, flexible though they are, can cope with such dramatic changes. It is an exceptional constitutional moment, so instead of imagining catastrophic scenarios, this could be a rare opportunity to rethink the Constitution and beyond the Union itself. The constitutional debate should not only be about Scotland but about a Union composed of four different nations. It is indeed essential to think of a new distribution of power not only between England and Scotland, but also between the four different nations.

The Scottish issue can also be seen in a European context (Leydier, 2007). In 2013, in what came to be known as the Bloomberg Speech, the British Prime Minister, David Cameron, promised an In/Out referendum on Britain's European Union membership were the Conservatives to win the 2015 General Election. His speech revolved around "three Rs" standing for "Renegotiation" (of European Treaties); Repatriation (of powers from Brussels); and a Referendum (on Britain's European Union membership). Two years later, his promise was incorporated in the 2015 Conservative Party General Election manifesto. In the meantime, in 2014, prior to the referendum on the independence of Scotland, David Cameron, together with the leaders of the main unionist parties, promised to devolve more powers to Scotland. It was followed by the setting up of a Commission named after its chairman Lord Smith of Kelvin. The SNP is now pressing for the full and rapid implementation of the proposals of the Smith Commission. Yet, as the former British Prime Minister, Gordon Brown, explained, "it would be wrong to automatically equate patriotism with nationalism or assume that the popular demand for change (in Scotland) is more about a change in border than about the social and economic change that people urgently want" (Brown, 2015). Indeed, the SNP leader claimed that the 2015 election was mainly about achieving more devolution over areas such as employment, welfare, business taxes, national insurance and equality. More precisely, under the provisions of the 2015 SNP manifesto, the objective is "to extend Edinburgh's economic powers while preserving the financial support Scotland receives from the UK" (*Financial Times*, 2015). In effect, they want to leave the Union and remain within it – the best of both worlds.

The Union has rarely been under so much strain as Scottish Nationalists' centrifugal forces try to pull the kingdom apart, while the English Nationalists of Ukip show stirrings of independence from the European Union, compromising the survival of the United Kingdom as a cohesive whole.

A Union under strain: between Union and Disunion

The Commission chaired by Lord Smith of Kelvin produced its report very rapidly indeed, in November 2014. Three proposals stand out which are likely to have a significant impact on the current constitutional arrangements of the United Kingdom starting with more fiscal devolution. The objective of the Commission is to go beyond the provisions of the *Scotland Act 2012* and thus move further towards the full fiscal autonomy that the Scottish Nationalists are now claiming⁶. Under the terms of the Smith Report, the Scottish Parliament will be responsible for setting all the rates and bands of income tax on earned income for Scottish taxpayers while the UK will continue to levy income tax on savings and dividends. This means that around 60% of the money the Scottish Parliament spends will flow directly to it. Echoing the promise made by the SNP in its 2015 manifesto, the Smith Report also includes a degree of welfare devolution to Scotland. The idea is for Scottish ministers to have the flexibility to develop their own priorities for welfare spending within certain limits to avoid significant distortions between the different parts of the United Kingdom. Last but not least, the Smith Commission advocates extending various other competences of the Scottish Parliament such as the regulation of telecommunications, the management and operation of tribunals but also oil and gas extraction, while embedding some of the features of Scottish devolution in national statutes most notably the Sewel Convention. Thus, under the main recommendation of the Smith Commission, the Scottish Parliament and Government should be made permanent institutions and the Sewel Convention should be placed on a statutory footing. Yet, as the independent experts of the Bingham Centre for the Rule of Law have explained, the problem with the Smith Commission's approach is that "it perpetuates the notion that devolved institutions are subordinates of Westminster not partners in the governance of the United Kingdom" (Bingham Centre, 2015, 8).

