Light Blue

Policy Adventures for Scottish Conservatives

Edited by Alan Convery

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Introduction

It has taken the Scottish Conservatives a long time to adjust to life in post-devolution Scotland. In particular, one question has overshadowed and constrained the party's thinking: what is the appropriate Conservative response to the Scottish Parliament? The Scottish Conservatives arrived at a definitive answer only in 2014. Having been anti-devolutionists (until 1999), willing participants (1999-2009) and then half-hearted supporters of further powers (2009-2014), the party finally put the issue to rest by proposing significant further powers for the Scottish Parliament through the Strathclyde Commission. It even managed to outflank the Labour Party to become the most radical proponent of a fiscally accountable Scottish Parliament.

The duration of the Conservatives' journey has had two consequences. First, the party has lacked the space for original thinking about policy. It has tended to prefer familiar and comfortable themes, rather than experimenting with new ideas. Second, it has not thought seriously enough about being in government in Scotland. This might still seem like a fanciful prospect, but the idea of changing in order to regain power is a central theme of the twentieth century Conservative Party. It has a disciplining and guiding effect. The party needs to think about how it could be a credible coalition partner in a future Scottish Government and about a programme that would sustain it across all policy areas for four years.

In short, the Scottish Conservatives have rarely taken the time to ask themselves what they are for. Because they have been distracted by the devolution question, the party has not gone through the same difficult debates about modernisation that have dominated the UK Conservatives. Where are the Scottish Cameroons, for instance? Or where is the Scottish critique of Cameronism? This edited collection is an attempt to prompt questions about what the Scottish Conservatives should stand

for in 2016. Most of the contributors are not Conservatives. These essays present a set of ideas that attempt to push the boundaries of Scottish Conservative thought. They are not intended as a coherent manifesto; rather, they are the beginnings of a debate about Scottish Tory modernisation.

Ruth Davidson's signal achievement as leader has been to finally place the party on an explicitly pro-devolution footing. She is reaching out to new voters and offering a confident vision for the Conservatives. The party goes into the 2016 elections in a better mood than for many years. In her own words, she is attempting to get 'back to proper, old-fashioned, blue-collar Toryism that somehow, somewhere, half our party forgot.'[1] This is the time to think about what modernisation means in Scotland. Above all, it is time for the Scottish Conservatives to start parking their tanks on unexpected lawns.

Alan Convery, 2016

[1] *Ruth Davidson, Speech to Adam Smith Institute, London, 25 August 2015. Available at: http://www.scottishconservatives.com/2015/08/ruth-davidson-speech-to-adam-smith-institute/*

Why Conservatives Should Support a Shift to Prevention

James Mitchell

The initial reaction to an invitation to answer the above question is that *everyone* should support a shift to prevention. The case for this shift is overwhelming but there are specific reasons why it is important that the Scottish Tories should get behind this. But first the reasons why everyone should support a shift to prevention.

There are different ways of articulating the case but few more powerful than a Christmas story. Andrew McLellan, former Moderator of the Church of Scotland and then Chief Inspector of Prisons for Scotland, described a Christmas Day encounter in his 2008-09 annual report:

> *What happens to Scotland's children is such an important pointer to what happens in Scotland's prisons. On Christmas Day I met a young man in Polmont whose record of violence among the most dreadful of any young person in the country. He told me that he had not been at liberty on Christmas Day since he was 11. Two weeks before I was speaking to a psychologist who supervises a Violence Prevention Programme with long-term prisoners. She told me this: 1% of Scottish children have been in care; 50% of Scottish prisoners have been in care; 80% of Scottish prisoners convicted of violence have been in care. Year after year I have said that it is naïve to blame prisons because they*

cannot solve the problems of Scotland. We will only have better prisons when we have a better Scotland.

Mr McLellan captured the case for prevention in a nutshell. Much debate has focused on the value or otherwise of custodial sentences but there is another dimension that requires attention. How do we prevent negative outcomes in the first place?

When we start to unpack these stark statistics, a picture emerges that is as shocking in public spending terms as it is horrendous in blighted lives. The cost to the public purse of incarcerating young men in prison is staggering. The Scottish prisons budget in 2016-17 is set to be around £350m and that is following a significant cut from the previous year. But that is only the tip of a massive financial iceberg. The life story of the average prisoner is one of per capita public spending well in excess of the average citizen well before reaching prison and without any compensating payback in contributions to society, including paying taxes.

The range of public services that intensely engage with those in prison over their young lives is difficult to quantify. The prison population consists of a high proportion of people who will have caused disruption in our schools. More time and energy is required in schools for disruptive pupils with least effect in terms of educational achievement. Those working in health know well the time, effort and money involved in addressing mental and physical health challenges amongst this part of society. Social work, housing, and the list goes on.

But even this does not capture the true cost of what Mr McLellan saw on his prison visits. The disruption and distress caused in our communities is impossible to calculate. No figure can be put on the fear and anguish experienced by those who have had encounters with many who end up in our prisons.

The lost potential of talent – not to mention tax receipts – of productive citizens needs to be added into any calculation.

The former Moderator's example is only one stark example to be found across our public services. In health, expertise in tackling ill-health at the point of crisis has reached extraordinarily impressive levels. But we have been less impressive in preventing the need for much late interventions. The body that falls of the cliff can be put back together by skilful surgeons but why do the bodies fall off in the first place when often enough we could prevent this happening? The smoking ban has been one of the Parliament's most successful interventions and had a far more significant impact than even some of its supports anticipated. An argument can be made that a ban on smoking interferes with an individual's freedom. But smoking affects others and its consequences have to be paid for by others.

Scientific evidence is now mounting that early intervention not only works but its absence is plain stupid. Public policy in this respect is like an investment with an expectation of an extremely good return. Failure to invest not only leads to no return but also creates mounting costs. Wise early investment pays literally incalculable dividends. The incalculability is a problem in a public policy culture in which a number has to be attached to anything deemed valuable. What counts often simply cannot be counted.

The Christie Commission on the Delivery of Public Services argued for a decisive shift towards prevention in its report in 2011. This was widely, if not universally, accepted and has been the subject of Parliamentary reports with cross party agreement.

But what of a specifically Conservative reason for supporting a shift to prevention? Parties do not need to be in government to influence policy. They contribute to policy debates by setting agendas, framing debates and in the bidding war that occurs when broad agreement already exists. The Additional

Member electoral system enhances the potential of all parties to have an impact on government. By taking away even the slimmest margin of votes, a party can prevent another or combination of others from having an overall majority. No party in Holyrood has ever been strong enough to ignore its opponents' policy pronouncements. It is difficult to imagine a situation in which this could ever arise.

All parties will attempt to set a policy agenda but all are affected to some extent by the policy agendas of others. There are policies that become the almost exclusive property of one party but most policies involve competition within a relatively narrow band of options. Competition for votes within the narrow band often enough comes down to promises to deliver a number of policy inputs or outputs. Examples of policy inputs include a commitment to a stated number of police officers and an example of a policy output is a commitment to deliver on some stated waiting time in hospital waiting lists. At best, policy inputs and outputs hope to achieve better outcomes. More police, for example, is assumed will help with law and order. Reduced waiting times, it is hoped, will improve public health. The distance between inputs/outputs and outcomes is considerable – at best they are proxies for outcomes. But they make for good headlines, easily expressed in sound bites, the currency of electoral politics. But they are generally bad for public policy health. The great problem for advocates of preventative public policy is that prevention is not only difficult to quantify but it is even more difficult to translate into a sound bite. A serious debate needs to take place on how we achieve and measure outcomes. Target based approaches were discredited in the old Soviet Union but have crept into our politics and with the same, if less egregious, problems of gaming that were evident in the Soviet system.

Taken together the above paragraph can be summed up simply. The Conservative Party – as well as any other party contesting the Holyrood elections – can and will affect policy outcomes for good or ill. The temptation may be to assume that the role of opposition is not simply to oppose but to make

life as difficult as possible for the governing party. Ratcheting up commitments that make little preventative sense might make electoral sense for an opposition party that has no ambition ever to govern if it forces the victorious other party to pursue policies that are inimical to the public good. This losers' compensation is a form of Schadenfreude but it comes at a cost to the public as a whole. There must be a line between being an effective opposition and undermining serious efforts to shift policy onto a more productive agenda.

