New World Order

Lessons from the Americas on Federalism, Intergovernmentalism, and Sovereignty

The Red Cell

Foreword

For many others involved in the European debate, there are few greater irritants than those who use the terms “Europe” and “EU” synonymously. Europe is a great continent of sovereign nations and proud peoples with their own individual histories. The European Union, on the other hand, is a political construct that is not only a recent entity in historical terms, but one which is increasingly losing the support of the people who live within its confines.

It is in this context that the debate about the future of the European Union takes place. There are those who genuinely believe in the concept of supranationalism, that is, the wilful submerging of the identities of nation states to create a new pan continental entity. Many, including myself, see this as the most unpalatable of destinations which, in any case, has a bad track record, not least the recent experience of the USSR. We all want to work in cooperation with our geographic neighbours where it is in our mutual interest to do so, even pooling sovereignty on a voluntary basis, as long as we are able to act independently where our unique national interests require it.

Looking at the North American experience and evaluating its strengths and weaknesses is particularly timely, not least as the United Kingdom approaches its referendum on continued membership of the European Union. Concepts of federalism and subsidiarity need to be fully understood if nation states are not to be subsumed into faceless and unaccountable entities.

The same intellectual scrutiny needs to be given to economic models too. The European single market, a market of harmonisation, inevitably involves an ever increasing body of law and regulation, which is inhibiting in an ever more globalised economic environment. Real consideration needs to be given to alternatives such as markets of mutual recognition.

The need to learn lessons from the Americas on federalism, intergovernmentalism and sovereignty has never been more necessary or its timing more pertinent. As the European project faces greater scrutiny from both inside and out, and as the inherent weaknesses of the Eurozone project and the Schengen open border initiative become more apparent, alternatives need to be evaluated.

“New World Order” does not intend to provide the only possible answers to the conundrums we face but it is an intelligent and compelling read for those who want to understand better the issues that must be tackled at the crossroads in European history at which we now find ourselves.

Dr Liam Fox was first elected MP for Woodspring (renamed North Somerset for the 2010 General Election) in 1992. He was soon appointed Parliamentary Private Secretary to Michael Howard, then Home Secretary; Assistant Government Whip; Senior Government Whip; and Minister at the Foreign and Commonwealth Office. In Opposition, he held the posts of Front Bench Spokesman on Constitutional Affairs; Shadow Secretary of State for Health; Co-Chairman of the Party; Shadow Foreign Secretary; and Shadow Secretary of State for Defence. Liam was appointed Secretary of State for Defence in 2010. Since returning to the back benches, Liam has been focusing on the UK's future relationship with the European Union, options for reducing our budget deficit and stimulating growth in our economy, and has kept a very close interest in our national security and the well-being of our armed forces. In 2012, he founded a charity called Give Us Time which matched owners of holiday homes who wish to donate time in their properties with service personnel and their families, so that troops returning from operations overseas can have some time away with their family.

Since originally writing this foreword, he was appointed Secretary of State for International Trade in the post-Brexit referendum Cabinet.

Introduction

North American political history has a great deal to teach EU-watchers. All three of the mainland continental states have developed constitutions along federal lines, albeit with distinctions that emerged from their different paths to independence. The construction of national identity and the development of nationhood also offer us lessons for our own continent as it moves towards a common federal European state. Many of the debates of the past are resurfacing today, indeed with the 'Founding Fathers' of the US nation being cited by putative 'Fathers of Europe' as well as by critics of integration today.

Intergovernmentalism is playing its part on this side of the Atlantic, but in forms sometimes very different from the EU approach. We can also contrast the North American approach to routes followed further south. While 'ever closer union' (perhaps: *una unión gradualmente más estrecha*) finds its supporters amongst Bolivarian dreamers, it also finds opponents who seek to keep integration limited to more Thatcherite aspirations, involving eased trade and generating wealth rather than a common citizenry. We might also profitably compare the impact of engagement across global organisations for a country such as Canada with the more constrained role that faces a United Kingdom bound by obligations to the European Union.

There is a third element also of interest, and far less considered; the political condition of the First Peoples within the continental constitutions. Focusing here on the treaty status of the Reservations in the United States and Canada raises subtle questions about the extent to which supporters of EU integration can honestly talk about 'pooled sovereignty' and the safeguards necessary to protect subsidiary or associated legal systems. Supporters of the Brussels approach too often follow the old Western line and "speak with forked tongue".

Some lessons from across the Pond

- Federalism carries with it an inherent centralising force. That centripetal force is exacerbated in times of war, crisis, and technological innovation. All three factors currently apply to the nascent EU federal state.
- North American politicians and commentators should avoid the trap of showing constitutional sympathy with the developing federal EU on the basis of assumed commonality of political systems. The UK outside of the EU is much more culturally and politically aligned to the US. The EU remains *sui generis*.
- The EU does not contain the safeguards that accompany a cemented federal constitution. Generating that safeguard though would confirm the surrender of the independence of the participatory state. The current reality of sovereignty is thus often quantum. The political illusion generated by denying the reality of a

constitutional shift is more in keeping with the Roman (post-Republican) model than the North American one.

- Subsidiarity within the EU consists of Jeffersonian principles applied only at the whim of the legislator (the European Commission) and the interpretation of a partisan judiciary.

- The case of the North American "Sovereign" First Nations shows that the idea of the "pooling" of sovereignty is a fiction. If constitutionally defined, sovereignty in a given competence is resident in one location; if undefined, it is conjectural and at risk. "Dependent Sovereignty" is a fairer description of the current situation in the EU.

- Supreme Courts where politicised affect the constitution. The ECJ is doubly harmful, as its membership is both politicised (supporting further integration) and not subject to democratic oversight and debate in its appointment.

- The United States on inception was held together by the threat of neighbouring superpowers; a measure of religious cohesion (much greater then than now) and thus of culture; a shared language; similar origins; a common legal system; and the tolerance of fundamental economic differences between its component elements (most infamously, for three generations, over slavery). These similarities made possible new loyalties being formed, by replacing ties to London with kinship between the states. No such kinship has ever existed across the highly divergent European states, other than vague concepts of a broad commonality of western culture (now veneered by post-modern neo-liberalism) coupled with the accident of geographic proximity. Even the latter assumes and requires a forgetfulness of past conflicts.

- The EU is not the only model for regional trade blocs. The NAFTA route rejected it. Other continental trade associations vary in their approach, despite greater cultural affinities and histories. In sum though, in the Americas the trade model is the Reciprocity Treaty of 1854; in Europe, it is the Austro-Hungarian state.

- The EU forms a lower order element in the hierarchy of global trade and cooperation entities. The contrast between the EU and Americas trade blocs is immense; the EU duplicates the role of UNECE, but UNECE has no effective counterpart in the Americas. This means trade bloc administrations in the Americas fill a gap, while in Europe the European Commission duplicates a role.

- In short, for what it is setting out to structurally achieve, the EU is on the wrong continent.

Part 1: *S*tates and *s*tates

North America consists of three major states, and a number of much smaller ones. Canada, the USA, and Mexico coalesced in very different ways. Each provides us with a contrast with the manner by which the European Union is forming as a federal entity.

One nation, indivisible

The development of the United States was revolutionary, metaphorically as well as literally. If one takes just the concept of citizenship, it overturned existing notions of statehood and affiliation. The arguments about how readily subject status could be repudiated by the expediency of moving to a republic was still being argued decades later: indeed, it formed a key part of the dispute over impressment that was a major feature behind the War of 1812.[1] In today's EU, identity is similarly contested, but with the introduction of a new level of citizenship, that the of the EU citizen, expressed in the medium of a common burgundy passport and protected by the growing circuit of common EU embassies (or shared infra-EU facilities).

Whole library shelves have been printed on aspects of US political development. Here let us just nominate a handful that may also be informative in an EU context.

We might begin with reflecting on the nature of the fight between the Federalists and the Jeffersonians. The former sought to replace now-absent royal authority with a strong central government; the latter fought to preserve existing rights and to devolve powers and institutions to local assemblies. Notably, the *states' rights* party forgot Franklin's revolutionary dictum of 'hanging together so as not to hang separately'; in the wake of the drafting of the constitution that generated a stronger central government, while numerically they formed the larger bloc they failed to coalesce as a single group and to assist each other during the local ratification processes, and so the constitution was passed. A lesson lies in there perhaps for the 'Out' campaigns in 2015 Britain.

The starting decades of the new United States also provide an example of constitutional gravity in federal systems. Trade issues led to limitations on devolved tariff powers. Debt issues encouraged the first hesitant steps towards a central bank. The Citizen Genêt Affair and the Quasi-War with France further developed a core standing military. Iconically, practically the first federal institution taking powers away from state management was a

[1] A Royal Naval sailor who absconded onto US territory could claim citizenship, but in the eyes of the Admiralty was still the same British subject he had been born as, and therefore was a legitimate target for being seized and put back on the rigging. The issue centred over residency rights for immigrants (which was unsettled and jumped between 2 and 14 years) and in particular the abuse of certification of that qualifying period.

centralised customs body – the institution which had underpinned the revolution in the first place.

During the Convention on the Future of Europe, participants occasionally turned to the Founding Fathers as inspirational figures, in whose footsteps they were themselves treading. The chairman, Valéry Giscard d'Estaing, was particularly fond of the comparison, largely because he appears to have seen himself as Jefferson – an irony, as he acted like a Hamilton. It does seem a peculiar element of that Brussels congress that those drawing from the parallel were universally those seeking to accrue the most power for the centre and to deny sovereign powers to the nation states. Giscard himself on occasion recognised that the two conventions were very different, for example when he admitted

> In some ways, our task is trickier, because we are a Europe of many nations with strikingly disparate dimensions and living standards.[2]

But this appears to have been the limit of the concession. Jeffersonian quotes were more properly thrown around outside the Convention by the likes of Montebellophile MEP Daniel Hannan; inside, the comparison made by MP David Heathcoat-Amory were more in the order of a later observer of the American system in a more structured federal system.[3] Alexis de Tocqueville's observations on *Democracy in America* (and for that matter, in Canada) generated far more rewarding analysis of the practical implications of the structures being formed and what it meant for European societies.

The European Commission is clearly aware of the marketing opportunities generated by the superficial political similarities between its form of governance and the early United States. It's US Delegation designed a logo for local consumption, setting the twelve star flag above a block of red and white bands to mimic the flank of the US Revolutionary flag.[4] American observers might usefully shift the veil of rhetoric and look at the practical.

There is a hint, for instance, of the inevitability argument being raised. The EU's own Manifest Destiny is as the harbinger of peace to a continent riven by centuries of war, or so the mythology goes. The historian might usefully recall that US Independence contained no guarantees of an American continental hegemon. Indeed, John Adams considered that an early risk was that three or four mini-confederacies would emerge reflecting the disparate interests of the former colonies, with Pennsylvania becoming a sort of 'American Flanders' (an analysis that would become prescient in the later age of Gettysburg). The development of the United States as we conceive it today was never a given. A host of alternative prospects emerge from the Vermont wobble, Shays' Rebellion, the divergent priorities in the Annapolis Convention, the Whiskey Rebellion, the Barbary pay offs, and the Hartford

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[2] Second annual Henry Alfred Kissinger Lecture, Library of Congress, 2003.
[3] See <http://www.brugesgroup.com/Plan-B-For-Europe.pdf>
[4] *The Hard Sell: EU Communication Policy and the Campaign for Hearts and Minds*, Rotherham/Mullally, Open Europe, 2008.