A few months afterwards, in January 2015, the UK Government issued its official response in a Command Paper entitled *Scotland in the UK: An Enduring Settlement* containing draft clauses for a *Scotland Bill* to be introduced in the first session of the new Parliament. In the 2015 Command Paper, two particularly important draft clauses received particular attention. The first one provided that after section 1 of the *Scotland Act 1998* would be inserted "A Scottish Parliament is recognised as a permanent part of the UK's constitutional arrangements", while the second one was to add the following words to section 28 (7) of the *Scotland Act 1998*: "but it is recognised that the parliament of the UK will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament". If in both cases, the aim was for the Westminster Parliament to be unable to disestablish the Scottish Parliament without the consent of the Scottish people, the new provisions were not to be legally binding and thus not judicially enforceable before the courts. At best, they will be politically binding which means that though they represent a strong symbol of the

⁶The *Scotland Act 2012* aimed at strengthening the devolution settlement in Scotland and increasing the financial accountability of the Scottish Parliament. The objective of the Act is to increase the Scottish Parliament's ability to make autonomous choices that benefit the people of Scotland and to be accountable for these choices. Its financial provisions are designed to reduce Scotland's dependence on UK tax and revenues. Some provisions in the Act are directly derived from the report of the Commission on Scottish Devolution or Calman Commission; others have been left out such as the recommendations for social security and welfare reform. In a nutshell, elements of taxation will be devolved, there will be a reduction in the block grant and extended borrowing powers will be introduced. It should be noted that Scotland's important financial services, notably the banks, were severely damaged by the 'credit crunch' in 2008-09.

permanence of Scottish institutions their scope will be limited even if they might move the current constitutional arrangements further in a federal direction in the long run (House of Lords, 2015a). It would still be legally and technically possible for the Westminster Parliament one day to abolish provisions which are only of a statutory nature even if the prospect of a political – and constitutional crisis – would deter national legislators from doing so.

The most imminent risks are not only to bring in more constitutional changes to try to satisfy Scottish Nationalists' claims by granting the SNP new concessions without thinking of their impact on the United Kingdom as a whole, but also to have very fragmented constitutional debates as the independent experts of the Bingham Centre for the Rule of Law have pointed out in an alarmist tone. If rethinking the constitution has undeniably been going on for some years, including within the Centre for Political and Constitutional Studies at King's College London formerly chaired by Professor Robert Blackburn, the pace has accelerated under the pressure of the Scottish referendum and now under the pressure of the forthcoming In/Out EU Referendum. The objective should not be to propose yet more constitutional changes to satisfy Nationalist claims while the latest devolution statutes – most notably the *Scotland Act 2012* and the *Wales Act 2014* – have not even been implemented. What is also essential is to concentrate on constitutional issues which have not yet been dealt with, that is the gaps in constitutional reform such as the English exception in the devolution process, England remaining for its part highly centralised. Indeed, England is still very much 'un-devolved'. Until recently, though the English were on the whole favourable to devolution to the Celtic nations, if unexcited by it, they were hostile to devolution for England. One of the main, yet highly divisive, options for England would be "English Votes for English Laws"; some form of English Parliament would be worse still. Yet the Westminster Parliament is already *de facto* both a British Parliament where all the four nations are represented – at least in the House of Commons – and an English Parliament in the sense that the great majority of its 650 MPs represent English constituencies (533). This is also true of the House of Lords which has a majority of peers from Southern England. One of the numerous problems that "English votes for English Laws" would entail would be to create two tiers of MPs, undermining the principle of equality between them. Besides, the status of MPs whose voting rights would be limited would also have to be dealt with as well as the impact of such fundamental changes on the House of Lords. Another solution to the 'English Question' which seems to be less controversial and more pragmatic at the same time would be to focus on some form of decentralisation for England based on existing institutions, city deals and strengthening local government - a *Cities and Local Government Bill* to this purpose was included in the 2015 Queen's Speech. It is all the more urgent to tackle the 'English Question' since English Nationalism too is on the rise. In this regard, the party for the independence of the United Kingdom from the European Union (Ukip) is now very much part of the political landscape. If it won only one seat in the 2015 General Election under the First-Past-The-Post voting system, which is not favourable to small political parties in general, the party of Nigel Farage appealed to no less than four million voters. The great majority of them are in England. So Ukip has not lost its momentum since the last European elections. Moreover, the forthcoming campaign for the In/Out EU Referendum is very likely to give it an opportunity to come to the fore and promote the withdrawal of the United Kingdom from the European Union, more commonly known as "Brexit".

