

Progressive federalism

**A different way of
looking at the UK**

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Foreword

The phrase 'progressive federalism' is heard these days in Labour party discussions of the future of the UK as a union. But what does it mean, and how could it be made into something real? In this paper, based on a lecture I recently gave to the West of Scotland Fabians, I argue that it is a powerful idea for those who think politics should be about social justice, but are struggling with the fact that these days, it is all apparently about identity. This progressive federalism works not just for Scotland and the other devolved nations in the UK but as a way to think about decentralising power in England.

Identity politics is all around us just now, from Trump and Johnson to Brexit and Scottish nationalism. Progressives struggle to deal with it and find it easiest simply to reject the idea – along with its disagreeable champions. However political structures like federalism which acknowledge identity are morally neutral, and can be designed to promote social justice. Indeed we have, step by step, got closer to that in the powers of the Scottish parliament. I argue that progressive federalism should be seen as an 'each way bet' for progressive causes – a structure which enables the right UK government to promote social justice, but the devolved parliament to step in and fill the gaps if it does not.

More needs to be done to embed this in the territorial constitution, and to make clearer what the purposes and aim of the union are not just international relations, or economic security but also a structure which promotes guarantees of public services and welfare across the territory. For Scotland that is far preferable to the uncertainties and austerity of independence and much more likely to create a society that works for everyone.

The same arguments apply within England. Those parts of the north which protested about being left behind by voting for Brexit were, like many poorer Scots, seduced by the empty arguments of identity, because they were being offered little else. In truth their beef is with London not Brussels, and a solution within this framework of progressive federalism, which offers them local agency while guaranteeing at least common standards of social provision, is the answer to the question they should have been asked.

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Introduction

What is progressive federalism? It is a phrase which is increasingly being used in the debate over Scotland in the union and the UK's territorial arrangements. It marks a welcome recognition that we need to move our thinking on from devolution and the arguments at the time of the independence referendum. In today's world, those concerned about social justice need a fresh approach to constitutional structures.

Questions of identity now dominate our politics, but people on the left have traditionally been dismissive of identity politics. A worker in Lanarkshire has more in common with a worker in London than with a laird in Perthshire. A pensioner in Glasgow shares interests with one in Gravesend, not with a venture capitalist in Edinburgh. That is how the argument has always gone.

This has always ignored the fact of national boundaries – why stop your solidarity at the channel, a “socialism in one country” dilemma that goes all the way back to splits among the early communists. But there is a more immediate problem. Identity politics are everywhere just now. They range from the utterly ghastly to the deeply uncomfortable: from Victor Orban and Donald Trump, to Brexit and Scottish nationalism. Why should this have become the big issue of our age?

It is in part a problem of success. Generations of social change have changed the structure of our societies. To put it simply, we have replaced a pyramid with a diamond. In terms of the distribution of income, we are no longer a society with a majority at the bottom of the income distribution. Most people are now in the middle: not rich, but often comfortable enough. The pressing challenges of social justice concern 20 per cent of our fellow citizens, not 60 per cent. In those circumstances, it is harder for those on the left to build a majority for progressive reform and easier for the peddlers of nationalism to construe social problems as the denial of identity. In rather old fashioned left-wing language, class identity has lost out to national identity, because most people are a bit better off.

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The second success is globalisation which has lifted literally billions of our fellow human beings out of the worst poverty. This success, however, creates uncertainty in our own economy. Jobs move elsewhere. People move too. The 'just about comfortable enough' middle of our society is unsettled and threatened by this. Their wages have stagnated. Their job security has reduced. They don't see that their children progressing in the same way they or their parents did.

Hence the appeal of Donald Trump with his 'make America great again'. Hence too the 'take back control' slogan of the Brexiteers. And hence, to some degree at least, the surge in support for Scottish independence in 2014 from those who were inclined to think that things couldn't get much worse for them.

Getting beyond the simple rejection of identity politics

It's easy to dismiss the claims of identity, easy to say it has nothing but economic downsides as well as being socially undesirable. Look at Brexit: identity-driven politics brings potentially serious economic disruption with an increasingly xenophobic tone.

But we need to get beyond this. Identity matters and meets a real human need for belonging. And it matters most at times of economic uncertainty, like now.

It is important to realise that identity politics has in fact *no* moral content – either way. It is amoral, not immoral – even though it is often used by deeply immoral people. In the same way, Scottish nationalism and Brexit are empty of policy content. An independent Scotland could be an Albania or a Singapore. Brexit Britain could be either a democratic socialist republic or a tax haven.