Convention, that might have set the US on a different path.[5] The development of what is today familiar to us as the US constitution and nation was no more certain than the prospect, let alone the need, for the process of European integration as developing according the current EU model of mutely anticipated statehood.

Conversely, US history supplies us with a precise example of the risks that are associated with nation building where the divergences are too great. The issue of slavery was a canker at the very heart of America's independence. General Carleton's refusal, for example, to turn over former slaves during the run down of the British occupation of New York polishes his reputation at the expense of the incoming (and slave owning) General Washington. Jefferson's inability to introduce gradual emancipation into the Virginian constitution perhaps constitutes his single greatest failure.[6] These matters are of course issues of their time that cast a long shadow for the enlightened observer of the modern age. The point remains that from the outset, attitudes were so at variance over a fundamental economic: for one party, the issue was a matter of pure morality; for the other, or fundamental economic self-interest. The road led to Fort Sumter. Of course, this is not to say that the EU will degenerate to open warfare between constituent states; but it does remind the observer of how economic differences and variant priorities can escalate where there is no safety valve. The situation in Greece and more widely across the Olive Belt hints at the risks in play.[7]

Or we might turn to the lessons to be gained from the US Supreme Court. That body consists of eight judges, nominated by the US President and approved by the Senate. This has been subject to misuse in the past (for instance, the case of the 'Midnight Judges' of John Adams). Notwithstanding its flaws, the system remains considerably more transparent and accountable than the nominations process for national judges despatched to the Court of Justice of the European Union.

By comparison, the separate European Court of Human Rights in Strasbourg is a paragon of transparency, since a list of three candidates along with their cv's is sent to Council of Europe delegates to consider. But with the Luxembourg Court, appointment is a matter of deep obscurity. Article 255 of the treaty does establish a panel for the review of candidates. It is made up of "seven persons chosen from among former members of the Court of Justice and the General Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament." But the nominations, supplied by the relevant government for the relevant national slot, can be counted on a single digit. It is, moreover, a mystery running at the standards of Eleusis as to what goes on in that hearing. It might of course be the case that a Devil's Advocate runs

[5] Not to mention prospects that could have developed from, for instance, the Olive Branch Petition, or the Galloway Plan of 1774.
[6] Though his policies on deportation would not have endeared him to history even if he had.
[7] The Treaty of Lisbon does at least remedy one gap still present in the US Constitution: the absence of a secession clause.

through the judge's track record and reviews secret dossiers lent by Europol covering the candidate's bank details; it is equally as likely that attendees gather round a coffee table and discuss the extent to which they support European integration. Some names proposed do seemingly drop away after an (unstated) opinion is noted as having been delivered, sometimes when existing judges are seeking reappointment - a particularly alarming situation on reflection. This approach differs wildly from the US model that puts potential judges very much under the spotlight. It might of course be argued that judges there are more of a political appointment; but it is not clear why obfuscation is a benefit over the politics of whether a judge is in favour or opposed to EU ever-closer union.

Of all the epithets that could be attached to Luxembourg judges, neutrality is not one of them. By dint of their very interest and engagement in EU law that makes these judges prime candidates for vacancies, there is an element of buy-in to the 'EU way of doing business' that is less a risk than if a random judge were selected from a British court. This is exacerbated further by the efforts of the Commission to train up and effectively co-opt professionals within the national judicial systems (see box below).

Initial training does not exist in all Member States. In May 2011 43% of judges and prosecutors declared that they had not studied Union law, the European Convention on Human Rights or another Member State's law as part of their law degree and 63% did not have any initial training in Union law prior to taking up their functions. Yet new legal practitioners should have sufficient **knowledge** of Union judicial cooperation instruments and acquire built-in **reflexes** to refer regularly to European-level jurisprudence, to verify national transposition and to use the Court of Justice of the European Union's preliminary ruling procedure.

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From 2007 to 2010, European judicial training was supported through funding or co-funding of projects to a total amount of EUR 35.5 millions. Until now, this has facilitated the training of between 4 000 and 9 000 legal practitioners per year. However, this is not enough given the size of the target audience and the need to keep up-to-date with Union acquis.

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*The European Commission will **concentrate its funding towards training** within the existing programmes to support **high-quality European judicial training projects** with a greater European impact.*

*Under the **new multiannual financial framework**, European judicial training should be a major **priority to support training of more than 20 000 legal practitioners per year by 2020**.*

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Strong commitment is needed to ensure that judicial training reaches the level of excellence required for a true European judicial culture

Building Trust in EU-Wide Justice: A New Dimension to European Judicial Training, European Commission, 2011

The development of the United States federal system was not an easy path. But if we take its winding route as a whole, we can see that it is an absurdity for anyone to congratulate the European Union on supposedly following it. Madison and his colleagues pursued their integrationist goals openly, arguing their case point by point over many years across many books and papers and newsprint column yards. The result was the poetry of Philadelphia in 1787, with its flaws but also its gilded aspirations. By contrast in the EU, the surrender of fundamental powers held by national governments in trust for their national parliaments is being pursued in a way that would have fostered tea party resentments. Both sides of the American debate, whether partisans of John Jay or backers of Patrick Henry, would have been horrified by the suppression of failed referenda in Europe.

Perhaps that very divergence between those federalist approaches is the telling detail. The British constitutional system is so at fundamental variance from those which our Roman Law continental counterparts have to offer, that even from the moment of its rejection by our American cousins it generated a different structure and style.

Terre de nos aïeux

Canada's example provides us with another template to compare EU krypto-federalism to. Again, it is important to place it in the context of how it came about.

French Canadian journalist André Laurendeau fifty years ago penned a piece for *Le Devoir* that provides an intriguing metaphor. A mother one day decided to make a wonderful cake, all full of juicy hot fruit and finely baked. But as it was left out to cool down, a thief ran off with it. The mother went back to the offcuts of pastry and threw together a new one, a rather higgledy-piggledy affair.

In contrast to the early drive (albeit contested) towards a significant element of central government to the South, the colonies of British North America remained highly disparate – indeed Newfoundland has only joined Canada within living memory. At the time the White House was being built, the surviving British colonies on the continental mainland were united only by a weak primacy of one of the governors. The rebellions of 1837-8 and Lord Durham's report led to a measure of political fusion as Lower and Upper Canada were administratively united. Representative government slowly seeped in. But solid constitutional change only emerged with the aftermath of the American Civil War, when the prospect of a renewed territorial threat from the south and the Fenian Raids encouraged

colonial administrators and politicians to consider greater union.[8] A meeting to discuss integration of the Maritime Provinces was 'gatecrashed' and turned into a conference that led to the agreement on Confederation, finally enacted in 1867. Canadian confederalism thus largely followed an external rather than an internal stimulus, endorsed by the colonial power which saw a more effective and efficient form of both defence and of governance.

The key result might be expressed in the distinction between the priorities of government expressed by the two groups of statesmen; "Peace, order, and good government" in Canada as opposed to "Life, Liberty and the pursuit of Happiness" in the Declaration of Independence.[9] We might compare these with the nearest the EU 's draft constitution had to offer as expressed in the Lisbon Treaty: "liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law", a somewhat more lawyer-orientated standpoint.

Canada is a Confederation rather than a Federation. To some extent this was, like EU federation, perhaps more of a matter of wordplay suited for the ratifying audience than a matter of practical application. But there are differences. Aside from issues over how the systems of government operate (such as over the separation of powers between the Executive and the representative assembly), Canada's system left residual power in the centre as opposed to with the devolved governments, and the US authorised state activity in areas of unactioned federal authority. The jury is still out over which route the EU will take, but the lessons from recent treaty developments and ECJ trends suggest a tendency towards increasing exclusion of national rights, despite and indeed through the new emphasis on areas of shared competency. Where power is shared, the Commission demonstrates a persistent keenness to justify expanding its own role. This begins with funding for relevant groups and lobbies and educational programmes for sharing information and best practice, expands into joint programmes, and then sole competency is sought in subsequent treaty development.

More recent Canadian constitutional development has been in a direction opposite to the UK's. The repatriation of the constitution in 1982 handed over to Canadian judges and legislators ultimate power over adjusting their own system of government. The United Kingdom by contrast has increasingly been ceding it to EU authorities. The fiasco of the 'red card' system underlines the point. Attempts were made during the Convention on the Future of Europe to generate a veto either for a parliament or for a group of parliaments where they disagreed with an EU law. This was watered down into an orange card system and a yellow card system – effectively, providing the right to early consultation and a 'pause button', but only if a group of Parliaments overcame vertiginous obstacles to coordinate their activities within a tight timeframe. The thresholds are so high a yellow card has only

[8] This was also the time of the Alaska Purchase, the establishment of a unified colony of British Columbia, and the development of Manitoba.

[9] Section 91 of the Constitution Act of 1867, contrasting with the second paragraph of the Declaration.

been achieved on two occasions since the Lisbon Treaty was ratified. On one occasion the Commission backed down without citing subsidiarity as the cause, while in the other the Commission went ahead anyway.[10]

Canada also provides a peculiar mirror to the UK's legal problems with the EU. Quebec's legal system (like Louisiana's in the United States) sees a civil law system based on Roman Law. However, the provincial legal code sits within a national legal system which is based on Common Law. The Quebec Act of 1774 recognised the right of residents to settle their civil affairs using the established French system, while criminal law (more important to issues of direct governance) would follow English Law.

Because the constitution recognises and accepts these differences, the system is preserved within a clear legal hierarchy and with specific safeguards. In Quebec, the Code itself operates as a reference authority rather than a higher court doing so. In practise, the Quebec Court of Appeal overwhelmingly tends to act as the supreme court. Even where it does not, by law three of the nine judges of the Canadian Supreme Court have to come from Quebec. This can be sadly contrasted with the lot of the English Common Law system within the EU's judicial structures, where precedent can be set without a British national, let alone a Common Law judge or lawyer, even in the room.

A final word might be said about a matter that does not involve the constitution. There is a deeper and more esoteric back story to NAFTA than many will be aware of. As Britain shifted its economic policies in the wake of the Corn Laws, a change in attitudes followed in Canada too. A window of opportunity emerged in 1854 when Washington saw a temporary decline in the strength of its own protectionist lobby. The result was the Reciprocity Treaty, in effect a sort of proto-NAFTA. The Canadian colonies and the United States removed tariffs on a large number of raw materials, especially food stuffs and wood; fisheries access rights were extended; and navigation rights were increased to the Great Lakes and the St Lawrence. The result contributed to a remarkable doubling of trade over the following decade.

The treaty was abrogated after the Civil War, and attempts to revisit an arrangement were variously hampered. It was only with the 1934 passage of the Reciprocal Tariff Act, giving Roosevelt a freer hand in trade talks as he sought to reverse protectionist tariffs, that Canadian Liberals were able to return to a similar understanding, facilitated by a Whitehall keen to keep the Americans sympathetic in the light of developing European dangers.