Of course, parties that are likely to win are quite capable of messing up policy themselves. But a party with serious ambitions to govern should assist them.

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A Basic Income

Alison Payne

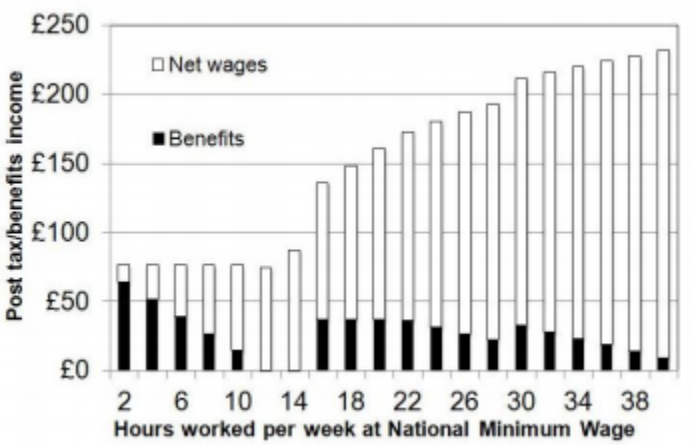
Reform Scotland published a report in February 2016 looking at how we could reform welfare, specifically welfare aimed at helping people remain in, or go back to work. That report recommended that a Basic Income should be introduced.

A Basic Income, or a Citizen's Income, is not a new idea. The Greens, both at a Scottish and UK level have been calling for this for some time. However, it has often been viewed as an issue that only has support from the political left. Reform Scotland believes that a Basic Income is a policy which can attract support from across the political spectrum and should be considered as a way of fixing our broken welfare system. As opposed to the many sticking plasters that have been applied to our welfare system over past decades, a Basic Income is a radical, ambitious and long-term solution that we should start considering today.

Welfare trap

People are not stupid. It is believed that if we offer incentives to those at the top with bonuses or other financial rewards, they will work harder. Yet, we currently have a welfare system which actively discourages work. Consider the following chart from the Citizen's Income Trust: [2]

[2] *Citizen's Income Trust*



It highlights the welfare trap whereby there is little, if any, financial reward to be gained from working more than 10 hours, up to 16 hours per week, on the minimum wage. In no other situation would you expect someone to work additional hours in return for no financial gain. So why should someone struggling on minimum wage work more and expect no financial reward in return? It would be illogical. Yet that is exactly what our current welfare system does.[3]

While an individual's precise marginal rate will vary due to factors such as eligibility, family structure etc, this impact is substantial.

In addition, because our current welfare system targets households, as opposed to individuals, our welfare system can reward families for living apart, as well as removing any independent means from adults in vulnerable situations. As a result, our welfare to work system is broken and a radical new

[3] *People who work less than 16 hours per week may be entitled to income support, while those who work more may be entitled to working tax credit or Universal Credit.*

approach is needed. I believe that a Basic Income could offer such an approach.

Why introduce a Basic Income?

A Basic Income, as proposed by Reform Scotland, would give every working-age person a basic income from the state of £5,200 per year, and every child £2,600. The income would be a right of citizenship and would be the same regardless of income or gender.

- It would be non-means tested and would not increase or decrease as someone's income changes, thereby removing the need for the associated bureaucracy.
- It would replace a number of means-tested work related benefits, as well as child benefit, and be a new way of providing a social safety net.
- It would be free of tax, but would replace personal allowances and tax credits.
- It would not be a since it only pays enough income to cover the basics of life. disincentive to work,

Crucially, however, a Basic Income would ensure that every additional hour worked would result in additional net income. In other words, it ensures work pays and there is a very real financial benefit for working more.

It would not penalise those facing additional situations, such as illness, disability or pregnancy, as hardship benefits such as Employment & Support Allowance would remain in place and be paid in addition to the Basic Income.

Every citizen would have a small independent income, whether or not they were in paid employment, since the individual would be the unit, as opposed to the household. As a result, people would be treated equally irrespective of gender, and marriage or cohabitation would not be subsidised or penalised.

Although everyone would receive the Basic Income there would be limits to the pressure for it to be increased. It is likely that increases in the level of the Basic Income would need to be paid for by increases in Income Tax. As a result, Income Tax and Basic Income levels should keep each other in balance.

Currently, some people who study or train for more than a few hours a week can forfeit some benefits. This would not be the case with a Basic Income. As a result, there would be no disincentive to train/retrain or carry out voluntary work.

Paying for the policy

No policy is unaffordable; it is simply a question of choosing priorities and arranging budgets in order to pay for those priorities. This policy is expensive. However, I believe that the benefits system currently does not work; there is a welfare trap and clear incentives not to work and changing this has to be a priority.

In our report, Reform Scotland proposed one way that this could be paid for. A full breakdown of all the workings, for delivering both a Scottish and UK Basic Income, can be found in detail in the report.[4] To summarise, the cost of providing a Basic Income for all children and working-age people (Reform Scotland did not include pensioners at this time, who would still receive a state

[4] *Available here: https://reformscotland.com/wp-content/uploads/2016/02/The-Basic-Income-Guarantee-1.pdf*

pension) in Scotland would be £20.4 billion per year. This could be paid for by:

- Scrapping certain benefits generates £3.6 billion
- Scrapping the personal allowance generates £5.2 billion
- Merging National Insurance with Income Tax, thereby removing the NI ceiling, generates £4.01 billion
- Adding 8p to all rates of income tax generates £5.53 billion.

This still leaves a small shortfall, though this is less than 10% of the overall cost.

The proposals to pay for this policy do include tax rises. Though, as the impact of the policy is felt, it can be expected that lower bureaucracy costs and increases in tax take as more people increase their working hours will mean that the tax rate could be lowered. Alternatively, savings could be generated from elsewhere in the budget.

The specific impact of the proposals Reform Scotland set out will vary depending on individual and household circumstances. Everyone earning £26,000 per year and under should be better off. But the change from a household system to an individual one will mean that even some people earning £100,000 per year will be better off under the proposals. The following table gives some examples of higher earners who would also benefit from the Basic Income scheme.

Scenario	Current net pay (+ child benefit where applicable)	Proposed net pay including Basic income	Difference
Two parent family, each earning £35,000 per year, with two children	£53,772.40 pay + £1,788.80 child benefit =£55,561.20	£42,000 net pay, + £10,400 adult basic income and £5,200 child basic income =£57,600	+£2,038.80
Two parent family, one earning £60,000 one earning £20,000, with two children	£58,813.40 net pay, no child benefit	£44,357.20 net pay + £10,400 adult basic income and £5,200 child basic income = £59,957.20	+£1,143.80
One parent household earning £40,000 with two children	£30,287.20 net pay + £1,788.80 child benefit = £32,076	£24,000 net pay + £5,200 adult basic income and £5,200 child basic income = £34,400	+£2,324
Two parent household, one parent earning £100,000, one parent not working, with three children	£65,326.20 net pay, no child benefit	£48,400 net pay + £10,400 adult basic income and £7,800 child basic income = £66,600	+£1,273.80

Crucially though, the proposal replaces a system with a welfare trap that discourages work with one which ensures that there will always be a financial gain from working. Everyone will always be better off by taking, or increasing, the amount they work.

Westminster or Holyrood

The costs set out above are for a Basic Income implemented at a Scottish level. However, it could equally be done on a UK wide level. Many areas of social justice have already been devolved, and income tax and some welfare benefits are due to be devolved. As a result, I believe this policy could be introduced in Scotland. All that is necessary is for Scotland to gain some of the welfare powers that were handed to Northern Ireland in the 1990s.

David Cameron has commented that the Scotland Bill 2015/16 will make Scotland "the strongest devolved government

anywhere in the world".[5] The legislation proposes to devolve Income Tax, Air Passenger Duty and Aggregates Levy to Scotland, as well as some benefits, the largest being Disability Living Allowance.

However, contrary to what David Cameron suggested in that statement, Scotland's proposed devolved welfare powers don't even go as far as those that were devolved to Northern Ireland in 1998.