Various proposals have already been made to achieve a more stable, coherent constitutional framework for the United Kingdom as a whole. They are all based on the need to redefine the purpose and core values of the Union in what is now identified as constitutional Unionism. Those values were not promoted – or not enough and not in a sufficiently clear way – during the 2014 referendum campaign as the Unionist parties and more largely the supporters of the Union never really explained why it was “better (to stay) together”, and took it for granted. It is all the more regrettable as in the words of Gordon Brown, who campaigned powerfully in favour of the Union, “No Union can survive without unionists” (Brown, 2015).

Some constitutional analysts favour a royal commission on the future of the Union, yet the majority support a United Kingdom-wide, multi-party constitutional convention. What is important is to make sure that it is a representative, open forum instead of a series of discussions between constitutional experts behind closed doors. What the Welsh constitutional experts of the UK’s Changing Union Project recommend is for such a convention to be composed of elected members drawn from the four United Kingdom legislatures. The idea is to involve both the United Kingdom Government and the territorial Governments all the more so as there has been a serious lack of inter-governmental and inter-parliamentary dialogue until now. The aim is not only to “meet the aspirations of all four constituent nations in the common interest of the Union as a whole” (Cardiff University, 2015, 2) but also to meet the aspirations of the people themselves, the difficulty being to define the level and the form of direct public involvement. Too often, citizens themselves have been the great absentees whereas it is essential for them to be associated with the whole process to make it not only democratic but also to make sure that it is based on people’s consent instead of just being imposed on them. In other words, it must be a “real national conversation” such as the one which preceded the setting-up of the Scottish Parliament. The Scottish Constitutional Convention, set up in the late 1980s, which paved the way for a Scottish legislature, could serve as a source of inspiration, as it was very successful, even if there is a need to adapt it to include this time the representatives of the four nations forming the Union. As Lord Forsyth argued in a speech before the House of Lords on the question of a national convention: “We cannot have constitutional change implanted unilaterally, we need to have all-party agreement” (House of Lords, 2015b). In July 2015, just before the parliamentary recess, a Private Members’ Bill entitled the *Constitutional Convention Bill* was introduced to that effect by the Liberal Democrat peer Lord Purvis in the House of Lords “aiming at a real, durable constitutional settlement” (McSmith, 2015), but it had no impact.

Among the numerous proposals that have been put forward by legal and political experts regarding the future of the Union as a whole and the form its constitutional arrangements could take, two are particularly worth examining. The first is in fact a joint Welsh initiative based on an active collaboration between the Wales Governance Centre at Cardiff University, the Institute of Welsh Affairs and ‘Tomorrow’s Wales’. After three years of intensive work they published a report in 2015 entitled “UK’s Changing Union” (Cardiff University, 2015). This Welsh initiative is all the more important as the constitutional debate until now has been very much Scottish-centred. This can partly be explained by the fact that the Welsh Nationalists are not considered as a threat for the Union. Whatever the efforts of the leader of Plaid Cymru, Leanne Wood, there was no breakthrough of the Welsh Nationalists in the 2015 General Election. They only managed to maintain their three seats in the House of Commons and came fourth in the overall vote. Wales is still a Labour stronghold. The leader of the

Labour Party in Wales and First Minister, Carwyn Jones, has himself called for a UK-wide constitutional convention.

The other major scheme is also a common initiative, based on the collective work of the Bingham Centre for the Rule of Law and the British Institute of International and Comparative Law. They issued their report in May 2015 as a first step towards a codified British Constitution to “lay down the underlying principles of the UK’s territorial Constitution” (Bingham Centre, 2015, ix). What is of great interest is that the drafters of the Charter of Union partly based their proposals on the arguments used during the Scottish independence referendum campaign. Their other main source of inspiration was the findings of the Kilbrandon Report (1973), the foundation of the devolution process⁷. However, if this project seems at first glance very ambitious, the term “charter” can be misleading. Indeed, the so-called Charter of Union would in fact be set up by a statute of the UK Parliament interpreted and enforced in the courts (*ibid.*, xiii). So it would only have the legal value of an Act of the Westminster Parliament and at most be a constitutional statute – not subject to implied repeal. It would mean that it could itself be one day abrogated by a new Parliament like the devolution statutes and the *Human Rights Act 1998* instead of being fully entrenched. Among the core values of the Charter of Union – also part of the Welsh constitutional project – would be social and economic cohesion between the four nations, subsidiarity⁸, a decentralised England within a much less asymmetrical Union. The Welsh and English projects both focus on the UK as a “Union State” and explore a federal or confederal option based on a codified UK Constitution. In the nineteenth century, the constitutional authority A.V. Dicey did not think that federalism was a desirable option for the country. A Liberal Unionist, he argued that “federalism revolutionises the whole constitution of the UK; by undermining the parliamentary sovereignty, it deprives English institutions of their elastic, their strength, and their life” (Dicey, 1882). A Federal United Kingdom would not only mean a fully written codified constitution but would involve fundamental changes regarding the existing national institutions. The Upper House of the British Parliament could be turned into a territorial elected chamber providing formal political representation at the centre for the nations and regions of the UK giving it a new *raison d’être* while the United Kingdom Supreme Court would act as a constitutional court with constitutional review power, which it has hitherto resisted.

