

Hangin' Together: The Case for Union

Introduction

In this lecture I want to set out the positive arguments for Scotland remaining inside the United Kingdom, so there are some things I will *not* be saying. I will not be talking about the risks and uncertainties of independence, real although those are. Nor will I be engaging directly with some of the arguments that the Yes campaign make for independence, though I regard some of them as not merely wrong but positively misleading.

I want instead to set out what I think is quite a complex argument, but one which has not properly been heard yet in the debate. The aim is to see if we can get behind the soundbites and look at some quite profound connections between three different aspects of the way in which we organise ourselves in the UK: the political, economic and social aspects of the union.

The connections

Political union is what is under challenge in this referendum. But I'm going to argue that it is the essential foundation for things even nationalists say they want to keep. Political union creates the opportunity for genuine economic integration - an economic union. Economic integration, I will argue, implies fiscal integration, and so enables social solidarity. And social solidarity is essentially a moral choice and is the expression of a sense of belonging. Hence a social union. The justification for each of these aspects of the union is partly instrumental - what is in Scotland's interest? But it's also principled - what's right for Scotland and the rest of the UK?

I will argue that these 3 unions are interconnected, and you cannot simply cut away the political union and hope to keep the others. But also that once you've understood the economic and social union that we have, you can see how the political union - and devolution within it - can develop further.

The economic union: what it means to have an integrated economy

Economics is perhaps inevitably at the top of the agenda a time of economic uncertainty. The polls tell us the vote in the referendum would be swayed if people thought they'd be £500 year better or worse off. Now I don't really believe that, but I do believe that economics matters a lot in this argument.

Economic union is a strategy for a small country in a globalised world. Not perhaps the only strategy but, I will argue, one that's proved successful. It's about two things. First, free trade and the opportunities that offers individual Scots and Scottish businesses. Second, it's a way of managing risk and uncertainty and coping with the effects of economic shocks, so as to provide economic stability and security.

Scotland has been part of a deep economic union for so long we take it for granted. At its heart is free trade - the movement of goods and services, people and capital, without hindrance, to all parts of the country. It's hard to imagine a world in which

Scots cannot move with complete freedom to take up jobs anywhere in the UK, or in which Scottish businesses cannot trade across the border without the slightest obstacle. But it wasn't always so. Securing access to English markets was a Scottish objective as long ago as 1700. And it isn't so everywhere. Even the European Single Market is still rife with trade barriers – ask any Scottish insurance company.

But in the UK, we do have genuine free trade. As a result, Scottish businesses have a domestic market 10 times our population. Young Scots have 10 times the job opportunities. Scotland's biggest export market by far is the rest of the UK. Economists since Adam Smith have understood how free trade delivers benefits. It allows us to specialise in what we are better at: and Scotland has specialised, serving UK markets in everything from financial services to warships, or university education.

Free trade within the union enabled Scotland's breakneck 19th century industrial development. But those of us who spent the 1970s and 80s worried about Scotland's industrial decline need to adjust our specs. Scotland is now one of the richest parts of the UK. Measured by gross value added or by household income Scotland is the UK's the third richest region. Our economic output per head is very close to the South East of England, and our cities come surprisingly close to London levels of output. Since the present set of statistics began in 1963, economic growth per head in Scotland has actually exceeded the UK's. This success has been possible because of, not in spite of, being part of the UK. And, as part of the UK, Scotland has done as well as most small countries economically. Better than Denmark, Finland and Ireland, as good as Austria, but not as good as Sweden. In terms of growth in recent decades and GDP head we are above the small country median for Europe. Could be better, but could certainly be a lot worse.

Equally important is how a small country manages risk and instability. As part of a larger economy, within a political union, Scotland can expect the rest of the UK to absorb fluctuations, uncertainties and economic shocks. This is no small thing. The collapse of the two big Scottish banks was extraordinary, but it was absorbed by the whole UK. Scotland's dependence on financial services is proportionately greater than Iceland's or Ireland's but because the shock was absorbed by the whole UK, the effects on the Scottish economy were less than in those countries. The same holds true, as we will see later, for fiscal shocks, fluctuations in tax and spending.