Those who believe that the purpose of politics it is to make society more just have to work with the reality of identity, but link it to social justice – and not just in the specious rhetoric of nationalism which claims that to be Scottish is to be a better kind of person. To put it another way, constitutional projects should never be an end in themselves. Constitutions serve policy aims. Our policy must be to ensure that the constitutional framework serves and is seen to serve the aim of social justice.

I want to argue that making the territorial politics of the United Kingdom into a kind of federalism can serve progressive purposes, and very evidently serve them much better than the empty identity-only arguments of nationalism. To do that, I want to assemble a picture of what 'progressive federalism' would be like. It is going to be a bit like doing a jigsaw.

Most of the pieces are already on the table, many constructed by progressive forces in Scottish politics. But we need to assemble them into a picture, and see what bits are missing.

What does it mean to talk of federalism in the UK context? Traditionally we have talked of the UK as a so-called union state. It is formed out of pre-existing parts which have come together, but retained some of their identity and institutions. That was the argument of the late John P Mackintosh and others. It is true, as a description of what has happened. But it doesn't tell us what to do next.

Construing the UK as “federal” gives a little more guidance. We start with something fundamental but which, like so much in the constitutional debate, has been taken for granted, then ignored. And that is that the UK is a voluntary union of different nations. This holds true today, not just in 1707 when the Acts of Union passed into law. Scotland’s Claim of Right was that the form of government for Scotland was for the Scottish people to choose. This was given teeth in the 2014 referendum. Even the Conservative government accepted without question that if Scotland chose to be independent it could be. This right to choose is easy to take for granted but it should not be. Look at what happens elsewhere, for example the problems in Spain, for which both Catalan separatists and the Madrid central government are to blame.

The UK is what one might call, in the jargon of those who study federalism, a ‘coming together’ federation. It is not actually, as the word ‘devolution’ implies, a federation created by disentangling a unitary state. The UK never really was one.

Like every federal country, the UK involves a mixture of shared rule and self-rule. Self-rule in Scotland is long-established – even before the creation of the Scottish parliament, with administrative, legal and educational differences. Scottish self-rule is, in practice, as powerful as self-rule in almost any federal country. Measure for example the extent of tax and spending decentralisation. Or look at the remarkable lack of control of London over Edinburgh on how the money is spent, seen in no other federal country. If you ignore self-consciously nationalist posturing, you will see perhaps the most powerful self-rule institution in the world.

So looked at from Scotland, the UK already has very much the look and feel of a federal state. There are however two pieces of the constitutional jigsaw missing. The first centres on the status of the devolved institutions. A key characteristic of a federal constitution is that there are some competences, some functions of government, which belong uniquely to one level of government or the other under the constitutional settlement, even if exactly what belongs to whom is argued (seen for example in the constant tension within the USA about states’ rights).

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The constitutional legislation however has not yet successfully recognised, codified or, in the jargon, 'entrenched' that. That is because of the slightly childish and certainly much misunderstood notion of parliamentary sovereignty. Since parliament can always change a law, it cannot legislate irreversibly to disempower itself and empower Holyrood. We made some progress on this in 2016, by declaratory provision about the permanence of the parliament and the nature of the Sewel convention which allows for the UK parliament to legislate on devolved matters with consent. Unfortunately, the UK government's handling of the Brexit legislation demonstrated that it was insensitive to this constitutional principle, as it proposed to reserve things without the agreement of Holyrood. In reality, this did not amount to much and may turn out in practice to amount to nothing at all. But it shows a need for a more explicit entrenchment of the Scottish parliament's powers. We must ensure that the legal, constitutional, formality follows the political and social reality: the Scottish institutions are not merely permanent but have control over their own destiny.

I will come back later to other opportunities to make the Scottish parliament more powerful, and the implications of seeing the Scotland-UK relationship as 'federalism' for the structure of the UK as a whole. But to find the second missing jigsaw piece I want first to focus on the notion of being 'progressive'.

What's 'progressive' about federalism?

We can see federalism is an institutional recognition of identity, and we know it is not an end in itself. The purpose of institutions is to improve people's lives. If the union, federal or otherwise, between Scotland and the rest of the UK is a voluntary one why should we join together, and why should we stay that way?

There are some obvious reasons which apply to any federation. It makes sense to conduct your international relations from within a larger unit, and if need be defend yourself there too.

