

Scotland: Avoiding a Westminster led Federation and the abrogation of the Act of Union

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Part I:

Executive summary

1. The Holyrood-Westminster agreement to hold the Scottish independence referendum ¹ on September 18th 2014 established in the eyes of the world that Westminster recognises the Scottish nation as a distinct and unique people within the UK who have *the right to full self determination* ² The outcome of the referendum is not pertinent to the following discussion. Future referenda can be called ³.
2. The duly elected Scottish parliament and the Court of Session has *the electoral mandate and moral right* to act in the best interests of Scotland's people under Scottish law should Westminster's actions leave no option. Considerations of 'competency' ⁴ referred to in the 1998 Scotland Act⁵ (part I, section 29(1)) must not be used to deprive the Scottish people of their rights under the Act of Union, the 1998 Scotland Act nor their rights, benefits, legal protections and privileges afforded to them as European Citizens.
3. The 'reserved power list' ⁶ (Scotland Act 1998) continues to deny and curtail Scotland's legally elected parliament and the Court of Session from acting in the best interests of the Scottish people at home and on the world stage.
4. The Act of Union is a potent linchpin of the current UK status quo. This position is substantiated given the delicate handling with which its parts were considered and embodied into the Scotland Act of 1998 (Schedule 4, part I, 2a and section 37)
5. The status of any remainder of the UK (rUK) as the *possible continuator* state is of little consequence to the Scottish voter excepting leverage in negotiation:
 - 5.1 The rUK would be wise to work in tandem with a sovereign Scotland should it (the rUK) expect Scotland to support its continuing uninterrupted claim of U.N. Permanent Security Council membership⁷, NATO membership, EU membership and other treaties that have been negotiated by Westminster since 1707.
 - 5.2 Scotland's membership of the United Nations as a sovereign nation will be addressed under U.N. article XIV of the *Rules of Procedure*.⁸
 - 5.3 Scotland's membership of the EU could proceed *either* through the regular *Accession process* given Scotland would readily satisfy Article 49 of the Treaty on European Union (TEU) and adhere to Article 6(1) TEU which mandates Member States subscribe to freedom, democracy, respect for human rights and fundamental freedoms and the rule of law. However, it may even be 'fast tracked' under Article 48 TEU. ^{9,10}
6. A Westminster sponsored referendum to withdraw from the EU , if successful, would deny the Scottish people who are citizens of the EU, their protections under the European Convention on Human rights (ECHR)¹¹; destroy their freedom of trade with the EU and remove other rights, benefits, protections and privileges currently enjoyed by the Scottish people for almost 40 years¹²
7. Westminster has no right to modify the Act of Union¹³. Consequently, the possible creation of a "Federal UK" including Scotland, would almost certainly be at loggerheads with both the Scotland Act of 1998, the Act of Union and the wishes of the Scottish people who do support their devolved parliament.

Part II:

Purpose of these comments: “reading the tea leaves”

8. Westminster has left an indelible mark in the histories of many political structures worldwide and indeed was the driving force behind the creation of the European Single market. It codified its perceived legal grip (and mark) on the economic, international, political and private lives of the Scots (Scotland Act 1998: part I, section 28 (7)) by embedding within this act, the 'reserved powers' list. These 'reserved' powers effectively hamstring any majority party in the Scottish parliament from behaving in Scotland's best interests as the parliament must defer all to often to some minister of the crown or to Westminster's view of the world. This world view is often at odds with that of the Scots on issues such as the Iraq wars, Nuclear deterrence, the Poll tax and of course the European Union.
9. David Cameron has the “tiger by the tail”. He has shown every indication he will hold a UK referendum on terminating the UK's EU Membership¹⁴ sometime in 2017, negatively impacting every Scottish citizen of the EU This despite research papers^{9,12} and cautionary advice against leaving from previous Prime Ministers^{15,16}. His purported 'progress' in EU migration and other issues is likely disingenuous. Another tirade will surely follow his patently anti-single market antics
10. David Cameron has also categorically refused First Minister Nicola Sturgeon's request¹⁷ that all four members of the UK must vote to leave the EU to make it binding on the UK as a whole. Make no mistake. This will be a majority vote driven by the overwhelming number of voters outside of Scotland. The consequences would be dire (see Part I section 6)
11. Understanding Westminster's motives for proposing leaving the EU are not critical¹⁴. However, the impact of such an outcome on the status of the Act of Union, the Scotland Act and countless EU privileges and protections on Scotland and it's people and economy cannot be overstated^{9,12}
12. The Westminster psyche towards Europe has been one of a poor team player¹⁸:
Not joining the Euro¹⁹. Not paying ones 'club fees'²⁰. Excessive bank protectionism²¹
In the run up to an EU separation vote one can expect an orchestrated, blistering anti-EU tirade across traditional and social media in the manner of the U.S.A “attack ad”.
There will be jingoistic UK flag waving, finger pointing at the “evil Eurocrats”. A denunciation of the European Convention on Human Rights, There will be vague promises of how “We British” could do better aligning with (failed) trade blocks like NAFTA or rely on trade with BRIC
(Brazil/Russia/India/China)
We can expect Xenophobic references alluding to terrible levels of uncontrolled immigration²² whilst ignoring the fact 160,000 non-UK EU citizens were permitted to vote in Scotland's Independence referendum²³.
In summary, most things European will be lambasted.