Now, perhaps Scotland could do as well as an independent country. But it would have to follow a different strategy. It couldn't, in the long-run, remain as integrated with the UK economy. This is because International borders do matter for trade, even in the EU, because laws and regulations differ. Estimates differ as to how big this effect is, but the example of the US and Canada is interesting. Despite being in a free trade area, it's been estimated Canadian provinces are over 20 times as likely to trade with each other than with equally distant US states. The UK government recently produced an estimate – admittedly speculative – that the border effect could be worth as much as £2000 a year for each Scottish household. It would hurt the rest of the UK economy too, but not by proportionately as much.

And we would need another way of planning for shocks. Typically small countries follow conservative fiscal policies, build up reserves, and *in extremis* devalue the

currency. They cannot sustain the kind of deficit financing which has been the hallmark of the UK, and now of Scotland within it. No one is saying it's impossible for Scotland to succeed as a small independent country. But no one can claim, with certainty, that it will, or deny that the costs of transition could be very large.

Economic union and currency union

The most obvious sign of economic union is sharing a currency. It's clear what makes a successful currency union. First, a genuinely integrated economy. An economy in which not just goods and services but capital flows freely. We have that in the UK. But it's also one with fiscal integration, so that when necessary, fiscal flows – tax and public spending – offset other economic imbalances. We have that in the UK, and its absence is the underlying cause of the Euro crisis.

The plain fact is that currency union, to be successful, must involve fiscal union. Otherwise you have the problems that are plaguing countries like Greece today. German taxpayers do *not* automatically support public spending in Greece. Bailouts of euro zone countries are conditional and grudging; whereas in the UK currency union, fiscal transfers are automatic and seen as justified. And let's just note at this point in the argument that fiscal union without political union to oversee it is unworkable and undemocratic.

You don't need to be an economist to see this. Most people have an instinctive sense that one country and one currency go together. Indeed Scots want to keep the pound – few want the Euro or a separate Scottish currency. So even nationalists advocate continued currency union, while rejecting the political and fiscal unions that go with it. It's hardly surprising that UK ministers give the strongest hints that sort of currency union is unlikely.

Economic integration and fiscal integration

So being in a union with an integrated economy also means fiscal sharing: pooling tax income, so that public spending in one part of the country doesn't depend solely on the taxes raised there. Economically successful places contribute to the common pot. If there is an economic downturn in one place, public services there don't bear all its effects.

At different times, Scotland has been in each of these positions. In the 1980s oil revenues supported the whole UK economy. In the 1970s, we benefited from regional economic policy. These days we more or less wash our own fiscal face. In future, if oil revenues decline, we might have to rely on the UK to support present levels of public spending. I'll come back to that later.

Economic union and social union

Economic unions, however, have social consequences. First of all, free movement of people creates economic, social and family ties across the whole country. At the time of the union in 1707 almost no Scots had any connections to England. It is completely different now. 450,000 people living in Scotland today were born elsewhere in the UK. More striking, 830,000 Scots live in the South. Hugely more people have professional, family and other ties all across the United Kingdom. These connections matter. They create a sense of shared identity: people do feel they belong together. We often remark on the strength of Scottish identity: but two-thirds of Scots also feel British.

But there is more to it than just friendly relations. Because we have an integrated fiscal system we are used to the idea that public expenditure should go wherever the need is in the country. Poor areas shouldn't have rotten public services simply because they do not have a strong local tax base. Pensioners should get the same support whether they live in the rich South East or the poor North West. Taxation should be redirected to support pensions, benefits and public services where needed, not one of the money arises. We are able to do this easily because we have an integrated economy and fiscal system and people feel we belong within it. Notice however that we've moved from describing something that's economically sensible to something that is morally right.

Fiscal sharing both demands and creates a sense of common obligation. Economic integration connects with social solidarity. Sharing of resources requires and reinforces a sense of belonging and it creates a common social citizenship. There is both an instrumental and a principled argument here.

That is why when, a few weeks back, we had different pro-union speeches from radically different politicians on successive days, they were both right. George Osborne argued the union promotes economic growth. Gordon Brown made a passionate case that it's an engine of social justice.