There are also very good arguments in favour of federalism around the economy, jobs and prosperity. For Scotland, the union ensures we have a large domestic market for Scotland's goods and services. These advantages are very important, and characterise unions from the United States to the European Union. Having a federal structure enables you to decouple economic questions like what currency to use from questions of identity. Looking at the fankle the SNP have got themselves into over currency, we can see just what a huge benefit that is. If you adopt a federal solution you can keep your (Scottish) identity and your (British) currency. You don't need to consider the alternatives which range from the highly risky – launching a new currency on the world's markets – to the downright crazy – supercharged austerity under a dollarised system. These points matter hugely, economically and politically. But there's nothing uniquely 'progressive' about them.

Progressive federalism and constitutionalising social rights

But there is a third characteristic of federalism which means it can be progressive: resources are shared across the federal territory. And if resources are shared, they can be redistributed. Every federation does this to some degree: the US not very much; Canada, quite a bit; Australia a great deal. The Federal Republic of Germany even has a constitutional requirement to equalise living conditions across its territory – something inserted by its conquerors after the second world war – and has as a result been redistributing resources into the Eastern Länder on a huge scale for decades.

So how does distribution and redistribution work for Scotland in the UK now? Here are four important features:

1. For reserved services like pensions and benefits, UK expenditure pays no heed to how much money is raised in the parts of the country where it is spent. Otherwise pensioners in poorer areas would get a smaller pension. This is explicitly redistributive across the UK territory as well as between richer and poorer people.
2. Devolved services are very heavily supported by shared UK taxation as well. The mechanism is the Barnett formula, and the result is remarkable. Spending in Scotland is 25 per cent per head higher than in England and is largely insulated from the fact that per head Scottish tax revenue is about 95 per cent of the UK average.
3. If on the other hand Scotland wants to spend a bit more, and is prepared to raise taxes, then it can increase Holyrood's spending.
4. But most remarkable of all, it can also increase reserved spending on pensions and benefits if it wants. In fact, it has not only the legal power to do that, but the fiscal resource – that 25 per cent extra could be redistributed to social security spending, as could increased revenue from higher tax rates as well.

Overall this creates what I would describe as an 'each way bet' in favour of expenditure on public services and benefits, and so, if we wish it, in favour of social justice. If there is a left of centre government in London, Scotland gets the benefit of increased spending supported by UK taxation. If there is

a right of centre government in London, it can use its own tax and spending power to offset the cuts. By comparison, independence is a one-way bet only. You rely on Scottish resources only whatever happens. Of course in practice the present Scottish government has been very reluctant to 'let Westminster off the hook' by spending more. But that is because its priority is independence, not social justice.

So by one means or another, we have assembled for Scotland inside the UK a set of constitutional powers and practices which are favourable, if politicians are willing to use them, to progressive politics— certainly much more so than independence would be. But if you read our constitutional legislation, the Scotland Act and its various successors, you would never realise that this was the case. You will never see it said that that was one of the purposes or effects of our territorial constitution. That is a missing piece of the jigsaw: we don't set out our federal constitution, and we don't say what it is intended to achieve.

What might setting out the constitutional aims involve? First of all, stating explicitly in constitutional legislation – I will come back later to what form that might take – that a purpose of the territorial constitution is to ensure at least a guaranteed level of social welfare all across the UK's territory. Second, that resources must be distributed in a way that makes that guarantee possible. Third, perhaps more controversially, we might also argue that in return for such guarantees, Holyrood (or Belfast or Cardiff) does not use its powers to, for example, cease providing healthcare free at the point of need, or free school education. In other words, if federalism is to be 'progressive', it should constitutionalise social rights and the allocation of resources to deliver them.

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The implications of Brexit

Now for some more jigsaw pieces. Brexit is a problem for progressive politics. I do not think that I need to explain why, merely refer you to the character of those who promote it. It is an eruption of English nationalism, and built around identity politics of a deeply undesirable sort. No one knows how it is going to turn out. It may even never happen at all. But it has one surprising potential. If it does happen, some powers will be repatriated from Brussels. I referred earlier to the UK government's incompetent handling of the Brexit issue in legislation, but the truth is that devolved powers will be increased. Looking at the issue through a federal lens, there may well be scope to do more – not just in areas like agriculture and fisheries, on which there is going to be a bit more flexibility (although still much constrained by international obligations and future European relations) but two areas where both the UK and Scottish governments have been silent.

First, there can be no good reason in a federal set-up to deny the Scottish parliament the capacity to make international relationships with the EU about things which are already within their powers such as the provision of health services to EU citizens visiting Scotland and vice versa or participation in EU education programmes.