The Labour Party has also seemingly forgotten what has been devolved to Northern Ireland. In his book *My Scotland, Our Britain* Gordon Brown comments that: 'The Union exists to provide security and opportunity for all by sharing and pooling our resources to reduce poverty, maximise employment and deliver healthcare free at the point of need.'[6] While the book was written with regard to the independence debate, the same argument about welfare would presumably apply to devolving the powers within the Union. In fact, the comments made by Gordon Brown with regard to the importance of welfare to the Union were echoed in Scottish Labour's Devolution Commission report.[7]

In other words, the argument being made was that the welfare system was an intrinsic part of the United Kingdom and it should not matter whether you live in Manchester or Inverness, if you need support you should have the same entitlement.

However, that argument has not been valid since 1998. It is already the case that your entitlement depends on what part of

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5 http://www.telegraph.co.uk/news/general-election-2015/11593179/David-Cameron-Scotland-will-be-strongest-devolved-government-in-the-world.html
6 http://www.theguardian.com/books/2014/jun/10/gordon-brown-save-progressive-union-interests-social-justice
7 http://www.scottishlabour.org.uk/page/-/Scottish%20Labour%20Devolution%20Commission%20report.pdf

the UK you live in. Therefore, there is no real reason why welfare powers cannot be devolved to Scotland while maintaining the Union; it is simply a matter of political will.

There is another lesson the experience of Northern Ireland also highlights – the need to be in control of raising what you spend. From devolution to Northern Ireland in 1998 up until the election of the coalition government in 2010, the power-sharing executive broadly chose to mirror welfare policies followed by the UK Labour Government.[8]

However, a number of changes made by the Coalition Government's Welfare Reform Act 2012 were not implemented in Northern Ireland. Although Northern Ireland's Executive had a bill covering similar policies that was introduced in 2012, the bill failed to be passed at its final stage in 2015.[9] As a result, the power-sharing executive did not implement the following[10]:

- Household benefits cap
- The so-called 'bedroom tax' for under-occupation affecting people living in social housing
- Time limiting Employment Support Allowance (ESA) for those considered able to prepare for work
- Replacing Disability Living Allowance (DLA) with Personal Independence Payments (PIPs)
- The introduction of Universal Credit

The democratically-elected Northern Ireland Executive had control over welfare and did not want to follow the same

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[8] *http://www.bbc.co.uk/news/uk-northern-ireland-32883191*

[9] *http://www.niassembly.gov.uk/assembly-business/legislation/primary-legislation-current-bills/welfare-reform-bill/*

[10] *http://www.bbc.co.uk/news/uk-northern-ireland-32883191*

policies as those being implemented by Westminster. As welfare had been devolved, this shouldn't be a problem since welfare, just like education or health, is an Executive responsibility.

However, the Northern Ireland Executive is not responsible for raising the money it spends. As a result, it was told by Westminster that if it did not introduce the welfare reforms it would face financial penalties. Basically, its grant would be cut by the amount its benefits budget would have fallen if the reforms had been implemented.[11]

So, basically:

- Uniform welfare provision is not an intrinsic part of the United Kingdom.
- Therefore, substantial welfare powers can be devolved to Scotland.
- However, unless control over raising the money being spent is also devolved, devolution simply means devolution of administration.

Conclusion

We have a welfare to work system that is broken beyond repair. Now is the time to consider a radical new approach. Now is the time to start looking at a Basic Income.

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[11] *http://www.bbc.co.uk/news/uk-northern-ireland-32883191*

A Threat to Merit? The Case for Gender Quotas

Meryl Kenny

The Scottish Conservative Party has never lacked prominent women – including current party leader Ruth Davidson MSP, as well as her predecessor Annabel Goldie MSP. The proportion of female Conservative MSPs currently stands at 40 per cent, a figure which only Scottish Labour and the Greens bettered in 2011 - though in numerical terms, this translates to just six women MSPs.

Looking to the future, however, the party clearly has ongoing problems with women's numerical representation. Half of the party's current women MSPs are standing down at the 2016 Scottish Parliament elections. And, only around 15% of the party's 2016 candidates are women, a proportion which lags far behind that of the other main parties.

What matters, of course, is not only how many women are selected overall, but also whether these women have a chance of winning. For the Scottish Conservatives, the main battleground in 2016 will be the regional lists, where placement is key. Yet, women top only two of the party's eight lists. If we expand this to the top two places across all of the lists (those places which are most likely to be won), only four of

these are occupied by women (25%). Moreover, two of the party's lists have no women standing on them at all (West Scotland and Highlands and Islands). Thus, even if the party makes electoral gains in 2016, the proportion of women in the party looks likely to stall or fall.

What can be done to increase the number of Conservative women in Scottish politics? Political parties can use a range of measures to promote women's political representation ranging from *positive action* measures (special training, financial assistance, setting targets and other initiatives) to stronger *positive discrimination* measures in the form of gender quotas (such as all-women shortlists, 'twinning', 'zipping', and other measures). The adoption of gender quotas is hardly an unusual intervention in politics – more than 100 countries around the world use them. This does not mean that quotas in themselves automatically guarantee increases in women's political presence – they need to be well-designed and effectively implemented to produce results. But, the international evidence overwhelmingly indicates that gender quotas work – when properly implemented, they are one of the most effective measures for ensuring significant increases in women's political representation.

Yet despite their demonstrated efficacy, gender quotas still face significant opposition. Critics of these measures often contend that they are simply unnecessary – if more women came forward, there would be more women elected. This ignores the critical role of political parties as gatekeepers to political office - even when there are gender imbalances in the numbers of candidates selected, there are generally sufficient numbers of women to be selected for winnable seats (if parties chose to do so). Indeed, when parties are required to select women – through measures such as quotas – they usually

manage to find that they had women who'd been willing to stand all along. Problems of supply are, therefore, easier to overcome when party demand increases.

Others argue that increases in women's representation will simply happen 'naturally' over time. Yet, the evidence is clear – gains in women's representation are not automatic and setbacks and reversals are always a possibility, as seen in the falling numbers of women MSPs in Scottish Parliament elections over time. So we cannot assume forward progress – without active intervention, gains will continue to be slow and incremental at best.

A final (and crucial) argument against quotas to consider is whether they are fundamentally 'unconservative'. Critics here would argue that quotas undermine the conservative principles of equality of opportunity and the promotion of merit. In other words, one should always strive to appoint the best person for the job, regardless of sex.

The underlying assumption behind this argument is, of course, that women has less 'merit' than men - in other words, that quotas promote inexperienced and unqualified women at the expense of their more meritorious male counterparts. But, there is very little research evidence (either in the UK or comparatively) to suggest that this is the case. Studies that have focused on political experience and backgrounds, for example, have found little evidence of a 'qualifications gap' between quota women and non-quota women and men. In fact, the opposite has been observed in several cases, with women candidates and MPs sometimes having stronger credentials than their male counterparts (providing support to the old adage that women have to be twice as good to get half as far…).

Meanwhile, studies of parliamentary behaviour find that 'quota women' are just as effective as men once they are in office and that they have equally successful career trajectories. Finally, while quotas may be unpopular with the public, voters overall agree that there should be more women in politics, they don't penalise women candidates at the ballot box, and they don't penalize quota women – quotas don't lose votes.

Quotas, then, do not undermine the principle of 'merit' – and in fact, they may actually enhance it. Several studies have found that quotas improve the overall quality of candidates and elected representatives. In Sweden, for example, the use of gender quotas on party lists has resulted in the selection of more, rather than less, qualified political candidates. Rather than oust competent men in favour of mediocre women, parties have replaced mediocre men with highly qualified women, raising the calibre of candidates overall (and particularly among men).

Meanwhile, my own work (with Maarja Luhiste) on women's representation in the European Parliament finds that not only are women MEPs from countries with legal quotas actually more experienced than women from countries without such quotas in place, but also that quota measures tend to increase the overall level of experience of both male and female elected MEPs. As such, quotas are not fundamentally 'unconservative', nor are they a threat to merit – rather, they expand the talent pool for political office and enable the best and brightest women (and men) to be selected and elected.