Much of the delay on the Canadian side can be ascribed to the reticence of the Canadian Conservatives; they felt that tariff reduction meant increasing US economic power in Canada, and brought with it a risk of political subordination despite the absence of political structures to govern the trade. The reverse is true with the UK and the EU. Ostensibly, that

[10] On Monti II (which faced issues within the Council, and which in any event was already in the hands of the ECJ); and over the European Public Prosecutor.

association is an arrangement to facilitate trade – the UK joined the European Economic Community after all. It is not of course a Free Trade arrangement, but a customs union with a common external tariff wall, rather more like the Imperial Preference system that American trade negotiators were so keen to breach in 1854 (only without a Victorian WTO counterpart to keep maximum permitted tariff thresholds down). In any event, unlike the Reciprocity deal, the EU trade deal is accompanied by an alarming circus of political baggage which generate both physical and constitutional additional costs.

As a strange aside, the terms upon which the UK joined the future EU in 1973 are not wildly far off the terms on which Ukraine has latterly reached in signing a Deep and Comprehensive Free Trade Agreement (DCFTA). While the UK is trapped within the EU, the Ukraine appears to have joined the EEC.

But in any event, both the DCFTA and the EU extend significantly beyond Reciprocity, a model as we shall see that appears to be more associated with the New World.

The Example of Sovereignty Association

> *Comment cette formule des États associés se situe-t-elle dans la perspective de ce qu'on appelle les différentes options politiques offertes aux Canada français à l'heure actuelle? Le titre de cet exposé le proclame déjà: la formule des Étas associés est une formule d'indépendence.*
>
> François-Albert Angers, L'Action nationale, June 1965, pp959-976

It would be a shame before moving off the Canadian experience to neglect a brief word on an aspect of constitutional history that generated some significant alternative modelling.

For the first half of the twentieth century, Quebec's separatist movement was based on nationality, language, culture, and religion. It gradually came to reject the prospect of generating a wider *canadien* nation: assimilation meant that the boundaries of an independent 'Laurentie' would have to be centred on the existing borders of the province of Quebec.[11] Other features of the movement adapted in tandem with the realities of Quebec's industrialising society. What still remained unresolved was the nature of the transition. By the mid-1960s, the dominant argument was no longer one of seeking straight independence but a more restricted shift, taking the form of "a sovereign Quebec within a Canadian economic union" (a perspective not unfamiliar perhaps to those engaged within

[11] Though co-terminous francophone populations in the Maritimes and eastern Ontario could be agglomerated, and the borders of Labrador remained hotly contested.

the recent Scottish vote). Not everyone was happy with this approach, but it appeared to offer the greatest chance of delivering a majority in favour.[12]

The success of Quebec's souverainistes in the 1976 provincial elections saw the Parti Québécois in power under René Lévesque, seeking a referendum mandate to put this into practice. The principle that was turned to was that of Sovereignty-Association, or Souveraineté-Association. In practical terms, this meant the continuation of a common monetary system. The Bank of Canada would be broken up into new institutions, such as a central monetary authority which would manage the exchange rate (sovereign debt, however, would be up to constituent elements to manage).

The plan also included a free-trade zone and a common external tariff, with the right for agricultural tariffs to be reserved. There would be free movement of goods and people, plus terms for jobs and immigration. Disputes would be settled by a joint panel. The system would be managed by a secretariat of experts, and a court of justice with equal numbers of judges with operational oversight of the treaty.

The plan as we know was rejected in a referendum; a second referendum in 1995 (on vaguer and even looser terms) also failed, though much more narrowly.

At first sight from a UK perspective, the concept of Sovereignty-Association looks back to front.[13] The province would be dropping its political affiliation but keeping its currency union; as we have seen with the Euro, and as examples of currency unions across history remind us, for them to work a considerable measure of political cooperation is required, down to the pooling of welfare and regional development budgets.

This anglocentric interpretation of course overlooks the starting point, involving two centuries of integrated status; the demand for a parity of representation in a partnership despite it being far from economically equal; a measure of economic continuity for the business community through not dropping the Canadian Dollar for the *Piastre canayen*; and an awareness that, geographically as a wedge, Quebec had RoC over a barrel.

The fact that the referendum was rejected was probably more of a marker of greater Canadian loyalties than of a sense of economic uncertainty. The 1995 result in particular – rejected by 49.4/50.6 (and by a margin smaller than the number of spoiled ballots) – should alert us to the principles at play. If a province of 7m (today 8m) can consider itself capable of striking out and becoming an independent nation, despite being right on the doorstep of the

[12] Though less frequently explored, it also offered a reduced chance of the Rest of Canada (RoC) simply fragmenting and joining the United States, also recognised as a threat by souverainistes as it would remove the one remaining counterpoint to a single anglo saxon cultural bloc.

[13] The authors of the White Paper setting it out were singularly ill-informed about the long term direction of the EEC, following the UK FCO line of the 1970s. This stance, however, suited the purpose of the authors as the EEC model of an economic alliance did not at that time thus constitute a long term threat to 'essential sovereignty'. It is difficult to see that interpretation being repeated today.

powerhouse economy of the United States, the UK is surely capable of stepping back from a far less integrated union and just continuing with the trade.

> *Dans l'histoire des peoples comme dans la vie des individus, surviennent des moments décisifs.*
>
> *Rien de plus naturel.*
>
> *Vivre, en effet, c'est choisir; et il n'y a pas de progress sans action, sans effort, sans changement. Pour progresser, il faur évoluer, en relevant avec succès les défis qu'apporte le temps.*
>
> *Ces moments décisifs sont rares. Heureusement, pourrait-on dire, car ils s'accompagnent presque toujours d'une certaine angoisse. Même quand le chemin nouveau qui s'offre au carrefour est bien plus prometteur que l'ancien, d'instinct, l'on est d'ordinaire porté à en exagérer les embûches. Et, naturellement, la peur du changement fait chercher des attraits inédits au vieux sentier sans horizon.*
>
> *Pour réussir, il faut surmonter la crainte.*
>
> La nouvelle entente Québec-Canada
> Proposition du gouvernement du Québec
> pour une entente égal à égal:
> la souveraineté-association
> Quebec Government, 1979

In the Nation is vested …

Modern Mexico has variously been a colonial province, a constitutional monarchy (very briefly), a republic, an autocracy, an Empire, and a dictatorship. The constitutions of 1857, decentralising a militarily defeated state into federalism, and 1917, drafted in the midst of a revolution, are the most relevant to us here.[14]

The Mexican model was far more directional than others. It sought to set new boundaries and confirm evolving social trends, particularly with respect to the role and power of the Church, over workers' rights, and schooling. The Convention on the Future of Europe thus provides a comparison of sorts, where delegates competed with each other to expand EU competences to address pet policy areas.

The Common Fisheries Policy (CFP) would get short shrift from Mexican lawyers. Article 27 declares, "In the Nation is vested the direct ownership of all natural resources of the continental shelf and the submarine shelf of the islands." In contrast with the principle of fundamental rights applied in the EU, Mexican citizens (Article 31) also have express

[14] They were amongst those studied by this author when advising a delegate to the Convention on the Future of Europe.

"obligations", including seeing that their children are properly educated. Quite contrary to the entire system of governance of the EU, chary post-colonial Mexico declares that "Foreigners may not in any way participate in the political affairs of the country" (Article 33).

Ultimately, Mexico's constitution is founded upon the reality of a generally homogenous people, and the prospect of armed revolt slicing territory off and becoming another small Central American Republic. It is about devolving and managing power to maintain a generally cohesive whole, for a geographically large area, with a back history of power struggles. In this regard is does not supply a wide-ranging set of parallels for the EU whose component elements have very different starting points. But we might focus on one: the vocabulary of sovereignty.

The Mexican federal system emphasises this. Article 40 states,

> *It is the will of the Mexican people to organize themselves into a federal, democratic, representative Republic composed of free and sovereign States in all that concerns their internal government, but united in a Federation established according to the principles of this fundamental law*

The definition of sovereignty is however subsequently clarified. "The national sovereignty resides essentially and originally in the people," and that sovereignty operates across the various levels of what amounts to a single government and therefore nation.

Supporters of the EU describe it in terms such as that of an "association of sovereign states". This is precisely the language used in the Mexican system. We might take the example of Oaxaca, which has possibly the highest proportion of indigenous peoples as its residents. It styles itself the *Estado Libre y Soberano de Oaxaca* – both free and sovereign. How does that square with being a part of Mexico? Article 1 sets that out straight from the outset;

> *El Estado de Oaxaca es parte integrante de los Estados Unidos Mexicanos y es libre y soberano en todo lo que concierne a su régimen interior*[15]

Its sovereignty lies in being able to run its internal affairs, as set out of course in the clauses to follow and subject to the Mexican constitution. The national constitution itself also describes the states in those self same terms, and crucially (Art 124) it also declares that powers not assigned to the centre fall to the states to employ. The country is not after all called Mexico, but *Estados Unidos Mexicanos*.

So the constitutional theory went. The flaw came though in its practical application. For seventy years after the constitution was formed, the country was essentially a one-party

[15] The Oaxaca state constitution can be read at <http://www.ieepco.org.mx/biblioteca_digital/legislacion/CPEO.pdf> (Spanish). (The caveat attached to article 1 appears to clarify what is considered state territory in the context of some dispute.)

state. Moreover, state governments were heavily dependent on financial settlements imposed by Mexico City. This in turn generated an alternative federal structure – loyalty to a top-down political hierarchy, continuing downwards from state level into the key building blocks of the municipality.

In recent years with greater plurality has come an element of opening up and clearer distinctions across the hierarchy of powers. President Zedillo for instance devolved much of the management of education to the states. Focus today now falls on devolving revenue raising powers, after which other competences will naturally follow. Aspirationally, this contrasts with the direction of travel that the EU is finding itself heading in, where the default means more powers to Brussels in the name of increased harmonisation.

To dwell together in unity

Space, and a reduced relevance, preclude delving here into the semi-continental constitution that apples to federated Brazil. But we might usefully briefly turn to another American federation whose failure is instructive.[16]

In 1958, the West Indies Federation brought together ten territories that were in the process of defining the nature and structure of their emerging independence. These were Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, St Kitts-Nevis-Anguilla, Saint Lucia, St Vincent, and Trinidad and Tobago (which hosted the federal capital). It was far from the first attempt at politically uniting these territories: such a move had triggered riots in Barbados in 1876, while the Windwards and Leewards had in the past seen governor overlap. However these measures had been informal and generated only tepid degrees of pan-Caribbeanism.

The Federal government was headed by an Executive Governor-General, appointed by Britain. A House of Representatives chose from its number a Prime Minister, who then picked a cabinet. The Governor General presided over a Council of State, largely his nominees, which acted as the core body (this was soon dispensed with). There was also a Senate.

Like the early EEC, development was approached gradually. Issues under consideration included the levying of direct federal taxes, regional aid, transport, defence, a distinct federal bureaucracy, further shared institutions of Higher Education, all within a customs union. Developing most of these met with opposition from participants. On the issue of revenue alone, Jamaica's stance of a minimalist government relying on tariffs was very different from Trinidad and Tobago's quest for a significant customs union, common

[16] It underpinned the later development of Caricom as well.

currency, strong central bank, free movement of the workforce, income tax, and regional aid.