Additionally, if we do leave the EU single market, something will have to replace freedom of movement for EU citizens in the UK. It might not be border controls, but in-country management of migration, and there are good reasons to argue that it should be managed differently in Scotland from the rest of the UK. Demographic pressures are different, economic needs might be different, and local preferences might be different too. Some federal countries do already manage something like this.

Five missing bits of the jigsaw

So in many ways the UK's territorial constitution can already be described as 'federal' and many of its aspects have in practice been designed to promote the possibilities of social justice. Maybe that is not surprising, as devolution was substantially a Labour Party project.

But there are still five pieces of the jigsaw missing. Let me summarise them: the changes we might make to the territorial constitution as it affects Scotland to create a genuine 'progressive federalism':

1. Entrenchment of the status of the Scottish Parliament in the UK constitution, even more explicitly than now.
2. Explicit statement, in constitutional law, of the social purposes of the territorial constitution.
3. Constitutional legislation relating to resource allocation ensuring at least a minimum welfare provision across the whole territory, and guaranteeing free education and health services.
4. Potentially, additional post-Brexit powers of external competence in relation to devolved matters.
5. Potentially also, post-Brexit powers to manage EU migration.

England, Wales and Northern Ireland

All this has been about Scotland, but what about the rest of the country? The same arguments apply, more or less unchanged, to both Northern Ireland and Wales. Northern Ireland in particular has always been recognised as having a choice about staying in the UK and while the idea of Welsh independence may not be practical or popular we might say the same principles apply.

But it doesn't work for England. Its people make up some 85 per cent of the population of the UK. English independence would be tantamount to ejecting the other countries from the UK. An English parliament along the lines of Holyrood would in my view spell the end of the union. It would swiftly become the focus of English political life and the federal government would become vestigial. In any event, England's parliament is Westminster, and England's government is the UK government. There are however things which can be done about the recognition of English identity in ways which would be more constructive than the Brexit shambles. First, the principle of 'English votes for English laws' is not actually wrong, although the Conservative party has used it as a political device. Isn't it interesting to see how willing they are to rely on the support of Northern Irish members of parliament? And while an English government would have the same effect as an English parliament, it would certainly be possible to do a bit more to distinguish England's governmental decisions from those of the rest of the UK. There is room for much more thinking about the internal organisation of government.

There is also a very strong case for decentralisation in England. I would favour an asymmetric system built around the economic and social reality of the city regions of the north in particular, giving them the same sort of guarantees of social welfare, and building up scope for them to increase it from local resources, provided there is democratic accountability for what would be not legislative devolution but the re-creation of powerful English localities. One of the deep ironies of Brexit is that the folk in Northern cities who voted to leave because they wanted change were aiming at the wrong target. In truth, their beef is with London, not Brussels. That is where they need to take back control from.

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The federal governance of the UK

Reconstruction is however needed in the central, federal, governance of the UK. We have never got that right, because devolution has been seen as a peripheral concern, and a kind of untidy appendix to an unitary state rather than a fundamental redefinition of power and sovereignty in the UK. Several things need done. The first relates to the organisation of central government. We are long overdue the creation of a powerful central ministry responsible for the territorial constitution, rather than three peripheral territorial departments. It should probably also be responsible for driving decentralisation in England. I think there might be a good case for having it such a ministry made responsible to a House of Lords minister whose role might be a bit like the traditional role of the Lord Chancellor, making sure that government respected the constitution.

We need to change the legislature as well as the executive. There is a key role for the House of Lords here, or at least a reformed House of Lords. Might we be able to turn it into a 'Senate of the nations and regions'? So many projects to reform the House of Lords get bogged down in arguments about composition. Instead we should begin with the task it should do, and in this case we should give it, through a specially constituted committee in which the devolved parts of the UK were deliberately overrepresented, responsibility for overseeing the implementation of these changes and how they operate in practice.

Conclusion

The territorial constitution of the UK is surprisingly close to something that could be described as 'progressive federalism', and I have argued here for the bits of the jigsaw need to finish off that picture: a seven-point plan. That probably means legislation at Westminster, and interestingly there are proposals from the constitutional reform group for a 'new act of union', an Act of Parliament setting out the nature and purposes of the territorial constitution, including many of the points I have mentioned. So there are some real opportunities here.

The most important point, however, in all this is to see just how much better federalism, or progressive federalism, is than independence for Scotland. It avoids the economic dislocations, notably the impossible question of currency. It is an each-way bet on social justice. In a post-Brexit world in which the negative consequences of deconstructing a union become clearer, it is likely to be the preference of an increasing majority of Scots. It is what Nicola Sturgeon should be arguing for: not so much independence, as independence inside the UK.