Osborne's economic analysis was, to my mind, compelling. Deep economic integration is good for trade and jobs. A single currency means an integrated fiscal system too, as the Eurozone is finding out. Brown would agree, I'm sure, but he was pursuing its social consequences.

This point bears repeating. An integrated fiscal system isn't just about economic management. Pooling tax receipts to support public expenditure across the country means spending can be determined by need, not by where the tax money comes from. Need, not geography, has been the watchword of UK public spending for over 100 years. Ever since the poor laws were abolished, it's been British fiscal policy that local spending is not determined by local taxable capacity, like poor law ratepayers. Pensions, health and welfare services are supported by general taxation, levied across the country according to ability to pay.

Take benefits: any government's largest single budget. How much is spent in different places on pensions and benefits is determined solely by individual entitlements. So

not only do benefits help stabilise economic activity across cycles, they are also the major geographical redistributor of resources across the UK.

Of course this was a campaign of the left. Trade unions argued for national unemployment assistance. The 1945 Labour Government created a National Health Service, not local authority hospitals funded by ratepayers and patient fees. To each according to his needs might have been a Marxist slogan, but spending according to need is now a principle widely accepted across the political spectrum.

We take this entirely for granted, but it doesn't happen everywhere. It contrasts markedly with the EU. Despite a common citizenship, and a common Eurozone currency, social solidarity is much more limited. Northern European economies simply won't support public services in poorer southern countries. In the UK such transfers are taken for granted. People are happy to share with those with whom they share a common social citizenship.

The pragmatic argument for social solidarity

From Scotland's perspective, there is a pragmatic argument for such a union. It means that the full resources of the UK economy support benefits and public services, irrespective of Scotland's fiscal position.

Scotland's fiscal position is now much more widely understood. Scottish onshore tax revenues are a little below the UK average; but public spending is over 10% per head higher. Just now the difference could nearly be made up if Scotland were to spend, rather than save, all its geographical share of North Sea oil taxes. If we just spend all the oil money to maintain present levels of benefits, an independent Scotland would eventually fall over a fiscal cliff.

I hear the distant yells of nationalist complaint already, so let me be clear: Scotland is not just some poor dependent. Quite the opposite: Scotland contributes resources as well as benefitting, putting oil and other revenues to the common pool, and drawing from that pool to support benefits and public services. Over the years, Scotland has put a lot in especially in the 1980's. Within the UK, Scotland will be able to continue to rely in the future on those common resources. Being able to pool resources across a wider community for the long term makes good sense.

The principled case

This isn't however just practicality. It's about what's right. People in need should benefit wherever they are in the UK, because they share the same citizenship. So we have a single system of unemployment assistance, a single old-age pension across the United Kingdom, and so on. We share with those with whom we belong.

Nationalists make a contrary argument: social solidarity should be confined to Scotland, and only Scotland's poor people should have a claim on Scottish resources for support. This fails the pragmatic test of long term sustainability, but it's weak on moral grounds too: do we turn our backs on poor people just because they are in England or Wales? "From each according to his ability" was the other half of the Marxist slogan. I find it ironic that the whole economic and social proposition of the

supposedly left wing nationalist movement is still based in the slogan “It’s Scotland’s oil” – and we’ll keep it. But I promised to be positive today.

Pooling risks and resources

A social union pools not just resources but risks as well. This is a form of insurance. In insurance, the wider the risk pool, the more secure the benefits. UK National insurance is the biggest insurance scheme of all. Being in a bigger insurance scheme matters. Take old-age pensions. The good news that we are all likely to live longer creates pressures on the payment of pensions. Scotland is getting older quicker than the rest of the UK. So the pressure here will be even greater. In UK national insurance, as resources are pooled, risks like this are shared too. Split the pool, you increase the risks – especially in the smaller part of it.