These positions were insuperable; the withdrawal of Jamaica removed the major component element involved, and the Federation was dissolved in 1962.[17]

The Jamaican position carries an odd echo of the modern debate in Europe over a similar clash in visions. In the words of a later observer,

> Doomed from the start by lukewarm popular support, the federation quickly foundered on the islands' uncompromisingly parochial interests, especially those of the principal participants, Trinidad and Tobago and Jamaica. The former would not accept unrestricted freedom of movement; the latter would not accept a binding customs union. On September 19, 1961, some 54 percent of the Jamaican electorate voted to end their participation. It was the lowest popular vote in any Jamaican election, but the government accepted the decision and initiated the plans to request complete independence for the state.[18]

Rejecting federalism, the individual islands stepped away from forming a customs union as part of a bloc and aimed for national independence instead.

[17] Its archives are held at a legacy institution, the University of the West Indies, in Barbados.
[18] *The Modern Caribbean*, Ed Franklin Wright and Colin Palmer, University of North Carolina Press, 1989

Part 2: Intergovernmentalism, Americas Style

The European Union does not sit in a vacuum. It fits into a mosaic of international, regional and global bodies. Many but not all of them are associated with the United Nations. There are other regional entities such as the Council of Europe; but also alternative trade blocs and trade associations such as EFTA, CEFTA, EEA, the Eurasian Customs Union, not to mention a number of trade bilaterals.

The concept of there being a manichean choice to EU association, either in as a member or frozen out, is a myth. There are no fewer than 42 types of trade arrangement that the Commission has established with third parties. Of these only four involve EU membership.[19]

Looking at trade developments in the Americas, the wider range of choices on offer between trading states becomes particularly clear. We begin with NAFTA, the North American Free Trade Agreement.

Trilateralism

When in 1994 the governments of the USA, Canada and Mexico resolved to establish a trading area, it was not to the EU model that they turned. Rather than develop a system of proto-governance and of supranational management, they agreed a light structure whose purpose was focused simply on cutting tariffs and reducing Non-Tariff Barriers (NTBs) to both trade and investment. It has been successful in that aim.

It has, for example, been able to agree a solution to the issue of 'origination', setting terms on 'Rules of Origin' that define which good qualify as being made in NAFTA states and therefore gain preferential tariff status, and which have only received minimal processing and so do not. This in itself reminds us that issues over defining value-added work can be resolved without EU membership, such as can affect interdependent business sectors including the European car industry and the production and use of foreign-made component parts. Those familiar with E agreements will be familiar with that reality already; the EU already has a developed format for determining and regulating the principles known as 'cumulation', and so the prospects of interrupted trade after BREXIT between the UK and the EU rump are highly overblown.[20]

More striking is the approach NAFTA took to the Free Movement of People: it doesn't exist. Chapter 16 permits the temporary cross-border movement of business travellers, if they fall into one of four categories - business visitors, traders and investors, intra-company transferees, and professionals. This is in striking contrast to the situation confronting the

[19] I cover the full list elsewhere, in Appendix E of *Change or Go*, Business for Britain, 2015.
[20] Appendix C of *Change of Go* covers the EU NTBs, the existing types of cumulation, and Preferential Rules of Origin.

UK. Indeed, it might be said that NAFTA was in part set up from a US perspective precisely to counter migrant issues, by reducing the economic pull across the southern border by strengthening the Mexican economy and generating jobs there, thus obviating the need for unemployed workers to become economic migrants.

We might also compare NAFTA's track record with the mythology surrounding EU membership, such as the nonsensical claim that three million jobs (the figure used alternates) depend on UK membership. In Canada's case, the economy is vastly more heavily dependent on exports than the UK's. One in five jobs is considered to be part linked to international trade, particularly trade with its near neighbour. Mexico has embraced NAFTA to shift from a petroleum-centred export model to a major exporter of manufactured goods. Neither, however, pushed for an EU model of governance. Instead, bolt-ons were settled as side-agreements, including the North American Agreement on Environmental Cooperation (NAAEC) and the North American Agreement on Labor Cooperation (NAALC). The latter covers issues such as on occupational safety and health, employment and job training, labour law, and workers' rights and productivity. But it does so on a budget that is surpassed by the entertainment allowance of the European Commission.

NAFTA was of its era though, and as the Heritage Foundation has explored in an important paper, is probably not the best model to use to expand into a larger free trade area involving a post-BREXIT UK.[21] Predating the internet, it doesn't cover services sufficiently; the negotiations with the NAFTA Commission could be complex; and it might open up the original deal again. Developments in global trade in the past two decades have cut global levels of tariffs and increased focus on reducing NTBs, addressing the founding rationale behind the original tripartite deal. Outside the EU, the UK would instead find it speedier and simpler to seek a bilateral deal with NAFTA states.

The traditional State Department approach, currently followed by the Obama Administration, prefers to see the UK as a supporter of Anglo-Saxon free trade principles from a position of being trapped within the EU – precisely what de Gaulle feared as the 'Trojan Horse' approach and which prompted two of his vetos. As Heritage points out, "this is a shortsighted and destructive approach, and it rests on several fallacies." A point the think tank could have further added was that on joining the EEC, the UK Government expressly made an undertaking to act as a *communautaire* partner and not operate as the spoke in the wheel that the State Department is looking for. Whitehall may not have always blindly fulfilled Ted Heath's pledges in this regard, but it has not been the brake on

[21] "Freedom from the EU: Why Britain and the U.S. Should Pursue a U.S.–U.K. Free Trade Area", Theodore Bromund and Nile Gardiner, Heritage Foundation (online at <http://www.heritage.org/research/reports/2014/09/freedom-from-the-eu-why-britain-and-the-us-should-pursue-a-usuk-free-trade-area>)

European political integration a reticent partner could have been (nor would it be in the UK national interest to play that role given the abolition of most vetos).

But if the EU is not the answer and NAFTA not for the UK a solution either, Heritage concludes a bilateral free trade area could be.

> *In short, a U.S.–U.K. free trade area, if it went beyond eliminating tariffs to addressing areas in which both nations share interests (promoting investment and trade in services and defending intellectual property) and have a natural complementarity (in particular, agriculture and energy), would have real value. It would not revolutionize the economy of either nation, but both parties are well positioned to benefit from reducing existing restrictions on trade and from concluding an agreement that would strengthen their already formidable positions as financial and technological innovators.*
>
> *But the most important facet of a U.S.–U.K. free trade area is not what it would do now, but what it would do in the future. Simply put, it would significantly insulate the U.K. from the damaging effects of further EU interference by aligning it clearly with the U.S. as a nation outside the EU's regulatory reach. This would not just benefit the U.K. It would also help the U.S. by improving the ability of the most important foreign investor in the United States to continue to serve as both a source of investment and a recipient of it.*

In the name of their peoples

EU activists infatuated by the model of EU integration might usefully reflect on the example of the Organisation of American States (OAS). The origins of that institution date back to a conference in 1889. Increased formalisation in the post-war years did not, however, mirror the pattern of the EEC, but could be more closely compared to the intergovernmentalism of the Council of Europe. Its charter affirms it is a regional body of the United Nations.

Unlike with respect to EU membership, countries did not have to attain a particular level of economic, democratic or administrative standardisation in order to qualify. The disparate nature of the participating states of course made a mark on the type of agreement reached. Rather than consider issues of social variation for example, the OAS Charter refers to the reality of absolute poverty amongst its members. Instead of pushing for a common system of management oversight in the form of an 'American Commission', Article 35 states that Member States should "refrain from practicing policies and adopting actions or measures that have serious adverse effects on the development of other Member States." Unlike the Council of Europe but like the EEC, economic integration is identified by this body as a strategic objective: Article 42 states that,

> *The Member States recognize that integration of the developing countries of the Hemisphere is one of the objectives of the inter-American system and, therefore, shall orient their efforts and take the necessary measures to accelerate the integration process, with a view to establishing a Latin American common market in the shortest possible time.*

However, the OAS does not itself set up a 'common market' (by which is meant a customs union), much less the administration associated with one. That, as we shall subsequently see, is left to member states to variously and very differently approach as they see fit. Similarly, the powers associated with the General Assembly, and the Meeting of Consultation of Ministers of Foreign Affairs, are intergovernmental rather than proto-federal. It does not need directorates-general and a budget of billions to organise a Pan American Health Organization (PAHO), Inter-American Children's Institute (IIN), Inter-American Commission of Women (CIM), Pan American Institute of Geography and History (PAIGH) or Inter-American Institute for Cooperation on Agriculture (IICA).

There is another aspect though that contrasts significantly with European continental development. Like the Council of Europe (CoE) which had its own traumatic back history in this area, the OAS identified human rights as an issue of concern that needed to be recognised and defended. Article 45 onwards set out a series of "principles and mechanisms" relating to equality that a CoE delegate would swiftly recognise, including rights to fair wages, trades union membership, legal aid and so on.

Yet what is particularly striking is the politics of implementation, and the very different anglo-saxon attitudes towards human rights as they are separately applied through OAS and CoE courts.

The Inter-American Court of Human Rights was set up to provide a measure of judicial oversight of the application of OAS principles in this area, to a continent occasionally peppered with death squads. Latterly, with the spread of liberal democracy, it appears to be following the trend of Strasbourg judges and stepping away from a pure focus on matters of life and limb, and more into questions of morality and custom, for example over the right of access to IVF.

It is the response of both Canada and the United States to the key agreement policed by the court that is remarkable. While the OAS treaty itself has a small list of rights set out within it, the central text is actually another OAS agreement, the American Convention on Human Rights. Both Canada and the US have declined to sign it. Both have instead expressed confidence in the ability of their supreme and regional courts to apply human rights principles without it. In this they are of course joined by Antipodean Common Law counterparts Australia and New Zealand, which do not have an OAS in their region. Their position is notably different from that of the UK, which is currently lumbered with the European Court of Human Rights as fettered through the Human Rights Act 1998.

Other papers (and indeed Conservative Party manifestos) have set out the damage that this causes to the UK and we need not delve into them again here.[22] The central point is that four great democracies that employ English legal systems are able to quite reasonably maintain themselves without having to subordinate themselves to an external human rights court. It demonstrates that the UK could quite properly extricate itself from the ECHR and its increasingly socio-political lobby-fodder agenda.

A range of economic blocs

NAFTA is not the only economic model on offer in the New World in opposition to the direction of the European Union. While none are as far reaching geographically as the OAS, there are in fact a number of groupings where neighbours have decided to integrate economically and politically to very varying degrees. Not all have survived and some have morphed into others, but the range itself proves the lie to the argument of inevitability over the political unification of any part of the world, even where common languages and common histories are in play.