Yet, while quotas may still seem a 'step too far' to some, doing nothing is not a viable option. Women's representation has been politicized – it is an issue which parties are competing over, and for which they are publicly being held to account. As

such, there are also pragmatic reasons for taking women's representation and the possibility of gender quotas seriously – in terms not only of improving the pool of candidates for elected office, but also transforming the party's image, expanding its electoral appeal and attracting votes. The time for action is now.

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Is There a Conservative Case for a Federal United Kingdom?

Asanga Welikala

In present debates about the future of the British constitution in general and the constitutional union of nations that lie at its heart in particular, perhaps the political tradition that displays the greatest degree of uncertainty and irresolution is the conservative position. Confident certainties of the past have been replaced by a hesitant ambivalence, even though the Conservative Party and conservatives more broadly have been accomplished practitioners of the 'pragmatic empiricism'[12] that is so admirable a feature of British constitutionalism, and in this way fully contributed to the 'federalism of political management'[13] that has long characterised the working of the British system of government in spite of the formally unitary character of the British state.[14] Notwithstanding the Thatcher aberration, Tory prime ministers like Salisbury and Baldwin were the originators of the notion of 'administrative

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[12] C. McCrudden, 'Northern Ireland and the British Constitution' in J. Jowell & D. Oliver (Eds.) (1994) The Changing Constitution (3rd Ed.) (Oxford: OUP): p.326.

[13] N. MacCormick (1999) Questioning Sovereignty: Law, State and Nation in the European Commonwealth (Oxford: OUP): p.60.

[14] N. Walker, 'Beyond the Unitary Conception of the United Kingdom Constitution' (2000) Public Law (Aut.): pp.384-404.

devolution' from the late nineteenth century onwards,[15] and the current Conservative government would deliver one of the most radical restructurings of the British constitution when the Scotland Bill 2015-16 is enacted in the near future.[16]

Nevertheless, the dominant tradition of public law has been the one associated with the development of the English constitution over centuries, which not only places the doctrine of parliamentary sovereignty at its heart, but also takes an incorporationist view of the Anglo-Scottish parliamentary union.[17] This tradition is normatively a conservative one, which Scottish conservatives have been happy to endorse in the past under different historical, political, economic, and legal circumstances, even if they have naturally placed more emphasis on the idea of union and unionism than their English counterparts.[18] This remains the default mode of conservative constitutional thinking, but it is increasingly being called into question, both internally among conservatives as well as externally by critics of conservatism.[19]

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[15] J. Mitchell, 'Conservatives and the Changing Meaning of the Union' (1996) Regional & Federal Studies 6 (1): pp.30-44; J. Mitchell (2009) Devolution in the UK (Manchester: Manchester UP): Ch.2; Scottish Conservatives (2014) Report of the Commission on the Future Governance of Scotland (Glasgow: Scottish Conservative Party): pp.3-4.

[16] See House of Lords Select Committee on the Constitution, Sixth Report of Session 2015-16 (Scotland Bill), HL Paper 59, 23rd November 2015: pp.5-16. Available at: http://www.publications.parliament.uk/pa/ld201516/ldselect/ldconst/59/59.pdf

[17] MacCormick (1999): Ch.5.

[18] S. Seawright (1999) An Important Matter of Principle: The Decline of the Scottish Conservative and Unionist Party (Aldershot: Ashgate): Chs.7, 8.

[19] S. Tierney, 'Federalism in a Unitary State: A Paradox Too Far?' (2009) Regional & Federal Studies 19 (2): pp.237-253; A. Convery, 'British Conservatism and Federalism: A Step Too Far?', Paper for Conference on Conservatives and Unionism in the 21st Century, Conservatives and Conservatism Specialist Group, Political Studies Association, University of Ulster Belfast Campus, 18th October 2013.

There is, however, little doubt now that the Diceyan conception of the constitution[20] is in serious trouble, and no longer provides, if it ever did, a remotely satisfactory basis for the exposition of the constitution in operation. Over the last century, the doctrine of parliamentary sovereignty has been eroded first by the establishment of the overseas dominions, and then by decolonisation more widely, then Europe, devolution, and most recently, the proliferation in the use of constitutional referendums. In particular, devolution's challenge to the sovereignty of the Westminster Parliament has critically called into question the corollary concept, the unitary state, so much so that an approach to understanding the British constitution on the basis of the traditional formalist classificatory dichotomy of unitary v. federal states makes very little sense nowadays. And it is precisely here that the ambivalence at the heart of the conservative position on the constitution stands exposed.[21]

The pragmatic and reasonable character of conservatism has tended to accommodate the devolutionary demands from the periphery as a matter of course; a day-to-day policy challenge of ordinary politics that could be dealt with through restraint, understanding, and deliberation, with incremental changes and British constitutionalism's bottomless capacity for accommodating what seemingly cannot be accommodated. The pragmatic mode of political accommodation however has resulted in rather radical constitutional innovations: arguably, very few formal federations of the classical mould would have countenanced either the extent or the asymmetry of the sub-

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[20] *A.V. Dicey (1964) Introduction to the Study of the Law of the Constitution (10th Ed.) (London: Macmillan).*

[21] *M. Keating (2009) The Independence of Scotland: Self-Government and the Shifting Politics of Union (Oxford: OUP): Ch.3.*

state autonomy permitted under the British constitution today. But in striking contrast, the old orthodoxy remains the default mode of conservative thinking on the underlying foundations of the constitution. This exemplifies what Bell saw as the British public law tradition's habit of managing radical constitutional change through denial – a method that has been successful in large part, but which as she also noted, comes with considerable costs.[22]

While this is true of the British constitutional ethos as a whole, conservatives especially – with some interesting exceptions[23] – seem to have thought very little about the consequences of pragmatic concessions to radical demands for the continued coherence of their deeper perspective on both the constitution and the state. This is strange, given that constitution and state are central concerns of conservative thought, and even more so in a polity that has been predominantly constructed on conservative arguments about union, state, nation, and sovereignty.[24] To the extent that the conservative perspectives of constitution and state remain anchored in a normative and analytical consensus of the nineteenth century, then it is increasingly becoming incapable of answering the more and more pressing constitutional questions that are asked of it in the contemporary world.

At the theoretical level, conservatives are attempting to defend their central commitment to the union (in the sense of the

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[22] C. Bell, 'Constitutional Transitions: The Peculiarities of the British Constitution and the Politics of Comparison' (2014) Public Law: pp.446-471.

[23] See e.g., D. Melding (2013) The Reformed Union: The UK as a Federation (Cardiff: Institute of Welsh Affairs); M. Fraser (forthcoming, 2016) Reforming Scotland (Edinburgh: Reform Scotland); D. Torrance (2014) Britain Rebooted: Scotland in a Federal Union (Edinburgh: Luath).

[24] M. Loughlin (1992) Public Law and Political Theory (Oxford: Clarendon Press): Ch.7.

unity of the British state, rather than what is more specifically and complexly implied by the term 'unionism') in the face of sub-state demands for national self-government with anachronistic doctrinal weapons, and it is clear that the inconsistency between radicalism in practice and parochialism in theory cannot stand for very much longer. The central contradiction generated by the conflict between pragmatic radicalism in policy and normative conservatism in theory is attributable then to the historically contingent nature of the conservative understanding of the idea of union that is at the fundament of the state. This idea of the union involves a British state, an English constitution, and as a result, a Scottish anomaly.[25]

Following MacCormick, let us call this the Dicey View of the constitution: that what happened in 1707 was essentially the territorial expansion of the English state with the incorporation of Scotland; that the pre-existing constitution of that state was only modified and adapted to include certain concessions to Scottish distinctiveness; and while the new state and new Parliament had a new name and new symbols, nothing really changed in terms of its fundamental principles and foundational doctrines.[26] Hence Dicey's famous contention that, in the light of parliamentary sovereignty, the (English) Act of Union was no more constitutionally important than the Dentists Act.[27]

And Scots were able to endorse this view in the centuries that followed due to specific confluences of interests, whether it was Protestant solidarity against continental Catholicism or as

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[25] *MacCormick (1999): Ch.4.*
[26] *Ibid: p.55.*
[27] *Dicey (1964): p.145.*

enthusiastic partners in the great imperial enterprise.[28] Now however things have changed and Scottish expectations of the British state are based on constitutional values and aspirations that are categorically at odds with old ideas like parliamentary sovereignty, the unitary state, and the incorporating union, even among those who voted to stay in the union in the referendum of September 2014.[29]

The Federal Idea and the Conservative Constitutional Worldview

This is the context in which the federal idea assumes relevance in determining a new conservative perspective on the union. Two distinct problems arise, both of which stem from the prevailing conservative conception of the union. Firstly, it is precisely the unitary conception of the state that gives rise to the perception that certain dissolution of the union is likely to eventuate as power is permissively devolved more and more in appeasing sub-state nationalism. This need not be so, were conservatives to imagine the very basis and character of the state, not as a unitary state, but according to a federal logic, as a 'union state'.[30] In other words, this is to both reinstate the approach of (pre-Thatcher) Scottish unionism as a more general conservative constitutional self-understanding as well as to add to it by incorporating the federal elements of shared-rule institutions, legislative devolution, and the functional sharing of sovereignty.

