

Does engaging the public in the constitutional process depend on the existence of a 'constitutional identity'?



As our ConstitutionUK Constitutional Convention approaches, Professor **Bill Kissane** considers the questions of constitutional change, identity and public identity in the UK today.

When contemplating the Constitutional Convention consider one aspect of the UK's constitutional culture that might bedevil its work. The recent attempt to reform the 'first past the post' electoral system revealed the difficulty politicians have in engaging the public with a reform agenda. When the Select Committee on Constitutional and Political Reform explored the case for a written constitution, this was one concern. The 2014 referendum on Scottish independence showed that constitutional choices can engage people in a meaningful way. Yet the rest of the UK were not similarly engaged.

Does the ability to engage the public depend on the existence of 'constitutional identity'? The idea that constitutions – like persons or states – have identities, has been developed most notably by Gary Jacobsohn whose (2010) work focuses on post-revolutionary states such as India, Ireland and Israel. The question cannot be avoided when a state decides that there are principles so fundamental that they ought to be protected from legal amendment. Yet Jacobsohn focussed on relatively new states that were engaged in debates about their founding values when they adopted their constitutions. For the UK the question is whether a society that has not experienced a revolutionary break can have such an identity? Moreover, a conservative could argue that the idea of personal identity presupposes above all continuity over time, and its constitutional analogue requires – as a prior condition – a constitutional culture. If such a culture is valuable, change to its core values is not advisable.

What if necessity also proves to be the mother of invention in this field? In 'The Rise of World Constitutionalism' Bruce Ackerman (1997) made the case that constitutional documents do not simply provide a framework for government; they are symbolic milestones in the life of a nation. Legal symbolism and the use of referendums to legitimate constitutional changes have certainly become more important in the UK. Moreover, many younger voters can only be engaged in constitutional politics through a cultural prism. Yet there has been a turn away from the cultural turn. Constitutional controversies have followed the eurozone crisis in the Czech Republic, Hungary, Greece, Iceland, Ireland, and Spain: the issues are about governance. In Britain too changes in the party system pose

questions about the framework of government which require more than symbolic gestures. It is a testimony to their complexity that two staples of the nineteenth century constitutional diet – the balance of power between parliaments and their executives, and the relationship between central and regional government – have become entwined in a decisive way. The prospect of the DUP or the SNP having the power to break minority governments after the May election provides an ugly focus for identity politics, and may galvanise interest in serious constitutional change. Then think of Ackerman's other thesis about constitutional moments; major change originating not in new beginnings but in constitutional failure.



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This article gives the views of the authors, and not the position of ConstitutionUK, nor of the London School of Economics.

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