ACP: African, Caribbean, and Pacific Group of States
Founded: Georgetown, 1975
Countries: 48 countries from Sub-Saharan Africa, 16 from the Caribbean and 15 from the Pacific.
Institutions: Secretariat, Secretary-General, Council of Ministers, Committee of Ambassadors, Parliamentary Assembly.
Priorities: Sustainable development, poverty reduction a matter of priority; coordination of the activities of the ACP Group in the framework of the implementation of ACP-EC Partnership Agreements; peace and stability in a free and democratic society.
Objectives: "establishing a new, fairer, and more equitable world order"; generating a counterbloc to the EU across its agreements with developing economies.
Further details: http://www.acp.int/

ACS/AEC: Association of Caribbean States
Founded: Cartagena, 1994
Countries: Antigua and Barbuda, Bahamas, Barbados, Belize, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, El Salvador, Grenada,Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Surinam, Trinidad and Tobago, Venezuela. There are also Associate Members, Founding Observers, Observers (of which the UK is one), Observer Organisations (including the EU), and Social Partners.
Institutions: Ministerial Council, Secretariat.

[22] See for example my costings in *Britain and the ECHR*, TaxPayers Alliance, 2010 (<https://d3n8a8pro7vhmx.cloudfront.net/taxpayersalliance/pages/329/attachments/original/1422620563/echr_(1).pdf?1422620563>)

Priorities: The preservation and conservation of the Caribbean Sea; sustainable tourism; advancing economic integration and intra-regional trade and investment; natural disasters; infraregional air and maritime transport.
Objectives: “Creating an enhanced economic space in the region” - the Greater Caribbean Zone of Co-operation.
Further details: http://www.acs-aec.org

ALADI: Asociación Latinoamericana de Integración
Founded: Montevideo, 1980
Countries: Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Panama, Paraguay, Peru, Uruguay and Venezuela. There are also 18 observer states (including Switzerland) and ten observer institutions (including the European Commission).
Institutions: Council of Ministers, Evaluation and Convergence Conference (standing intergovernmental technical body), General Secretariat, Committee of Representatives (standing political body), Working Groups, Auxiliary Bodies (thematic groups).
Priorities: “Desgravación arancelaria y promoción del comercio; complementación económica; comercio agropecuario; cooperación financiera, tributaria, aduanera, sanitaria; preservación del medio ambiente; cooperación científica y tecnológica; promoción del turismo; normas técnicas; y muchos otros campos” (trade, finances, customs, health, environment, R&D, tourism, technical standards, and other treaty areas).
Objectives: “La creación de un área de preferencias económicas en la región, con el objetivo final de lograr un mercado común latinoamericano” (regional tariff reduction and ultimately a Latin American common market).
Further details: http://www.aladi.org/sitioAladi/index.html

ALALC: Asociación Latinoamericana de Libre Comercio (English: LAFTA)
Founded: Montevideo, 1960. Superseded by ALADI which it became in 1980, and some members span into the Andean Pact.
Countries: Argentina, Brazil, Chile, Mexico, Paraguay, Peru, Uruguay; later joined by Colombia, Venezuela, Ecuador and Bolivia.
Institutions: Executive Committee, Secretariat, Council of [Foreign] Ministers, Conference.
Priorities: Gradual reduction of trade restrictions and tariffs, diversification of exports, creation of an international payment and credit system.
Objectives: Establishment of a free trade zone.

ALBA: Alianza Bolivariana para los Pueblos de Nuestra América
Founded: Quebec, 2001 (in the margins of another summit).
Countries: Antigua and Barbuda, Bolivia, Cuba, Dominica, Ecuador, Nicaragua, Saint Lucia, Saint Vincent and the Grenadines, and Venezuela.
Institutions: Political Council, Social Council, Economic Council, Social Movements Council, Bank; PetroCaribe (Venezuelan oil), PETROSUR (energy alliance), TELESUR (media conglomerate), plans for an arbitration court and common military.
Priorities: Political integration, poverty, quality of life, opposition to ALCA, anti-Americanism.
Objectives: La unidad de Nuestra América en las áreas de formación ideológica, comunicación, organización y movilización (i.e. a Marxist programme of political integration).

Further details: http://alba-tcp.org/en

FTAA/ALCA: Free Trade Area of the Americas
Founded: Miami, 1994
Countries: 34 American states recognised as multi-party democracies.
Institutions: Trade Negotiations Committee (TNC), nine negotiating groups, three committees/groups for horizontal issues, technical committee, ad hoc group of experts, Tripartite Committee, Administrative Secretariat.
Priorities: To contribute to raising living standards, improving working conditions of all people in the Americas, and better protecting the environment. Exclusion of Left Wing autocracies.
Objectives: To progressively unite the economies of the Americas into a single free trade area.
Further details: http://www.ftaa-alca.org/

Alianza del Pacífico
Founded: Lima, 2011
Countries: Chile, Colombia, Mexico, Peru. Large number of observer countries.
Institutions: Council of Ministers, rotating presidency.
Priorities: To move progressively towards the free movement of goods, services, resources and people, and overcome socioeconomic inequality.
Objectives: Become a platform of political articulation, economic and commercial integration and projection to the world, with emphasis on the Asia-Pacific region.
Further details: https://alianzapacifico.net/en/

APEC: Asia-Pacific Economic Cooperation
Founded: Canberra, 1990.
Countries: Canada, Mexico, Peru, USA, Chile, and sixteen Asian states.
Institutions: Secretariat, Ministerial Meetings, Business Advisory Council, Senior Officials Meetings, Secretariat, four committees, Working Groups, Dialogues, Fora.
Priorities: Promoting and accelerating regional economic integration, encouraging economic and technical cooperation, enhancing human security, and facilitating a favourable and sustainable business environment.
Objectives: To build a dynamic and harmonious Asia-Pacific community by championing free and open trade and investment.
Further details: http://www.apec.org/

CAFTA-DR: Dominican Republic-Central America FTA
Founded: 2006.
Countries: USA, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Dominican Republic.
Institutions: Trade Capacity Building Committee. Feed in from SIECA.
Priorities: Cutting tariffs.
Objectives: Stronger trade and investment ties, prosperity, and stability. Free trade in goods and services (though not as standardised as under NAFTA).
Further details: https://ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta

CAN: Comunidad Andina
Founded: Cartagena, 1969.
Countries: Bolivia, Colombia, Ecuador, Peru.
Institutions: Presidential Council, Council of Foreign Affairs, Commission of the Andean Community, General Secretariat, Andean Parliament, five-member Court of Justice, Latin American Reserve Fund, Andean Development Corporation, business and labour advisory councils.
Priorities: Citizen participation, commercial integration, fiscal integration, borders, social welfare, tourism, security, culture, energy, institutional development.
Objectives: Establishment of an institutionalised customs union following the EC model of integration.
Further details: http://www.comunidadandina.org/

CARIFTA: Caribbean Free Trade Association
Founded: Dickensen Bay, 1965. Became CARICOM in 1973.
Countries: Antigua and Barbuda, Barbados, Guyana, and Trinidad and Tobago.
Institutions: Commonwealth Caribbean Regional Secretariat, Caribbean Development Bank (CDB).
Priorities: Removing tariffs and quotas on goods produced and traded within the area, while setting up rules to protect SMEs.
Objectives: Increasing, diversifying, and liberalising trade, and ensuring 'fair' competition.
Further details: http://www.caricom.org/jsp/community/carifta.jsp?menu=community

CARICOM: Caribbean Community
Founded: Georgetown, 1973 (formerly CARIFTA).
Countries: Barbados, Guyana, Jamaica, Trinidad and Tobago, Antigua and Barbuda, St. Kitts and Nevis, The Bahamas, Surinam, Haiti. Associate members are the British Virgin Islands, Turks and Caicos Islands, Anguilla, Cayman Islands, and Bermuda.
Institutions: Quasi-Cabinet; Assembly of Caribbean Community Parliamentarians (ACCP); Caribbean Court of Justice (CCJ); Caribbean Disaster Emergency Response Agency (CDERA); Caribbean Meteorological Institute (CMI); Caribbean Meteorological Organisation (CMO); Caribbean Environmental Health Institute (CEHI); Caribbean Agricultural Research and Development Institute (CARDI); Caribbean Centre for Developmental Administration (CARICAD); the Caribbean Food and Nutrition Institute (CFNI); Caribbean Regional Organisation for Standards and Quality (CROSQ) and the Caribbean Community Climate Change Centre (CCCCC). Associate Institutions are the Caribbean Development Bank (CDB), the University of Guyana (UG), the University of the West Indies (UWI), the Caribbean Law Institute and its Centre (CLI/CLIC) and the Secretariat of the Organisation of Eastern Caribbean States (OECS).
Priorities: Full use of labour; full exploitation of the other factors of production; competitive production leading to greater variety; quality and quantity of goods and services.
Objectives: Economic integration, co-ordination of foreign policy, and functional co-operation in areas such as health, education and culture and other areas related to human and social development. CARICOM turned the free trade association of CARIFTA into a customs union involving a measure of revisited political union.
Further details: http://www.caricom.org/

CELAC: Community of Latin American and Caribbean States
Founded: Caracas, 2011
Countries: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Ecuador, El Salvador, Granada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, St. Lucia, St. Kitts and Nevis, St. Vincent and Grenadines, Trinidad and Tobago. Uruguay and Venezuela.
Institutions: Rotating presidency (and staff), Troika, National Coordinators.
Priorities: Greater cooperation between Latin American and Caribbean states, greater commercial interaction, greater freedom of movement of capital and of people.
Objectives: From the 2008 summit that led to its establishment – "la CALC parte de la premisa de que la integración política, económica, social y cultural de América Latina y el Caribe es una aspiración histórica de sus pueblos y es condición necesaria para lograr el desarrollo sostenible y el bienestar social de los países que la conforman" (ie the objectives are political, economic, social and cultural integration).
Further details: http://www.celacinternational.org/

Comunidad Iberoamericana
Founded: Guadaljahara, 1991. It today folds together a number of organisations of greater antecedence. OEI, the science/culture/education element, was originally established in Madrid in 1949; OISS followed the year after.
Countries: 23 Hispanophone and Lusophone countries, of which three in Europe (Spain, Portugal and Andorra). Membership may vary marginally across the institutions. Equatorial Guinea, an African state, is one non-New World country that has been increasing its level of engagement.
Institutions: Conferencia Iberoamericana de Jefes de Estado y de Gobierno, Secretaría General Iberoamericana (SEGIB), Secretaría Pro Témpore, Meetings of Foreign Ministers, Conferences of Ministers of Justice (COMJOB), Organización de Estados Iberoamericanos para la Educación, la Ciencia y la Cultura (OEI – several constituent elements including a General Assembly, General Secretariat and Directing Council), Organización Iberoamericana de Juventud (OIJ – distinct General Secretariat), Organización Iberoamericana de Seguridad Social (OISS – various institutions including a Congress, Commission, standing and regional committees, working commissions and executive organs), Strategic Direction Committee (CoDEI).
Priorities: Strengthen historical, cultural, social and economic ties, support diversity, coordination with other regional American groupings.
Objectives: Political cohesion internationally ('Latin Commonwealth').
Further details: http://segib.org/

ECCM: Eastern Caribbean Common Market
Founded: Grenada, 1968.
Countries: Antigua, Dominica, Grenada, Montserrat, St. Kitts/Nevis, Saint Lucia, St. Vincent and the Grenadines.
Institutions: The Authority (Heads of Government), Foreign Affairs Committee, Defence and Security Committee, Economic Affairs Committee, Central Secretariat.
Priorities: Economic integration, mutual support of sovereignty, measure of harmonisation in foreign policy.