However, neither the 2015 Conservative manifesto nor the 2015 Queen’s Speech included any proposal or Bill dealing with parliamentary reform or with the reform of the national institutions. Thus turning the House of Lords into an elected House based on a territorial form of representation is not on the agenda, any more than a reform of the voting system of the House of Commons – except for a few changes to the constituency boundaries (deferred until 2018) to reduce the number of seats from 650 to 600, which would make it harder for the Labour Party to win seats in the Commons. The 2015 Queen’s Speech was dominated by the European issue focusing on the need to renegotiate the UK’s relationship with the EU as well as early legislation to provide for an In/Out referendum on membership of the EU before the end of 2017. Devolution was the other major constitutional issue with a Bill to devolve wide-ranging powers to Scotland and Wales following the Smith Commission’s recommendations as well as changing the standing orders of the House of Commons to ensure that decisions

⁷Yet, its refusal of federalism as an option for the UK has been widely criticised.

⁸a key principle introduced in the European Union by the Maastricht Treaty.

affecting England, or England and Wales, can be taken only with the consent of the majority of MPs representing constituencies in those parts of the UK. Significantly, the 2015 Queen's Speech did not include any Bill on the repeal of the *Human Rights Act 1998* which would have further alienated central government from the nations and regions and would have undermined the whole devolution legal framework. After criticisms from leading Conservatives, it contained only a brief statement about "bringing forward proposals for a British Bill of Rights", and Conservative intentions remain far from clear.

Conclusion

The 2014 referendum on the independence of Scotland did not come near to resolving the 'Scottish Question' – or indeed the future of Wales. It also revived the 'English Question' more intensely than ever. A positive way to look at those constitutional issues would be to see them as a new beginning, not only for Scotland but also for the Union as a whole. There will be more devolution granted to Scotland, since it was part of the *Scotland Act 2012*, and to Wales under the *2014 Wales Bill* even if the hasty promises (or 'vows') made by politicians in the count-down to the Scottish referendum were not to be fulfilled. In any case, aggravating the asymmetrical nature of the current devolution process can only fuel resentment and nationalist feelings in both England and Scotland and is bound to lead to a new referendum on independence in Scotland. Constitutional reform should not be exclusively based on ever more devolution but also on the modernisation and democratisation of national institutions, and a more positive emphasis on the Union. Thus, British democracy would benefit from a more streamlined House of Commons and a more democratic British Upper House based on territorial representation, as well as a UK Supreme Court with a wider devolution jurisdiction and one or two Welsh Justices, as a move towards a formal Welsh law.

To use the expression of a prolific journalist of *The Guardian*, Simon Jenkins, this is "an exciting new era" in a country with a rich and complex constitutional and political history. It is without doubt a fascinating and challenging time for British people and constitutional lawyers as it raises many complex – and for some – unprecedented constitutional issues in a country which, though still lacking a codified constitution, contributed to the emergence of constitutional law together with France and especially the United States of America and the Commonwealth countries. Now is the time for the UK to seize the day and adopt a fully-written constitution for the country as a whole. The 2014 Scottish Constitutional Bill which was to be the blueprint of the new Scottish independent state provided Scotland with a fully-written constitution – one that would entrench devolution and better protect Human Rights for the benefit of all four nations and the British people. Its effect would be to create a United Kingdom more diversified but also more truly united than ever before. Salvation could come, therefore, not from the English epicentre but from the so-called Celtic fringe. It would be an anti-Diceyan irony to be treasured.

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