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[28] J. Robertson, 'Empire and Union: Two Concepts of the Early Modern European Political Order' and C. Kidd, 'Religious Realignment between the Restoration and the Union' in J. Robertson (Ed.) (1995) A Union for Empire: Political Thought and the British Union of 1707 (Cambridge: CUP): Chs.1, 6.

[29] Convery (2013).

[30] S. Rokkan & D. Urwin, 'Introduction: Centres and Peripheries in Western Europe' in S. Rokkan & D. Urwin (Eds.) (1982) The Politics of Territorial Identity: Studies in European Regionalism (London: Sage): p.11.

The second problem that arises from the unitary conception of constitutional form and of power and authority is that it is not merely incapable of understanding self-rule at the periphery according to a federal logic, but it also has no conception of shared-rule at the centre according any logic other than incorporating unitarism. That until very recently, no proposal for the reform of the House of Lords even contemplated its possible role as a chamber for the representation of the home nations at Westminster is illustrative of this. Again, the federal principle that self-rule is or should always be countervailed and balanced by shared-rule institutions to provide representation and a stake at the centre for the constitutive nations provides an alternative way of reconceiving the idea of unity and union.[31]

In both these critical respects, therefore, the federal principle commends itself to conservatives as the better philosophical basis on which to defend the union and unionism than the excessive centralisation and homogenisation, or indeed the increasing artificiality, implied by the unitary conception of the state. Nevertheless, and despite the relentless depredations it has suffered over the past century, the Dicey View is so ingrained within the conservative worldview that conservatives find it difficult to unshackle themselves from it too easily.[32] Part of the reason for this is that the dominance of this constitutional self-understanding has been such that any other way of looking at the constitution was seen as purely 'theoretical' (in the sense of 'impractical') or as 'ideological' (in

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[31] *D. Elazar (1987) Exploring Federalism (Tuscaloosa: Univ. of Alabama Press): p.12.*

[32] *N. Johnson (1977) In Search of the Constitution: Reflections on State and Society in Britain (Oxford: Pergamon Press): Ch.7.*

the sense of 'liberal'), even though the dominant view is as theoretical and as ideologically particularist as any other.[33]

But fortunately for the Scottish tradition of conservatism at least, there is a conservative, historicist, and organic way of thinking about the state as a federal-type union that is independent of liberal ideology or the Hayekian 'constructivist rationalism' decried by Oakeshott.[34] To draw from MacCormick again, this is what is known as the Defoe View of the Articles of Union, specifically Article 25, and the wholly alternative view of the United Kingdom of Great Britain as a union state that flows consequentially from this.[35] The Articles of Union provided for what was to be common to the whole as well as what was to remain distinct in the formerly separate kingdoms. Common institutions established included the already unified Crown; the new bicameral Parliament with the inclusion of Scottish peers and MPs; new symbols such as the flag; and the new monetary and fiscal union. The distinctive institutions that were preserved in Scotland were the courts and common law, the Kirk, local government, and the education system.[36] All this was underpinned by Article 25, which provided:

> *All laws and statutes in either kingdom, so far as they are contrary to or inconsistent with the terms of these articles, or any one of them, shall, from and after the Union, cease and become void, and shall be so declared to be by the respective parliaments of the said kingdoms.*

This is a provision that was naturally required by the context of the new arrangement that was in contemplation, because logically the terms of the union must prevail, and must not be

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[33] *Torrance (2014): Chs.1, 3.*
[34] *Loughlin (1992): Ch.5.*
[35] *MacCormick (1999): pp.54-55.*
[36] *Ibid: pp.52-53.*

unilaterally amendable by one party, if it is to be a union at all. The Articles must therefore be regarded as fundamental law, which cannot be overridden by the new legislature except as permitted by the Articles, and any existing law inconsistent with them must be void.[37]

In rudimentary terms, the division of separate spheres of authority and the sharing of others, underpinned by a written covenant embodying agreed terms that is held to govern the entire arrangement, cumulatively make the Articles of Union an embryonic federal-type constitution. As Daniel Defoe argued for the pro-Union side,

> *Nothing is more plain than that the articles of the Treaty … cannot be touched by the Parliament of Britain; and that the moment they attempt it, they dissolve their own Constitution; so it is a Union upon no other terms, and is expressly stipulated what shall, and what shall not, be alterable by the subsequent Parliaments. And, as the Parliaments of Great Britain are founded, not upon the original right of the people, as the separate Parliaments of England and Scotland were before, but upon the Treaty which is prior to the said Parliament, and consequently superior; so, for that reason, it cannot have power to alter its own foundation, or act against the power which formed it, since all constituted power is subordinate, and inferior to the power constituting.*[38]

While of course it was not this Defoe View but rather the Dicey View that has prevailed until now, it is now clear that this long-submerged conception of the founding of the British state and the foundation of its constitution is the superior interpretation from the perspective of both modern democratic values as well

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[37] *Ibid: p.53.*
[38] *Cited in ibid: pp.53-54.*

as contemporary political expectations of what is sociologically if not yet in proper constitutional form, a plurinational union state.[39]

Even though it has been unmistakably the marginal perspective, the Defoe View is nonetheless well known to constitutional historians, and even occasionally surfaces in judicial pronouncements, such as in the oft-quoted observations of Lord President Cooper in *MacCormick v. Lord Advocate* (1953).[40] To the extent that the present perception of an untenable disequilibrium in the constitutional relationship between the centre and the periphery – or between self-rule and shared-rule – demands a federal-type rebalancing of that relationship, then there is no doubt that the Defoe View can be resurrected as a serviceable basis for a new constitutional self-understanding of the British state and constitution. While this 'ancient constitution'[41] is available for interpretation and adoption for the purposes of historically contextualising contemporary constitutional arguments by liberals and conservatives alike, the contention that it is particularly well suited for conservative arguments can be sustained on three interrelated grounds.

Firstly, going in search of the ancient constitution, or in other words grounding present day constitutional arguments by reference to the past, is a typically conservative method of securing legitimacy, by looking, not, primarily, at results but at origins. As Scruton observed of the US constitution in refuting the liberal contention that that instrument was somehow

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[39] S. Tierney (2004) Constitutional Law and National Pluralism (Oxford: OUP): pp.109-117.
[40] 1953 S.C. 396.
[41] M. Keating (2001) Plurinational Democracy: Stateless Nations in a Post-Sovereignty Era (Oxford: OUP): pp.29-40.

written upon a *tabula rasa*, 'It is history and not the written word which reveals the constitution of America, and that part of it which is usually identified as the whole is no more than a delicate superstructure, resting on an unfathomable base.'[42] The similar exercise in historicisation in our case is only different inasmuch as we are not looking at a documentary constitution in its historical context, but seeking to replace a dominant but newer orthodoxy about state and constitution that has become obsolete, with a marginalised but older conception that speaks better to the present. As Lord Home observed, 'Conservatism is in essence trusteeship and evolution, and its practice is to conserve the best of the past and to shape events so that the future is an improvement on that which has gone before.'[43]

Secondly, and closely related to the first, is the conservative value in the organic. Again as Scruton notes, 'Conservatives see the constitution as the inherited principle of the life of the state, and the state in its turn not just the guardian but also as the expression of a social entity … For conservatives end and means are the same: the life of the body politic.'[44] If therefore there is a 'history' which reveals an 'inherited principle of the life of the state' that is fundamentally contractarian and plural in its foundations, then it is not difficult from there to construct what is categorically a *conservative* argument for federal union.