Objectives: Economic and social development, subsequently to act as a bloc in the context of CARICOM.

GRIO: Rio Group
Founded: Rio de Janeiro, 1986.
Countries: Argentina, Brazil, Colombia, Mexico, Panama, Peru, Uruguay, Venezuela, Bolivia, Ecuador, CARICOM, Chile, Paraguay, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Dominican Republic, Belize, Cuba, Haiti, Guyana, Surinam.
Institutions: Troika, rotating secretariat, ministerial summits, National Coordinators.
Priorities: Cooperation in any area deemed of multilateral interest.
Objectives: Political coordination.
Further details: Summit presidency.

MCCA: Mercado Común Centroamericano (English: CACM)
Founded: Managua, 1960, expanding a new Treaty of Economic Association (TEA) between three parties.
Countries: Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica. Panama is an observer.
Institutions: Economic/Monetary Council, Secretary General, Central American Bank for Economic Integration.
Priorities: Protectionism versus Asian cheap imports esp textiles. Four of the members signed the **Central America-4 (CA-4) Border Control Agreement** in 2006, a sort of micro-Schengen.
Objectives: Support of local manufactures, establishment of a customs union, expansion into NAFTA.
Further details: Effectively now a component element of SICA.

MERCOSUR/MERCOSUL: Mercado Común del Sur
Founded: Asuncion, 1991.
Countries: Argentina, Brazil, Paraguay, Uruguay, Venezuela, Bolivia.
Institutions: Common Market Council, Common Market Group (the Executive), Business Commission, Mercosur Parliament, Economic-Social Consultative Forum, Secretariat, Court of Revision, High Representative, Structural Convergence Fund, Human Rights Institute, Social Institute, Social Outreach Unit, Secretariat.
Priorities: Economic integration, accompanied by migration, labour, cultural and social policies.
Objectives: A customs union facilitating political union.
Further details: http://www.mercosur.int/

OCTA: Organização Tratado de Cooperação Amazônica
Founded: Brasilia, 1978.
Countries: Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Surinam and Venezuela.
Institutions: Permanent Secretariat, Coordinating Offices (thematic).
Priorities: Indigenous Affairs, Environment, Health, Transport, Infrastructure, Communication, Tourism, Science, Technology and Education.
Objectives: Improving links in infrastructure, transport and communications across Amazon regions, particularly now in the context of MERCOSUR.
Further details: http://otca.info/portal/

ODECA: Organización de Estado Centroamericanos (Organization of Central American States)
Founded: San Salvador, 1951. Later developed into MCCA.
Countries: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.
Institutions: Conference of Heads of State, Court of Justice, Secretary General,
Priorities: Developing/maintaining a commonality of identity, and seeking common solutions of problems of an economic/cultural/social nature.
Objectives: Full political integration.
Further details: Organisation not extant.

OECS: Organisation of Eastern Caribbean States
Founded: Basseterre, 1981. Merged WISA and the EECM.
Countries: Antigua and Barbuda, Dominica, Grenada, Montserrat, St Kitts and Nevis, St Lucia and St Vincent and the Grenadines. Anguilla and the British Virgin Islands are associate members.
Institutions: OECS Authority, Council of Ministers, Assembly, Economic Affairs Council, Commission, Secretariat, Central Bank (common currency), Supreme Court.
Priorities: Economic union, making possible the creation of a single financial and economic space within which goods, people and capital move freely, monetary and fiscal policies are harmonized and countries continue to adopt a common approach to trade, health, education and environment, as well as to the development of such critical sectors as agriculture, tourism and energy.
Objectives: Legislative union.
Further details: http://www.oecs.org/

SELA: Sistema Económico Latinoamericano y del Caribe
Founded: Panama, 1975.
Countries: Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Chile, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Surinam, Trinidad and Tobago, Uruguay and Venezuela.
Institutions: Latin American Council, Permanent Secretariat, Working groups (Comité de Acción).
Priorities: Development, leadership support, expertise, social development, macroeconomics.
Objectives: General mechanism for multilateral exchanges.
Further details: http://www.sela.org/

SICA: Sistema de la Integración Centroamericana
Founded: Tegucigalpa, 1991. Developed from the MCCA, itself an offshoot of ODECA.
Countries: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Belize, Dominican Republic. Observers include the EU and the UK.
Institutions: La Secretaría de Integración Económica Centroamericana (SIECA), ministerial council (COMIECO), three directorates.
Priorities: Peace, Liberty, Democracy and Development.
Objectives: “La construcción gradual y progresiva de la Unión Centroamericana,” to secure human rights and stable democratic governance.
Further details: http://www.sieca.int/General/Default.aspx

UNASUR/UNASUL (Unión de Naciones Suramericanas)
Founded: Cuzco, 2004. It was a development of the **CSN** (Comunidad Suramericana de Naciones).
Countries: Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Guyana, Paraguay, Peru, Surinam, Uruguay and Venezuela
Institutions: Council of Heads of State and Government, Ministerial Council, Council of Delegates, General Secretariat, Centre for Strategic Defence Studies, South American Institute of Government in Health.
Priorities: Social development, energy integration, infrastructure links, financial integration, residency rights, R&D, public safety, counter-criminality, defence exchanges.
Objectives: Integrating regional processes developed by the Mercosur and the Andean Community.
Further details: http://www.unasursg.org/

WISA: West Indies Associated States
Founded: 1966 With the ECCM, a successor organisation to the West Indies Federation. Subsequently in turn superseded.
Countries: Antigua, Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent.
Institutions: Council of Ministers
Priorities: Economic and political cooperation.
Objectives: Ease colonial transition.

Other examples

Other examples of intergovernmental activity can also be found in a number of initiatives that have emerged from the above. These include the Antilles-French Guiana Regional Centre of the National Institute of Agronomical Research (CRAG/INRA), the Association of Caribbean Universities and Research Institutes (UNICA), the Association of Caribbean University, Research and Institutional Libraries (ACURIL), the Caribbean Association of Industry and Commerce (CAIC), Caribbean Conservation Association (CCA), Caribbean Medical Association (AMECA), Caribbean Shipping Association (CSA), the Regional Economic and Social Research Coordinator (CRIES), the Latin American Faculty of Social Sciences (FLASCO) and the University of the West Indies (UWI).

Lessons to be learned from Regionalism

That proves to be a bewildering list of regional groups, even after stripping away the earlier versions of associations that subsequently developed into something else.

That the Latin American scenarios generate their own lessons as well as following from other case studies in federal development has not been lost on political scientists and students of economic history. The Central American Common Market (MCCA) notably was the subject of the doctoral thesis of the future Business Secretary (and ‘Europhile’ politician) Sir Vince Cable.

He strikingly accepted that some members of this Common Market area gain little from the terms of the arrangement (at the time of research at least). Moreover, he suggested, some would benefit from withdrawal. As the pending Dr Cable observed, and which he has subsequently forgotten in auditing the UK's own membership of the EU,

> *The most important specific hypothesis which is tested (and which no other major study has looked at seriously) is the view that not all members of the Common Market have benefitted from membership, and* [word inserted after viva: *some*] *would gain from withdrawal. The author's findings indicate that Honduras in particular can identify little gain. Much of its regional exporting would take place anyway. Much of its regional importing could be converted quite easily into industries using the national market. Its losses from customs duty remission on regional trade and "trade diversion" are disproportionately great. Above all, the attractions of "growth pole" centres such as San Salvador and Guatemala* [inserted: *for new investment*] *have become cumulative.*

We might assign this glimmer of Euroscepticism to the wild exhuberances of Sir Vince's youth. For ourselves, we can identify eight possible lessons from this array of trade structures.

- **Left wing leaderships prefer protectionist social unions**. The Delors model sits more closely to the principles associated with this approach than it does to the more innovative and economically expanding economic blocs. Which would the UK prefer to apply?

- **Advanced Anglo Saxon economies prefer straight trade deals**. The US and Canada have plumped for trading agreements that do not have extensive and ambitious bureaucracies attached. The UK approach since 1973 after the ditching of EFTA has been to run counter to type. In this respect, countries such as Mexico and Chile are more 'Anglo-Saxon' in their strategic philosophy than the UK currently is.

- **Protectionist countries prefer customs unions**. The EU is a customs union but the UK is not fundamentally protectionist, so this suggests a bad fit.

- **Countries seeking a 'Bolivarist' political union follow the EU model**. They do so for a reason: it has successfully led towards political integration notwithstanding major opposition. Unless the UK wishes to be part of a European Bolivarist state, it should step away from the EU model.

- **There is a greater success at integration where there are cultural similarities**. Those countries that have the greatest cultural and political similarities have integrated the

most successfully and quickly. That should raise questions on the merits and limits of UK participation in the EU integration process, given the intense differences.

- **Microstates and small states have the greatest interests in federalising.** The UK, as a major international power and economy, does not have the same need for politically and economically integrating with its neighbours as, say, Barbados.

- **Continental uniformity is a big ask.** Treaty structures generate a mad Euler diagram for the Americas. The European Commission by contrast prefers an approach of unanimity, and dislikes the Swiss deal, the EEA concept and other bilateral arrangements as administratively they make their tidy lives 'awkward'. The Americas example reminds us that easier for the bureaucracy does not mean better for the democracy.[23]

- **Not all states want to integrate**. The UK can learn from the example of countries such as Chile, which have been happy to reduce trade barriers but have declined to integrate politically. There is nothing obligatory or predestined about the Bolivarean dream, or Jean Monnet's either.

Looking wider: the new dimension in Americas trade talks

> *With CETA, Canada will be the only G-7 country and one of the only developed countries in the world to have preferential access to the world's two largest markets, the EU and the United States—giving us access to more than 800 million of the world's most affluent consumers. This will make Canada the envy of trading nations all over the world and an even more attractive destination for investors and manufacturers looking to benefit from this access. The expanded opportunities for Ontario companies and new investors will lead to more high-paying manufacturing jobs for Ontarians.*
>
> **Foreign Affairs Trade and Development Canada briefing note[24]**

The development of regional trade deals is not the full story; indeed, as some of the alignments show with blocs generating footprints on other continents, even regional arrangements fit into wider patterns and context.

[23] Eurosceptic politician Sir Richard Body supported a model of a 'Europe of Many Circles' (see his book of that name). Multi-institutionalisation means that it has essentially been put into informal practice, but on the wrong continent.

[24] <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/benefits-avantages/on.aspx?lang=eng>

Recent developments involving the economics of Canada and the United States prove this point. We begin with the development of the EU-Canadian partnership, the background to the Canada-EU Trade Agreement or CETA.

Canada of course has long had exceptionally close political and economic ties to Europe; it is just that it has predominantly been through its historic links to the United Kingdom (and to a much lesser extent, cultural ties to France more recently reaffirmed). In 1976, in the wake of UK accession to the EEC and in the context of the shift from Commonwealth trading preferences, Brussels and Ottawa signed an EEC Framework Agreement on Economic Co-operation, a ground breaking development in EEC trade policy. Some areas of political cooperation then followed, but Canada's eye inevitably remained rather focused on its superpower neighbour and the economy with which it was intensely interlocked, the United States.