Connections again

So letters remind ourselves of the connections between the different aspects of union. We have an economic argument: Britain, from 1707 till today, has had free trade and a single currency. An open domestic market works for jobs and growth, and people have an almost instinctive understanding that keeping the pound is in Scotland’s interests. The UK long ago swallowed the medicine that the Eurozone struggles with today: monetary union means fiscal union too - a common system of tax and public spending. Exactly parallel we have an argument from social solidarity. A fiscal union means taxes are paid by the people and places that can afford them. The money goes into a common pot and pays for pensions, benefits and public services for people who need them, wherever they are. Need, not nationality, decides where spending goes. Sharing goes alongside belonging because over time, the UK has developed common social citizenship, and the mutual solidarity of a welfare state. It’s a jigsaw- pull out one bit and you don’t have a picture.

The social union as a development of the political and economic

I say “over time” because this is something which has developed gradually over several centuries. The union of 1707 was political and economic. The negotiators of the Acts of union were not arguing about old-age pensions. They were arguing about peace and war, religion and trade. It was the 20th century that built a shared social citizenship onto an integrated economy; creating social solidarity so that the risks of everyday life are pooled, and managed from a common pot of shared resources. Having not just a market but a social market will be equally important in the 21st century. There is no reason to assume that those risks of everyday life - demography, economic instability – will become easier to manage.

Political Union

Independence would break the political base of this economic and social union. What would that mean?

The easiest way to answer this is to look again at the big contrast between the UK and the European Union. The UK has deep economic integration; the EU single market is still incomplete. UK tax and spending is integrated, so pensions are the same and

public services comparable wherever you go - not so between the north and south of the EU. EU bailouts and structural funds are grudging and limited, but taxpayers in rich parts of Britain take for granted that they support benefit payments in poorer regions. This is because the Eurozone is not a fiscal union. And it is not a fiscal union because it struggles to become an effective political union. By contrast the economic and social union in Britain is a product of a long-standing political union.

Political union is of course precisely what Scottish independence would end, and much of the argument in the referendum campaign has been about the nationalist assertion that economic and social union could survive such a split. The lesson from Europe today is a simple one – it wouldn't. Why not? Because currency union needs sufficient fiscal union, and so does effective social solidarity. Neither of those is possible without functioning political union.

The territorial dimension of political union:

Political union with the rest of the UK defines Scotland's international personality. For a long time the overwhelming number of Scottish voters have accepted that those issues – defence and international relations – can only be dealt with at a UK level. I don't have time to deal with the arguments about that today. But political union has an internal territorial dimension as well, and that's what I want to turn to now.

There is nothing in the argument I have made which says that political union requires complete centralisation, and there's nothing to say that its territorial dimension cannot change or develop. But over the years two quite different sets of people have tended to claim that was so. Nationalists trot out the ideas of Westminster rule and London dominance for obvious reasons. But in the past they have been helped by a nearly extinct set of English constitutional writers. These were so in thrall to the idea of parliamentary sovereignty they forgot that a union state has a well-defined territorial dimension.

Reality is more complex, and more interesting. The academic literature defines a union state as one formed by a coming together, but still retaining some of the pre-union characteristics in its institutions. The UK is the best example.

Let's go back again to 1707. The union then was a negotiated deal. The two nations had just fought themselves to a standstill, mainly over the right sort of church. Scotland was broke, after the Darien venture. England was bigger, richer, and more powerful, but the Scottish negotiators still had some leverage. The swing voters of the day were the glamorously named *Squadron Volante*. What swung them was a deal that, instead of just letting England assimilate Scotland, preserved the institutions that really mattered to Scots at the time. When the church dominated everyday life, the union preserved the radically different Kirk. It didn't impose England's state religion. When the civil power of the state was mostly about lawyers and courts, Scotland's distinctive legal system was entrenched, as it remains to this day.

That's set the course for the Anglo-Scottish Union ever since. Over the years there have been plenty of English voices ignoring or wanting to overturn that. But Scotland never did become North Britain. One of the ironies of today's debate is that it suits nationalists to claim it did.