Finally, an approach to constitution and state informed by these historicist and organic perspectives necessarily privileges incremental evolution over revolutionary change. But first the

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[42] R. Scruton (2001) The Meaning of Conservatism (3rd Ed.) (Basingstoke: Palgrave Macmillan): p.39.

[43] The Rt. Hon. The Lord Home of the Hirsel, K.T., 'Foreword' in J.T. Ward (1982) The First Century: A History of Scottish Tory Organisation 1882-1982 (Edinburgh: Scottish Conservative and Unionist Association): p.3.

[44] Scruton (2001): pp.40-41.

stereotypical myth about the conservative attitude to change is to be dispelled: conservatism does not mean an inflexible and obstinate refusal to conserve everything about the inherited order at the expense of change; in fact it means the very opposite in embracing change and adapting to evolving societal exigencies, albeit in a deliberative, proportionate, incremental way. Indeed, the conservative opposition to revolutionary change stems from the fear of the potential of revolutions to destroy the well-constituted constitutional order's capacity for gradual self-correction. As Burke argued in *Reflections on the Revolution in France*, 'A state without the means of some change is without the means of its conservation.'[45] And as Disraeli said in an address to Edinburgh Tories in 1867,

> *In a progressive country change is constant, and the great question is not whether you should resist change, which is inevitable, but whether that change should be carried out in deference to the manners, the customs, the laws and the traditions of the people, or whether it should be carried out in deference to abstract principles and abstract and arbitrary doctrines.*[46]

It is clear that our current 'unsettled constitution' in relation 'to parliamentary sovereignty as an authoritative legal doctrine and to the institutional centralism of the parliamentary state'[47] in the context of competing sub-state demands requires a more coherent response from the conservative and unionist political tradition. It is clear equally that some form of federalisation of the UK's internal constitutional settlement by

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[45] *E. Burke (1909-14) Reflections on the French Revolution (Cambridge, Mass: The Harvard Classics): para.35. See also J. Norman (2013) Edmund Burke: Philosopher, Politician, Prophet (London: William Collins): Ch.5; R. Bourke (2015) Empire & Revolution: The Political Life of Edmund Burke (Princeton: Princeton UP): Ch.13.*

[46] *Cited in Ward (1982): p.5.*

[47] *N. Walker, 'Our Constitutional Unsettlement' (2014) Public Law: p.529-548 at p.535.*

the establishment of an institutional framework that incorporates not only self-rule but also shared-rule would help to ameliorate some of the current tensions. And it is also clear that such a federalising constitutional reform could be supported by a categorically conservative mode of arguments.

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The Conservatives and Electoral Reform: Lessons from Scotland

David Dempsey and Rory Scothorne

In November 2013 the Electoral Reform Society published *Northern Blues: the Conservative Case for Local Electoral Reform.*[48] The report argued that the Conservative Party's decline in the north of England – in terms of vote share, seats, and crucial party infrastructure - could be halted, and perhaps even reversed, by the introduction of proportional representation for local government elections. While Conservatives continue to benefit from the winner-takes-all First Past the Post (FPTP) system in the south of England, in the north the system works against them. Their share of the vote is significantly higher than their share of councillors, and as their seats decline, so too does local party infrastructure – making it harder to hold or win more seats, and leading to a 'negative feedback loop' that sees the party gradually disappearing from local relevance.

In his foreword to the report, Peter Oborne wrote that it had persuaded him that local electoral reform was 'part of the answer' to one of the most pressing questions facing the Conservative Party: how to avoid becoming a party confined to

[48] *Nick Tyrone and Chris Terry, Northern Blues: The Conservative Case for Election Reform (2013)*

the south of England and parts of the midlands. If that question must be asked about the north of England – and if electoral reform is part of the answer – then the case for electoral reform must surely be all the more persuasive in Scotland. The Conservatives, predominant (as the Unionist Party) in Scottish politics in the mid-twentieth century, hold just one of Scotland's 59 Westminster constituencies despite winning fifteen percent of the vote in the 2015 general election. However, the party's experiences of proportional systems in the Scottish Parliament and Scottish local government elections are considerably more positive, and the question of the party's territoriality is all the more pressing with questions of independence and devolution continuing to dominate Scottish politics.

Our argument in this chapter, then, is that the experience of the Conservative Party in Scotland lends itself to a simple conclusion: that there has never been a better time for the Conservatives to embrace electoral reform across the United Kingdom. There are principled and pragmatic arguments for such a position. In principle, electoral reform would give voters across the country considerably more choice of representatives, not to mention a better chance of having their own views properly represented. It would also help to turn the Conservatives back into a demonstrably 'national' party of government for the whole United Kingdom.

In terms of political pragmatism, electoral reform could help to secure the future of the union, would help to rebuild party infrastructure across the country, and would counter nationalist claims that the party is an alien force in Scottish politics. One of the authors can draw on first-hand experience of contesting elections under a proportional system, as leader of the Conservative group on Fife Council. The other draws on

years spent studying the ebb and flow of British and Scottish politics, and – as a reluctant 'Yes' voter – considerable familiarity with the 'democratic' case for independence.

A Crisis of National Democracy, Rory Scothorne

On the surface, the structure of British democracy does not appear to be a problem for the Conservative Party. It has a parliamentary majority, and the referendum on independence produced a convincing result in favour of the union. But to come to a conclusion like that on such circumstantial evidence is like denying the existence of global warming just because it's snowing outside. The real story is told by broader, underlying trends. The last four elections have seen the four lowest turnouts in British postwar history. Until 2001, turnout never fell below 70 percent. From 2001 onwards, it has never risen above 66 percent.

Trust in government and politicians is falling, with the number of people saying that they 'almost never' trust government rising from 10% in 1986 to 30% in 2013. In 2015 the Hansard Society found that 58% of people in Britain believe that the democratic system does not serve them or their families very well or at all. This is part of a broader trend of falling participation in electoral and party democracy across the western world, which the political scientist Peter Mair calls 'the hollowing of western democracy'. For Mair, the decline of popular democracy is the result of the decline in the mass party as a political vehicle:

> *The age of party democracy has passed. Although the parties themselves remain, they have become so disconnected from the wider society, and pursue a form of competition that is so lacking in meaning,*

> *that they no longer seem capable of sustaining democracy in its present form.*[49]

Membership of Britain's two major parties has plunged over the course of the past half-century. In 1953, Conservative membership was reportedly 2.8 million. Labour's was reportedly over 1 million. Today, the Conservative Party is estimated to have under 150,000 members[50] – a meagre proportion of the British population for a party that commands a majority in parliament.

While Labour, SNP and Green membership has grown rapidly in recent years, this has been in large part a reaction to perceptions that British politics is in some way 'broken', in need of renewal or, in the case of the SNP, irretrievably undemocratic. Under Jeremy Corbyn, the Labour Party has increasingly positioned itself as an 'anti-systemic' party, and members of the Labour leadership have expressed support for extra-parliamentary means like direct action and political strikes[51]. The Conservative Party remains overwhelmingly focused on parliamentary means for political change, but its activist base is shrinking and it is failing to attract younger members despite the party's recent successes.

Parties are increasingly regionally concentrated, with the SNP predominant in Scotland, Labour in the urban north of England and London, and the Conservatives in the south and rural areas. In parts of the country without proportional systems, this can lead to a severe limitation on the democratic choice

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[49] *Peter Mair, Ruling The Void: The Hollowing of Western Democracy. London: Verso, 2013, p.1*

[50] *Richard Keen, 'Membership of Political Parties', UK Parliament Briefing Paper (2015)*

[51] *George Eaton, 'John McDonnell: The 'Bank Manager' who supports direct action', New Statesman (28 September, 2015)*

available to those who would normally align with non-predominant parties.

As the *Northern Blues* report demonstrated, a lack of local representation can cause local party infrastructure to atrophy. While Labour, the Greens and the SNP have been able to counteract the effects on membership of this 'territorialisation' problem somewhat – and, in the case of the SNP, benefit from it – by positioning themselves as more or less anti-systemic, the Conservatives have not and their membership base has suffered.