The process of generating CETA has again now seen the Canadians taking the lead in opening up the EU market to outsiders. This is immensely important. Alongside the Deep and Comprehensive Free Trade Agreement (DCFTA) model being offered to Eastern neighbours of the EU, and the two forms of association generated for EFTA members, it provides a fourth model for close access to the EU's markets without the prerequisites of EU membership. It thus proves the lie that membership of the European Union is required for a country to export to it.

CETA's terms cover precisely those issues that those opposed to UK departure from the EU use as frighteners. As the Commission itself declares, it will remove customs duties, end limitations in access to public contracts, open-up services' market, offer predictable conditions for investors, and preserve copyright and type branding. It removes 98.7% of EU customs duties (the remainder have a transition period of 3, 5 or 7 years), along with many of the Non Tariff Barriers (NTBs) that some claim are an inevitable part of not being an EU member.

Sectorally, that means 100% of the tariff lines on industrial products for both sides will be fully eliminated, with a transition period for automobiles. Cars are a particularly insightful pointer on the measure of this treaty, as the quotas on Canadian vehicles don't cover current export levels but provide for a massive expansion of the number being exported.

Both sides will fully eliminate all tariffs on fisheries products – three quarters of Canadian exports currently are tariff-free under WTO rules. EU exports of wine and spirits will see several key 'behind the border' NTBs dropped and a process begun for further reductions. Existing product quotas will be substantially increased in both directions. Liberalisation will be accompanied by the ending of export subsidies.

What might we pick out from this and the other terms from a UK perspective reviewing alternatives to EU membership?

(i) Agriculture is a negotiation sticking point, but will be a marginal one. The key issues for CETA were dairy, chicken and turkey meat, eggs and egg products; and agreement on geographically-associated food produce. As it happens the UK is already signed up to the latter; and as a net food importer the UK's negotiating position over individual produce is strong. Canadian whisky exports to the EU look set to double under CETA, another pointer for UK spirits.

(ii) The Rules of Origin issue was successfully settled by a compromise. Canada's economy is heavily integrated into the US one, with complex supply chains. CETA addressed this and even allowed for future third party structures to be bolted on. The precedent of the CETA deal means that a country such as the UK which has market supply lines integrated with the continental economy will be able to more easily, especially as European cumulation rules already exist (as we referenced earlier).

(iii) The CETA chapter on TBTs is founded on the WTO Agreement on Technical Barriers to Trade, and operates on a principle of mutual recognition and accreditation. This suggests UK standards, currently EU compliant, would be swiftly recognised, removing the one real potential barrier to UK-EU trade.

(iv) CETA constitutes the most comprehensive trade agreement the EU has ever concluded over services and investment. It contains commitments to redressing discriminatory measures and quantitative restrictions across all sectors, as well as broad regulatory provisions on key sectors such as financial or telecommunication services. These are key UK sectors and this demonstrates deals are achievable outside the EU, in sectors the EU is itself failing to live up to Single Market expectations – so why stay in?[25]

(v) CETA also establishes a framework for the mutual recognition of professional qualifications. UK nationals are currently covered by agreements in this area and the EU is failing to stand up for their existing rights as it is. Future continued participation was already known not to require EU membership, as CETA now confirms.[26]

(vi) Eight existing bilateral investment agreements will be replaced by an improved system of investment protection and investor-to-state dispute settlement which

[25] CETA allows for the public service safeguard, for instance over maintaining the NHS in its current form, permitted under current EU rules but which some suggest is at risk under TTIP.
[26] ECVET requires a Memorandum of Understanding to add a new state; EQAVET includes EEA countries and Turkey. See Chapter 19 of *Change or Go*.

will remove concerns over excessive restrictions on public authorities in their relations with foreign investors.

(vii) Canada has agreed to recognise a number of current UNECE vehicle standards, accompanied by a "forward looking work programme towards regulatory convergence", also taking into account possible EU negotiations with the US. Since the UK uses UNECE standards, this suggests an easier negotiating time in allowing for continued market access post-BREXIT. It also significantly suggests an easier time negotiating a continued UK FTA with Canada.

(viii) CETA includes a dispute resolution mechanism short of turning to the WTO, involving a panel of independent experts. It does not involve a role for the ECJ.

Taken as a whole, CETA reminds us that it is possible to reach a wide-ranging settlement across all the aspects of trade without having to enter into a political union. Of course, CETA does not mean full liberalisation. Some NTBs remain; but this is hardly a problematic precedent for the UK leaving the EU, as Britain would start from the point of full compliance with EU rules so no barriers exist as precursor obstacles to stymie trade talks.

Again, CETA involves quota systems for certain products; but a review of the types of quotas in play point to areas where either the UK counterparts are part of a cross-border processing chain that big European companies will want to see continue, or key export sectors to the UK where the suppliers (particularly continental farmers) risk pricing themselves out of the market place in any tariff or quota war and generating major market gaps for domestic suppliers.

The Reciprocity Principle

The successful conclusion of CETA took place despite it generating fears that it might extend a NAFTA principle - that public authorities may be liable for decisions that adversely affect corporate investment and thus be subject to compensation claims from it. This concern has more seriously hampered negotiations over a counterpart agreement with the United States.

Notably, the original aspiration was to reach an agreement within 18-24 months; this provides a lesson both in the potential realistic target time frame of the UK reaching a new trade deal post-BREXIT, but also of the need to secure a fall back transitional plan if the timetable slips beyond what Article 50 sets out.[27]

[27] Article 50 allows for up to two years notice for denouncing the EU treaties, thus permitting a phase of transition and a period to negotiate the new terms of association from outside the EU. The deadline can be extended if all parties concur. It is also possible, but cannot be guaranteed, that all parties could agree to park

TTIP, the TransAtlantic Trade and Investment Partnership, is still under negotiation and therefore remains a classified set of proposals. The terms are so closely held that MEPs monitoring developments have been subject to stringent safeguards when being allowed access to the working documents.[28] Consequently we do not intend here to provide a clairvoyant commentary, but the example does support the observation once again that membership is not needed for a country to trade or cooperate with the EU.

The agreement will take the form of 24 chapters, covering three areas. The first area relates to market access. These cover trade in goods and customs duties; trade in services; public procurement; and rules of origin. The second covers regulatory cooperation, including TBTs and the oversight of plant health, but also sector by sector issues. A fair amount of this work involves finding common standards. The third area relates to rules, such as over sustainable development, simplifying customs procedures, making life easier for SMEs, encouraging investment, and resolving disputes.[29]

The first area thus covers a number of aspects which the UK would by default already inherit after BREXIT as existing norms, while the mutual reduction of tariffs and obstructions would take place as per any normal trade talks; the second area would already be settled as the UK reaches the standards already; the third area sees TTIP setting the new standards that a future treaty could use as a starting draft.

If TTIP is taking longer than the 18-24 months also originally envisaged it would take to draft it, a UK-EU Trans-Channel Trade and Investment Partnership should in comparison be a lot easier to settle. In particular, TTIP is opening up the principle of Reciprocity to a level not previously explored; that is, accepting the equivalence between legislative and monitoring systems, without the need to accept that they are fully identical. If TTIP does accept this as a standard principle, allowing access to US products that meet US safety standards but not EU ones, then a key argument that the UK needs to be part of the EU to access EU markets dissipates. The UK is already compliant with EU models, especially through signing up to UNECE standards, a process to which it would remain signed up. *Reciprocity* may just prove to be the principle that renders EU membership obsolete, not just in trading standards but across the board.

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the UK in the EEA while the final terms are being negotiated. On review, brinksmanship (while it cannot be ruled out) would most damage those countries who are most likely to seek to engage in it, and would also not be looked on favourably by Berlin. The worst case scenario remains defaulting to WTO Rules, which as *Change or Go* demonstrates are an improvement on the current situation.

[28] Such as reportedly having to scribble on paper that couldn't be photocopied. Although the methodology appears comedic, the documents are in fact classified at SECRET level. The real absurdity thus lies not in issuing MEPs pencils in windowless rooms, but the fact that MEPs in these circumstances provide the democratic input that would otherwise be more directly provided by government ministers - themselves MPs - if governments still had competency to negotiate international trade deals rather than leaving it to the Commission.

[29] These can be found, as they evolve, at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>

North America is not just looking East though. The TPP, or Trans-Pacific Partnership, may over time prove to be far more significant. TPP unites twelve countries; Australia, Canada, Japan, Malaysia, Mexico, Peru, the United States, Vietnam, Chile, Brunei, Singapore and New Zealand. It eliminates 18,000 tariffs, but also includes safeguard clauses on issues such as workers' rights, environmental protection, SME interests, a deregulated internet, and opening up trade in Services. Curiously, given Mexico is not a signatory, it is talked of as an upgraded NAFTA (since it includes certain welfare enforcement clauses).

The document was only signed off in early October, and at the time of writing still remains classified. Here, we confine ourselves to the simple observation that the drive towards free trade continues to advance in the Pacific Rim, from a lower starting basis and with much greater market potential. But it is an opportunity from which the UK is presently largely excluded.

Part 3: Big Picture, Small Cases

The constitutions of states and the terms of international treaties provide ready examples of how agreements divide up powers between authorities, and set out objectives and aspirations for what international associations intend to become.

But there are other forms of structure that also merit case review at either end of these levels of interconnectivity. These relate to the highest elements of globalisation, and tot he more forgotten elements of traditional devolved power on the western continent.

The 'Crazies' have a point

The popular perception of the United Nations is based predominantly on the work of the General Assembly and that of the Security Council. Occasionally people might also reflect on activity in the fields of disaster relief, or human rights. Much less understood by the public is the UN's role in facilitating international trade, and in associated areas that subsequently result in the generating of legislation.

Much of the background to the complex framework underpinning international standards setting is covered by this author in other papers.[30] At this point we need simply indicate that there is a hierarchy of structures in place.

At the summit are the international standards organisations, turning agreed international voluntary standards from suggestions and best practise into international legal norms for the signatory states.

Within the EU these then progress through the Brussels regulatory system, risking localised gold plating in the process from the various institutions, especially from the Commission and from MEPs. This gold plating adds costs to domestic producers.

Then there is the national ratification process, where further gold plating is possible. In the case of a conscientious civil service within the EU, this is a particular risk as it seeks to be completely compliant with the agreement both as worded at EU level as well as that worded at international level. Recently, the costs of infringement have increased substantially. Consequently, in order to reduce the threat of the UK being fined by the Commission, Whitehall is motivated to overdraft its enforcing regulations, carrying with it additional costs and burdens not included in the original international agreement.[31] Again, these burdens

[30] In depth for example in *Change or Go* by Business for Britain, to which this author was a lead contributor; and also in a parallel Better Off Out paper tracking the legislative process across a particular case study.
[31] As at 2014 for the UK, any potential fine would run at €237,864 per day of breach, and (since 2005; previously: *or*) a lump sum for the UK currently standing at €9,938,000. This is per issue, and the lump sum is a *minimum*. These fines are merely those faced by government for failing to pass a law correctly and are a separate matter to fines levied against business, for instance as proposed for beach of data protection rules.

tend to fall on domestic producers, suppliers, consumers and enforcers, since the original principle behind the original international agreement must be maintained and standard compliant imports allowed in. But this adds a further competitive disadvantage to the UK's own suppliers.

