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ON MATTERS CONSTITUTIONAL

Scotland and the EU: Comment by MICHAEL KEATING

Michael Keating

09.09.2014 doi: 10.17176/20181005-163337-0

I find Sionaidh Douglas-Scott's arguments compelling and will not take issue with them. Rather, I will elaborate on two arguments derived from my own fields of politics and public policy.

The first is one of democratic principle. Theories of self-determination have moved away from essentialist arguments about nations and towards democratic foundations. This is best summed up in the judgement of the Supreme Court of Canada in the Quebec secession reference. The finding was that there was no right of secession in the Canadian constitution but that if any province demonstrated such a desire in a clear response to a clear question, then a democratic reading of the constitution would oblige the Canadian government to negotiate. The post-war European order is founded on similar principles of democracy and mutual respect. It is difficult to think of a more democratic way of resolving a self-determination claim than an election victory (an absolute majority in a proportional election system), with a mandate for a referendum, followed by a referendum on a question agreed by both sides and debated over a period of two years. It is to the credit of the British political parties that they have recognized this in the Edinburgh Agreement, while their Spanish counterparts are locked into an argument that has no democratic resolution.

To suggest that a nation that has followed the Scottish route should not be allowed into the European family while others with more dubious pedigrees are, would violate basic democratic principles. Effectively, Scotland would be expelled from the union for exercising a widely-recognized democratic right. Jose Manuel Barroso and others have argued that this is not so since by voting for independence Scots would be putting themselves outside the EU. Yet it is quite clear that what is proposed is independence in Europe. Indeed, Scottish parties are more committed to the European project than their UK counterparts. Of course, the institutional details of Scottish membership would have to be negotiated but this does not justify excluding the territory or the citizens of Scotland, which have been part of the EC/EU for over forty years.

Barroso's arguments are particularly confused. His comparison of Scotland with Kosovo betrays an appalling insensitivity to the different ways of resolving nationality conflicts. Kosovo emerged from civil war and ethnic cleansing, is a long way from meeting the minimum criteria for EU membership and is not recognized by Serbia in the way that Scottish independence would be recognized by the UK under the Edinburgh agreement. The argument that Scotland would have to join a queue ignores the way in which accession happens – the Nordic countries were not put in a queue. In arguing that an independent Catalonia would be outside the EU, he implicitly accepts that a Catalan independence is possible; the argument in Spain is that this is ruled out by the Spanish constitution, in contrast to the UK. Even the Spanish government recognizes this crucial difference, which is why it has not said that it would veto Scottish membership, despite repeatedly being invited to do so.

The second set of arguments for suggesting that Scotland would be in the EU are practical. It is difficult to see who would have an interest in creating a hole in the internal market where Scotland used to be. The remaining UK, other member states, businesses, citizens, students, workers and third countries alike would pay for the ensuring disruption. The legal and logistical problems of disentangling Scotland from the European order would be formidable. It is particularly implausible to suggest, as Barosso and the House of Commons Scottish Affairs Committee have suggested, that Scotland would have to leave the internal market and then negotiate to get back in (which might or might not be successful). Nobody in their right mind

would surely go to the expense and trouble of disentangling Scotland from the internal market and then devote more time and effort to getting it back in again, all at a time when there is turmoil on its external borders and a continuing crisis in the Eurozone. Even if negotiations for Scottish membership had not been concluded in the eighteen months anticipated by the Scottish Government, transitional arrangements would surely be put in place to secure the market and citizenship rights.

My criticism of the Scottish Government is a different one altogether. It proposes to continue EU membership on the same terms as currently enjoyed by the United Kingdom. The UK Government, meanwhile, is trying to renegotiate terms and repatriate powers (although in its current Review of Competences it is struggling to say what these should be). Scotland, especially if it keeps a currency union (formal or otherwise) with the UK, would be bound into UK European strategies and risk being dragged away from Europe. We know that small states can do well in the EU if they work intelligently, have a reputation as good Europeans and forge alliances. Big states can afford to throw their weight around more, threaten vetoes and occasionally be on their own – although the present UK government has taken this to entirely counter-productive lengths and alienated many other states. Scotland as a small state would be well to play a positive European game in the core rather than sulking on the periphery. Indeed their hand might be forced. The Conservatives have promised an in-out referendum on the EU in 2017 and, without Scotland, this would be more likely to pass, leaving Scotland in the rest of the UK out. This is why the Scottish nationalists make a powerful point when they urge Scots to vote for independence, not to leave the EU but as the only way of staying in. In my recent visits to Brussels, I have found increasing recognition of this point, in contrast to the poses struck by Barroso and the outgoing Commission.

ABOUT THE AUTHOR

Michael Keating

Michael Keating is a Professor of Politics at the Universities of Aberdeen and Edinburgh and the Director of the Scottish Centre on Constitutional Change.

SUGGESTED CITATION

Keating, Michael: Scotland and the EU: Comment by MICHAEL KEATING, Verfassungsblog, 09.09.2014, doi: 10.17176/20181005-163337-0.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20181005-163337-0.