It seems like their share of the vote has held up in spite of this, but a wider historical lens suggests otherwise. 2015 was the Conservatives' highest share of the vote in a general election since 1992, but their 6th lowest share of the vote out of 19 general elections in the postwar era, only marginally higher than 2010. Most importantly, 5 of those 6 lowest shares occurred in the last 5 general elections. Although their current share of the vote grants them a slim majority, the Conservative Party's long-term future as a party of truly *national* government – in terms of governing the nation from Westminster, in terms of being elected to do so from across the whole UK, and indeed in terms of keeping the UK intact – remains very much in doubt.

If the main complaint Conservatives have with proportional representation is that it does not ensure stable government, the long-term fragility of the Conservative Party's parliamentary majority must lead to similar questions about the efficacy of the current system. With the SNP enjoying a similar or greater level of authority in Scotland under a proportional system, the relative 'stability' of First Past the Post seems particularly dubious. Most importantly, a proportional

national democracy would see Conservative representatives elected across the United Kingdom – surely a crucial condition of any truly 'national' governing party.

Why PR? The view from Fife Council, Cllr David Dempsey

I was first elected in 2007 on the day that Scottish Council elections switched to multi-member wards and Single Transferable Vote. I was re-elected in 2012. It occurs to me that my enthusiasm for STV may stem from my successes under it but I think there's more to it than that.

The Conservatives don't do well in Fife and particularly in my end of Fife where there are streets named after cosmonauts. Nevertheless, we do poll 10% or so and a simple First past the Post system would leave our supporters virtually unrepresented. Even with STV and three or four member council wards we don't get our 'fair' share but we do get a presence. Larger wards with more members in each would get us closer to proportionality but, particularly in more rural parts, the physical size of the wards would cause problems for councillors who, unlike parliamentarians, don't have dedicated staff and offices to ease the load.

Because proportional representation of any sort tends to deliver results that are less clear cut in terms of a winning party, our representation, small as it is, enables us to punch above our weight and so better represent our natural constituency.

That's at a Fife level but there are gains locally too. Because no single councillor 'owns' a ward, there needs to be co-operation at ward level between the three or four ward members. There the party political aspect drops away and often disappears altogether but the underlying approaches that lead one to join

a political party remain and are fed into any deliberations. I believe that the outcomes are very often better for that. The thoughts and ideas of several disparate individuals become more than the sum of their parts.

Post 2007, I regularly heard two lines of complaint about the new arrangements. One, which came in particular from councillors who served under the old single member, smaller ward system was simply that 'the old way was better'. I don't hear that from anyone any more so I put it down simply to the natural conservatism (small "c") of the human species.

The other came from Conservatives who complained that 'no-one gives us second preferences'. Again, I don't seem to hear that any longer. There's anecdotal evidence that we now get more second and subsequent preferences than before and I suspect that we didn't get second preferences for much the same reasons that we didn't get firsts. The electronic counting system means that counting agents get to see ballot papers that the computers weren't able to automatically allocate. Having attended numerous by-election counts, I can say that the voters allocate their preferences in a myriad of ways, some of which appear to defy any political logic.

Those are views from 'inside' PR – from those who've worked with it. From those who've yet to experience it come thoughts that it yields unstable governments. I would argue that experience in Scotland refutes that. The tendency of PR to produce smaller majorities or even coalitions certainly makes the job of administrations harder but a large part of that comes from the need to pay more attention to what's being decided. Some of the old stagers in Fife talked of the days when councillors appeared at meetings with their papers still sealed in the envelopes. They could do that because their huge

majorities stifled scrutiny and criticism but it would be hard to argue that the electorate was the better for it.

Nevertheless PR is a hard sell to Conservatives in the shire counties of England, just as it is in the Labour heartlands to the north. Yet it's a salutary thought that it was a hard sell to Scottish Labour not that long ago. After May 2015, I suspect that very few of them would favour a return to FPTP.

Rory Scothorne is Campaigns Organiser (Policy) at the Electoral Reform Society Scotland.

David Dempsey is a Conservative councillor on Fife Council.

Education Policy: Rediscovering the Democratic Intellect

Alan Convery

Education is the policy area where the Scottish Conservatives have most consistently set the agenda. The party has criticised the SNP's record and suggested some thoughtful ways forward.[52] However, the party's excellent ideas in this area risk being undermined because it has not fully confronted the Curriculum for Excellence (CfE). Unfortunately, CfE *is the problem* in Scottish education, not the solution. It is a wrongheaded reform that has consumed a great deal of energy without producing many benefits. The space is wide open for the Scottish Conservatives to make this argument. This chapter sets out the philosophical and practical case against CfE from a conservative standpoint. It then suggests a liberal Scottish alternative. Conservatives must rediscover the liberating and equalising Scottish idea of the democratic intellect.

Wrong in principle: why it's difficult for conservatives to support CfE

One of the biggest problems one encounters when arguing against CfE is that it is extremely difficult to pin down. It sometimes appears that it is impossible to be against CfE because it is portrayed as a neutral and technocratic reform that commands widespread support in schools, unions and

[52] *Scottish Conservative Party, The Gold Standard: A World-Class Education for Every Child. Available at http://www.scottishconservatives.com/wordpress/wp-content/uploads/2016/01/THE-GOLD-STANDARD-A-world-class-education-for-every-child.pdf*

universities. It is at once revolutionary and completely unobjectionable. Most criticisms of CfE concentrate on its flawed implementation, rather than taking issue with its philosophy.[53] It is helpful, therefore, to return briefly to first principles in order to set out why the philosophy of CfE is incompatible with conservatism.

It is broadly based on what might be termed 'progressive' educational ideas. This might be summarised as:

1. The twenty-first century requires fundamental changes in the education system in order to concentrate on skills, rather than the passing on of a body of knowledge.
2. There is no common culture or canon of great works.
3. Children should study things they enjoy in real-world situations.
4. So-called 'rote learning' should be replaced with group work, 'learning how to learn' and transferable skills.
5. It is better to learn in an interdisciplinary context; subject disciplines are arbitrary and old fashioned.

Using such ideas as the basis for a curriculum is problematic in principle and in practice. Let us start with the principles. Fundamental to conservatism is some notion of tradition. CfE abandons any notion of tradition in education and operates a scorched-earth approach to the content of the curriculum. There is a vague national framework and schools have to choose the content to use.[54] Under this system, one school might choose Shakespeare and Beethoven; another might provide no access to literature or music before 1900. Thus, if you do not receive a broad cultural education at home, there is no guarantee that it will be provided for you in school. Each school has to invent its own curriculum. Aside from being enormously time-consuming and bureaucratic, such a system

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[53] See, for instance, Keir Bloomer, 'Two Cheers for Curriculum for Excellence' in Scottish Conservative Party, First Class: From Nursery to University: Essays on Improving Scottish Education. Edinburgh: Scottish Conservative Party, 2014.

[54] Scottish Government, Curriculum for Excellence: Experiences and Outcomes. Available at: https://www.educationscotland.gov.uk/Images/all_experiences_outcomes_tcm4-539562.pdf

risks entrenching educational inequalities between those who receive a broad liberal education and those who do not. It would be difficult for a conservative to agree with the relativist standpoint of CfE that any content is fine as long as it teaches appropriate skills.

Furthermore, in promoting 'enjoyment' and 'choice', CfE fundamentally misunderstands the nature of education. Any conservative knows that what is worthwhile is not necessarily enjoyable or what children will naturally choose. These concepts cannot be at the heart of deciding what to teach children. Learning is hard. Instead of encouraging humility in the face of the accumulated wisdom of the ages, CfE suggests to children that they have the knowledge to choose what is important or 'relevant'. This is fundamentally at odds with conservative ideas about tradition, knowledge and the nature of learning.[55]

Instead of broadening children's horizons and challenging them to get to grips with difficult art and literature, CfE suggests that we should cater to their uninformed tastes. How can any child in secondary school, let alone primary school, possibly have the knowledge to discern what is important or worthy of study? Under CfE, it is perfectly acceptable for children to consistently choose what appears fun and familiar over the difficult works that will raise them to new heights. Such a level of choice is not routinely offered to most undergraduates.