Part III:

The EU exit scenario plays out after Westminster's majority

13. David Cameron' 2017 "Exit the EU" ballot takes place and the majority of voters across the UK support that exit. Their reasoning is not pertinent.
14. The majority of Scottish voters have voted to maintain their status as Citizens of the EU
15. Again, David Cameron insists "We are Great Britain – one country and we're leaving the EU" ¹⁷
16. Impact on Scotland and the Scots:
 - 16.1 Loss of Citizen EU protections guaranteed in Scotland Act 1998 § 57. Note Westminster may not unilaterally break European laws to which it is a signatory.
 - 16.2 Westminster deciding to ignore the majority vote of the Scots infringes Article 6 of the European Convention on Human Rights. The Scottish parliament registers it's dissent on EU exit within the EU courts on behalf of the Scottish people per part I(2) described above,
 - 16.3 The revocation/suspension of EU citizenship status for Scottish voters is irrational at common law ²⁴. A Westminster decision to enforce a UK wide exit would impose substantial harm on Scottish businesses and individuals by removing their rights to all the benefits of free trade enjoyed within the EU single market. The Scottish parliament may not petition directly to prevent this as Foreign affairs are yet another reserved power to Westminster.
"The creation of the Single Market was instigated by Britain, and is now the world's largest trading bloc, containing half a billion people with a GDP of £10 trillion. To Britain, membership is estimated to be worth between £31bn and £92bn per year in income gains, or between £1,200 to £3,500 for every household." ²⁵
 - 16.4 Parts IV and VI of the Act of Union ²⁶ are explicitly protected in the Scotland Act 1998 §1-37 and Schedule 4, part I, 2a. from modification by the Scottish parliament. However, Westminster is not permitted to alter the Act of Union ¹³
By denying Scotland continued access to the Single market and numerous benefits it has enjoyed for some 40 years as a good European Citizen, Westminster would not be honouring the Treaties to which it was the signatory.
*AOU IV "That all the subjects of the United Kingdom of Great Britain shall, from and after the Union, have full freedom and intercourse of trade and navigation, to and from any port or place within the said United Kingdom, and the dominions and plantations thereunto belonging, and that there be a communication of all other rights, privileges, and advantages which do or **may belong** to the subjects of either kingdom, except where it is otherwise expressly agreed in these articles"*

Part IV:

The Scottish parliament and Court of Session response

17. It is now assumed that Westminster has followed up on David Cameron's pledge, has ignored the wishes of the Scottish electorate, and presses ahead with its *long planned* negotiations with the EU to instantiate a UK withdrawal ¹⁴
18. The Scottish parliament voices its dissent, but as all Foreign Affairs (EU) negotiations are a reserved power to Westminster, pleas fall on deaf ears. Since when can (approximately) 4.5 million voters in Scotland overcome an English electorate 10 times its size?
Scottish MPs may even be excluded from discussions on the EU exit in Westminster if the vote is deemed pertinent to 'English taxation alone'. ²⁷
19. What options are available to the Scottish parliament and its now disenfranchised EU Citizens who are in a state of limbo?
20. Options:
 - 20.1 The Scottish parliament simply does nothing. This would be an enormous U-turn on the part of any SNP government and would kowtow to Westminster's wishes. It would be the death knell for the Independence movement. As Nicola Sturgeon said "The alternative is to remain part of a Westminster system of government that has repeatedly failed to deliver for Scotland." ⁹
 - 20.2 The Scottish parliament could implore for more devolved autonomy, but it seems likely the 1998 'reserved powers' list would not be relinquished. Instead, these reserved powers would be leveraged by Westminster to suppress the Scottish *vox populi* and slowly but surely spawn some "UK Federation" where Scotland would be reduced to the level of some English county²⁸. The Smith Commission and the pro-Union 'No caucus' have broken their 'vow' ²⁹.
 - 20.3 There exists another option.
Given part I.2 described herein and the impacts in part III.15 et seq. the Scottish parliament, backed by the Court of Session, could declare (at least) the Act of Union had been *materially breached* under Scottish Law and rescind the Act of Union.

This is what the Americans would call the 'Nuclear Option'.

There is no need to warn^{30,31} Westminster of this intention as *ex hypothesi* the Scottish people would be the innocent party and Nicola Sturgeon's plea for Westminster to consider the Scots E.U vote has *already* been denied (partII 10)
21. Westminster would be presented with a lengthy legal document explaining on what grounds parts of the Act of Union, the Scotland Act 1998 and a multitude of European laws protecting Scottish citizens and best interests had been breached. Westminster's choice to unilaterally ignore the rights and will of Scottish EU Citizens would be clearly defined in legal terms.
22. This legal document would assert Scotland's sovereignty and its people's right to self determination. It would not be seeking permission nor a referendum to do so.

23. 'Day One' actions after such a momentous decision would necessitate the Scottish parliament declare the date of the first free Scottish general election for a prime minister and set out negotiation points for Westminster as would have happened after a 'yes' vote in September 2014.

The Scottish parliament and its people would finally be negotiating with their friends and neighbours in England as equals, with great leverage, as the rUK would need (and should expect) Scotland's support over issues such as continued U.N. security council membership retention etc.

Annex 1:

References

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