As the state developed in the 19th and 20th centuries, Scottish state institutions grew with it. Powerbrokers around the Court of Session could run an 18th century Scotland. But the 19th century state needed a plethora of Scottish boards, commissions and departments, like the nineteenth century Scotch Education department, which took over the parish and burgh schools. By the late 20th century the Scottish Office ran most of the public services in the country, and Secretaries of State like Tom Johnson, Willie Ross or George Younger were great powers in the land, in London as well as Edinburgh.

But administration, however effective, had in the long run to give way to democracy, and late 20th century politics eventually produced a Scottish Parliament. That politics involved Mrs Thatcher and more than a little panic about nationalism. But devolution is equally well seen as the inevitable consequence, in a democratic age, of distinct Scottish public policy, administration, and institutions. There's more continuity in this story than is often realised. Political union has always meant keeping Scotland's own institutions. Nowadays, they're elected - what else could they be?

Political union: the scope for further development

This union will develop more. So long as we preserve its key features of economic integration and social solidarity, there is plenty of scope for change. The most obvious changes are already underway. It doesn't make sense for the Scottish Parliament to spend vast sums of public money, but raise very little. From 2016, it will be responsible for raising about one third of its budget, under the Calman proposals.

But a fair criticism of the UK is that it's a piecemeal union – one set of arrangements for Scotland, one for Wales, a different set again in Northern Ireland, and nothing very much for England, with Westminster sailing along as if nothing very much had changed, even though it passed the laws to found three new legislatures.

In my view, now is the time for a better articulation of the UK as a union state. All components are there, but their implications need to be better understood.

First of all, the union has to retain the combination of economic integration and social solidarity that creates both the domestic market and a well functioning social market. That means not decentralising the instruments of economic management – and even Nationalists don't want to do that – and ensuring that there are fiscal transfers sufficient to support real social solidarity. In my view that means retaining and national system of national insurance. The clue is in the name.

Subject to that, it should be home rule all round. As in federal countries worldwide, national Parliaments should be funded by a mixture of a share of UK taxes and their own tax resources. A share of UK taxes gives effect to social solidarity. Raising devolved taxes gives autonomy to make their own decisions, and accountability to their electorates. The right mixture depends on the circumstances of each nation. In Scotland's case, it should be possible to move roughly as far as a 50/50 split. The technicalities of tax devolution put some limits on this, but the important principle is that excessive fiscal autonomy is inconsistent with effective social solidarity.

Northern Ireland and Wales have weaker economies and tax bases, and require more social solidarity, so their scope for devolved taxes is less.

Of course there's more to political union than devolution funding. Parliament at Westminster matters hugely. It defines Scotland's place in the world, but also Britain's territorial constitution. And if home rule is good for Scotland, Wales and Northern Ireland, what to do about England? How to make such a lopsided union work and how to define and entrench its territorial constitution, when Westminster is both England's Parliament and the Union's, is another story again. That's entirely possible, but perhaps it will need another lecture.

Conclusion

If this were a stump speech about the referendum I would conclude by saying that there is positive case for the UK for economic reasons, on grounds of social solidarity and a shared sense of belonging. Breaking the political union will inevitably unravel the other two. And I might leave it at that, with a rousing peroration.

But I'm conscious of addressing mainly the law school. I've rambled through economics, fiscal federalism, social policy, and politics. Where's the law in this ?

Of course in one sense it's shot through the whole thing. The legal rules on trade, on taxation, on social security. But I'm glad to have the John Millar Professor of Public Law in the chair today. Because the real challenge, if the Scottish people vote No – and perhaps to help them see more clearly why they should do so – is how we develop and set out what should be not just a further adjustment of the Scottish devolution settlement, but rather a new, lasting, and stable territorial constitution for the whole UK. A constitutional settlement that embeds the concept of a Union state; that recognises the asymmetry of the UK not a problem but as the lived reality of political life; that expresses clearly the balance between devolved autonomy and social solidarity; and that makes sense for England as well as those of us on the Celtic fringe. What legal instruments are appropriate for such a constitution, given the British tradition we start from? How and when should it be drawn up? Offering answers to those questions is the contribution that legal scholars can make to this debate, and I can think of no better university in which to start looking for answers.

Professor Jim Gallagher

Visiting Professor, School of Law, University of Glasgow.

28th October 2013