Wrong in practice

Whilst most conservatives would recoil at the relativist philosophy at the heart of CfE, they might be tempted to support it if its principles were underpinned by strong empirical

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[55] See, for instance, Timothy Fuller (ed.) The Voice of Liberal Learning: Michael Oakeshott on Education, New Haven: Yale University Press, 1989. For a more recent conservative argument about education and the importance of tradition, see, for example, Michael Gove, 'Speech to Cambridge University on a Liberal Education', 24 November 2011, available at https://www.gov.uk/government/speeches/michael-gove-to-cambridge-university

evidence. Unfortunately, this is not the case. Indeed, much of the evidence points in the opposite direction.

Firstly, does knowledge matter less in the twenty-first century? Should we be less concerned with the teaching of facts and more concerned with students' creativity, critical thinking and conceptual understanding? This might seem intuitively correct, but it is actually a false assumption. As Daniel Willingham argues:

> *Data from the last thirty years lead to a conclusion that is not scientifically challengeable: thinking well requires knowing facts, and that's true not just because you need something to think about. The very processes that teachers care about most – critical thinking processes such as reasoning and problem solving – are intimately intertwined with factual knowledge that is stored in long-term memory (not just found in the environment).*[56]

Thus, CfE fails to recognise that the memorisation of facts is not a hindrance to higher-level skills like analysis or evaluation: it is the basis for it.

Second, should children be taught differently in the twenty-first century? Even if we accept that knowledge is essential, should it be taught in modern ways that emphasise independent learning and projects? Again, there is reason to doubt that this will be effective. A Sutton Trust review of effective teaching concluded that: 'Enthusiasm for 'discovery learning' is not supported by research evidence, which broadly favours direct instruction'[57]. Do we need to ensure that learners are 'active',

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[56] *Daniel Willingham, Why Don't Students Like School? San Francisco: Jossey Bass, 2009, p.28.*

[57] *Robert Coe et al., What Makes Great Teaching? Review of the Underpinning Research, October 2014. Available at http://www.suttontrust.com/wp-content/uploads/2014/10/What-Makes-Great-Teaching-REPORT.pdf, p.23*

rather than merely listening to the teacher? The same review is doubtful:

> *This claim is commonly presented in the form of a 'learning pyramid' which shows precise percentages of material that will be retained when different levels of activity are employed. These percentages have no empirical basis and are pure fiction. Memory is the residue of thought (Willingham, 2008), so if you want students to remember something you have to get them to think about it. This might be achieved by being 'active' or 'passive'.*[58]

The case for changing the curriculum in order to promote 'active' teaching methods has not been made. The flawed emphasis on conceptual understanding at the expense of factual knowledge also potentially denies students the joy of the rote learning of poetry and song. The memorisation of beautiful works so that they can be analysed and treasured over a lifetime is a deeply conservative concern.

Dismantling CfE

Unfortunately, instead of allowing great teachers to teach, Scottish education has become bogged down in arcane debates about assessment, administration, experiences and new exams. Without any apparent sense of irony, the Scottish Government has had to establish a bureaucracy to control the bureaucracy its own policy has created.[59] Have there been any practical benefits to teachers or pupils as a result of this upheaval? It is difficult to avoid the conclusion that we have witnessed something of a 'lost decade' in education policy in Scotland. CfE has consumed enormous amounts of time and energy but there appears to be little evidence to suggest that it will help to

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[58] *What Makes Great Teaching? p.24*

[59] *Curriculum for Excellence Working Group on Tackling Bureaucracy, Follow-Up Report. Available at https://scottishgovernment.presscentre.com/imagelibrary/downloadmedia.ashx?MediaDetailsID=3505&SizeId=-1*

tackle big challenges in Scottish education like the attainment gap.

The Scottish Conservatives should propose to gradually dismantle CfE and replace it with a system that guarantees a liberal education for all. Thankfully, the SNP Government has taken the first step towards this goal in primary schools. The new national tests should in practice impose a common curriculum in primary and early secondary. In the absence of any prescribed curriculum, the content of these tests will likely become the basis for the curriculum in most schools. Conservatives should support the new national tests in primary and early secondary school and work to strengthen them if necessary.

The other elements of CfE can be similarly dismantled in a gradual process. Thus, as a first step, the Scottish Conservatives should propose the creation of a national syllabus to accompany the experiences and outcomes of CfE. This should state explicitly what should be taught and with what materials. It should be based on the idea of a traditional Scottish liberal education. An independent panel should oversee the creation of the national syllabus. It should ensure that children are exposed to the best of human culture. Thus, for instance, excellent literature and philosophy from across the world would feature alongside the English canon.

This syllabus will result in an immediate end to confusion. However, it should not at first be statutory. Instead, the aim is to provide a common framework for teaching and learning in Scotland and a set of minimum standards. Any school that chose to implement its own syllabus, rather than the national suggestions, would be free at first to do so. However, it would have to demonstrate that its offering was superior.

Second, Scottish Conservatives should propose a return to the previous versions of National Qualifications, including the old Highers, Intermediates and Standard Grades. In particular, the requirement in many local authorities to study eight Standard

Grade subjects from a broad range of disciplines up to the age of 16 was a great merit of the Scottish system and it has been thrown away without sufficient justification.

By returning to the previous system, we can finally put debates about process to rest and start to talk about the real issues in Scottish education (about which there are many excellent suggestions[60]). Nobody has adequately made the case that Standard Grades and Higher Still qualifications were central problems in the system that needed to be tackled. Implementing new qualifications has taken up a great deal of time and energy, but it is not clear what problem they have solved.

A liberal education for the twenty-first century

It should be a fundamental belief of Scottish Conservatives in the twenty-first century that pupils in Morningside and in Govan should have access to the same great canon of the 'best that has been thought and said'. Such a selection of works cannot be left to chance. There can be no truly equal education system in Scotland until we democratise knowledge of the greatest art, music and literature.

Conservatives should be naturally sceptical about organising a curriculum on the basis of children's capacities, rather than on the knowledge to be acquired. However, as a thought exercise, it is helpful to set out a starkly different approach by suggesting an alternative 'four capacities' using CfE's first-person style.[61] They are fundamentally at odds with CfE's relativist approach.

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[60] See, for example, Joseph Rowntree Foundation, Closing the Attainment Gap in Scottish Education, May 2014. Available at: https://www.jrf.org.uk/report/closing-attainment-gap-scottish-education

[61] CfE is based on the idea that pupils should become: successful learners, confident individuals, responsible citizens and effective contributors.

Alternative Four Capacities

Well-read individuals: I have read a representative sample of what is considered to be the canon of great works of literature, philosophy, politics and science. I have engaged with the thought of the great minds of previous generations and considered my own response to the eternal questions of human existence.

Disciplined thinkers: Through exposure to the great arguments about science and social life contained in the accumulated wisdom of a broad range of subject disciplines, I have the knowledge to be able to assess the strengths and weaknesses of different perspectives, and to form my own arguments.

Critical citizens: I have the knowledge to be able to take part in serious conversations about current political events, the nature of good government, and my obligations to others. I know enough about the history of ideas to be able to ask intelligent questions about public life and be an informed citizen of a liberal democracy.

Radical creators: I communicate clearly and accurately in standard written English. I can place my own writing, art and compositions in the context of the best that has been created. Increasingly, I am able to question the nature of my own education and the boundaries of taste, subject disciplines and the dominant discourse of the culture into which I have been inducted.

Conclusion

The greatest irony is that the SNP has presided over the anglification of the Scottish curriculum at precisely the moment when Michael Gove was drawing on traditional Scottish ideas for his reforms in England. Education policy therefore represents a fantastic opportunity for the Scottish Conservatives to be the champions of Scottish distinctiveness and to promote Ruth Davidson's social justice agenda. Conservatives should continue to propose excellent ideas on school structures and autonomy. However, the party must also confront CfE.

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The publication of this booklet was made possible by a Knowledge Exchange Grant from the University of Edinburgh's College of Humanities and Social Science, and funding from Politics and International Relations and the ESRC Centre on Constitutional Change.

Light Blue
Policy Adventures for Scottish Conservatives