Countries operating outside of the EU escape this double layering of gold plating and red tape, and their legislators can simply check that their civil servants are drafting domestic laws that meet the international standards without adding unnecessary burdens. Those civil servants also cannot fall back on EU obligations, shrug their shoulders, and disclaim responsibility even for their own red tape. Countries outside the EU also have the advantage of representing themselves at these bodies, rather than having the Commission represent them (and 27 other states). Since the talks are done by consensus, such EU collectivism actually runs counter to the UK's national interest. The UK surrenders its global veto in exchange for QMV at EU level, largely over implementing what the Commission has already agreed.

This myopic approach might be contrasted with what happens with other countries. The case of Norway is sometimes cited, demonstrating that the 'Norwegian fax democracy' concept is a fallacy more accurately applied to Whitehall.

Less considered is how these systems of international standards setting apply to the economies across the Atlantic. On reviewing this, we can start to appreciate that conspiracy theorists claiming that the UN is pushing for world governance might be over-egging the pudding by the van-load; but they are right to observe that trade regulation is far more internationalised than the democracies of North America and the pseudo-democracy of the European Union tend to acknowledge.

ECOSOC is the United Nations Economic and Social Council. It is the core entity underpinning international agreements in both of these namesake fields, and in environmental policy development as well. As such, it sits at a higher tier than regional trade blocs. This detail is recognised by a back reference whenever the EU passes a law enforcing a standard agreed at UN rather than EU level (a frequent occurrence, as any review of regulatory recitals demonstrates).

> PETER THOMPSON (European Commission), speaking on behalf the European Union, said […]
>
> Minutes/press release of ECOSOC meeting, 18 July 2003

ECOSOC's work is divided up. It has functional commissions, looking at issues such as forestry on a thematic basis. It also has five regional elements. These are the Economic Commission for Africa (ECA), the Economic and Social Commission for Asia and the Pacific (ESCAP), the Economic Commission for Europe (ECE), the Economic Commission for Latin America and the Caribbean (ECLAC), and the Economic and Social Commission for Western Asia (ESCWA – basically, the Arab League).

ECE, or UNECE, is the critically relevant entity. Set up in 1947, its mission is "to promote pan-European economic integration". While its focus is, as its name suggests, on easing trade on the continent of Europe, its work also brings in key trading partners from beyond European shores. The United States, with Marshall Plan era engagement and interests, was a founding member. Canada became a member in 1973. But *any* interested UN member has the right to participate in its work in generating international trading standards designed to apply to this continent. Its work facilitating the negotiation of international legal instruments, and the development of regulations and norms, involving the economies of many industrialised nations is so cutting edge that it plays a key role in setting global trading norms and has done since its very inception.

This might be contrasted with the other UN regional blocs. UNESCAP covers the Asian States and western Pacific Rim. The United Kingdom, France and Netherlands, as colonial powers, were founder members and remain so today. So too was, and is, the United States. Several USSR successor Eurasian states are members of both this organisation and of UNECE, as too is Turkey. ESCAP's significance lies in its human extent, since it covers a geographic spread that is home to 4.1bn people. Much of its activity thematically mirrors UNECE, though with a higher emphasis on disaster relief and a historic starting point of third world development (it still today counts 680m poor). These priorities, together with postcolonial politics, a default to protectionism (especially from LSE graduates in government), the need to establish national sovereignty and the assertion of single party power, explain why it has not been as successful as UNECE in unifying trade standards. In trade terms its high point was probably the establishment of the Asia-Pacific Trade Agreement (Bangkok Agreement) in 1975. Uniquely, this ties India and China together in a single trade agreement.

UNESCAP's comparatively limited success also helps explains the appeal of ASEAN in fulfilling a void felt amongst more free trading states, and why ASEAN was not set up as a supranational entity (since there was nothing remotely approaching a tariff bloc to glue onto). In any event, as Western economies (excluding Russia) are excluded from the Bangkok terms, the significance of this association for the sole Americas member, the US, is limited and so we must pass on to another UN regional entity.[32]

[32] We conclude in passing by noting the differing and overlapping blocs that have developed in this region too: ASEAN, APTA, SAFTA, BIMSTEC, Pacific Islands FTA, and the Euroasian Economic Community.

That body is the Economic Commission for Latin America and the Caribbean. Membership covers all of the Americas, again including the USA and Canada, but also former colonial powers (UK, France, Portugal, Spain, Netherlands); and, peculiarly, Norway, Germany, Italy, Japan and Korea (which are donor states). Again, much of its work focuses on development, plus population growth and women's rights, rather than facilitating standardising widgets. It does have a role in trade development. As its mission statement notes,

> *The mission of ECLAC in this area is to generate and disseminate analyses and policy proposals aimed at strengthening the participation of the Latin American and Caribbean region in global trade and fostering regional integration, particularly as it relates to economic matters.*

Because of the low starting point for the integration of the economies though, much of this is through developing databases and sharing information about NTBs and tariff rates. This falls short of the levels of achievement reached even by UNESCAP.

The UN's regional agencies therefore provide us with very different extents of success. UNECE is firmly at the forefront in the agreement of templates for trade standards, as might perhaps be expected of an institution that encompasses the developed western economies, already technologically advanced and interdependent. Indeed, the fact that it is open to every UN member (and sees its standards informally picked up by countries such as Australia and South Africa) demonstrates its global rather than regional reach and potential. The United States, notwithstanding its long term membership, is a relative late comer to full participation in UNECE processes, long preferring to generate its own standards for its domestic market (which in the past might have been more quickly achieved than today), and then reviewing compatibility with whatever was settled both through UNECE and unilaterally by other major exporters. TTIP today is a marker of Washington's increased interest in removing divergences that have emerged as a result, and reducing obstacles in trade generated by failing to previously fully engage in UNECE's committees.

The US experience again reminds us that the UK starts from a point of UNECE compliance. That means trumping many of the potential barriers that an obstructionist EU could – in a highly implausible worst case scenario – deploy if it sought to hinder UK exports to the EU market after BREXIT. Simply put, UNECE standards are UK standards; the same applies to EU standards; so long as UK authorities are recognised as competent, exports are considered to reach the legal standards required. By and large, UK authorities are considered amongst the best.

The Latin American example separately teaches us something different. The failure of ECLAC to turn into a Latin UNECE was perhaps inevitable. It was not simply a question of the priorities of underdevelopment and protectionism, since UNESCAP in Asia shared those and yet from a lower start point achieved more. The organisation appears to have been too ideologically partisan. It was headquartered in Allende's Chile, even providing him with

several members of his economic staff. But it then overnight became headquartered in Pinochet's Chile. As a UN-supported briefing note rather too gently states, "ECLAC was still ideologically identified with its past, avoiding the embrace of the new orthodoxy espoused in the economic realm by Milton Friedman and in the political domain by Ronald Reagan and Margaret Thatcher. However, it could not come up with an alternative to the new orthodoxy, and so it found refuge in addressing specific policy questions rather than trying to tackle the big picture."[33]

Significantly, if only for its symbolism, that has not stopped ECLAC being factored into the integration process by some of the American blocs where it has observer status - formally so for instance in the Association of Caribbean States. On that continent, ECLAC as a quasi-think tank is playing but a shadow of the role UNECE is achieving in defining the small print of trade terms for the economies of the North.

For that very reason the drive towards a highly institutionalised form of trade integration may make some sense for the South, where different starting conditions apply. There is a coherent logic in seeking to mirror EU institutions, since a codifying Bolivarean Commission could fill also UNECE's gap and facilitate intra-continental trade by helping to set common standards. But in Europe, the quest for regulatory governance is a nonsense if used as an excuse to remain within the European Union. Since COMECE already exists, the European Commission is largely its ape.

Forked Tongue

It is not our intention to audit the histories of the First Peoples in these few pages, or review their relationships with an outside body that would become the dominant political force. Nor do we intend to contrast, for example, attitudes towards the indigenous population as they varied from country to county. The events of the Trail of Tears, Sand Creek, Tippecanoe, or Red River are as charged as Little Big Horn, Deerfield, Long Sault, King Philip's War or for that matter the first Thanksgiving. Perceptions are further clouded by the impact of decades of output from Hollywood. Breaking through the mythology requires a volume in its own right before any deeper analysis can begin.[34]

What we can productively consider in these short paragraphs is what constitutionally the situation is today, as it applies both in the United States and in Canada. It transpires that the example also here proves instructive on whether a state that has ceded powers can still

[33] UN Intellectual History Project Briefing Note 19, Louis Emmerij and Gert Rosenthal, Ralph Bunche Institute for International Studies, 2009.

[34] As just one example, the battle of Long Sault (1660), which resulted in the deaths of Dollard des Ormeaux and his associates at the hands of the Iroquois, gained interwar cult status thanks to the writings of French Canadian nationalist historian l'abbé Lionel Groulx.

justifiably call itself “sovereign”, a term widely and loosely used by supporters of EU integration.

In the United States, the relationship between the federal government and the First Peoples is run through the Bureau of Indian Affairs (BIA), set up in 1824 and thus the oldest element of the Department of the Interior.[35] It provides services (directly or through grant support) to 1.9m American Indians and Alaska Natives, across 566 federally recognized tribal groups, and 55 million acres.[36]

The relationship is complex and not entirely uniform, having developed from a variety of treaties and court decisions and in recent years shifting to a more devolved administrative approach.[37] Fundamentally, the model is based on a duty of care. The BIA is predominantly engaged in ensuring the delivery of services for which it supplies the funding and monitors. These cover education, social services, natural resources management on trust lands, economic support for deprived areas, law enforcement and prisons, tribal courts, housing improvement, disaster relief, route maintenance, dam repairs, local government, job training, quality of life programmes, and in some places irrigation and electrical supply.[38]

Essentially, the Federal Government today sees its role as providing technical support for these communities, ensuring that these federal programmes are paid for and take place but passing the management of them down to local democratic representatives. This is a shift in approach which followed the 1975 Indian Self-Determination and Education Assistance Act, a consequence of the wider civil rights period. That Act reversed the previous trend by Washington to seek to centralise and to integrate, though itself reminds us that current trends themselves might one day be reversed. It also fell short of the demands by some Indian Rights activists at the time for full reinstatement of bilateral Treaty Status between the two sides. Of interest to observers of the ECJ, those campaigners further warned that having an internal judiciary (in this instance, the US Supreme Court) monitoring matters was an insufficient safeguard for sovereign treaty rights.

In addition to what are now essentially devolved programmes, there are those elements that are more clearly reserved to the Reservation. In a sense, this generates a form of asymmetric federalism, running in tandem to powers that are equally reserved under the US system to state legislators and to municipalities. These involve issues of land ownership,

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[35] It has a website, < http://www.indianaffairs.gov/>

[36] The selection of vocabulary is politically sensitive when referring to indigenous peoples. All the terms variously used in this paper (including “Indian”) are those used by government organisations or by First Peoples groups, without consensus.

[37] On differences, Montana v United States (1981) for example saw the US Supreme Court having to work out where treaty rights rested in relation to managing fisheries for non-Indians. However, in broad brush terms the issues that are run locally are similar.

[38] Not always without controversy. The handling of the interwar Navajo livestock controversy, where the federal government intervened to seize animals on environmental management grounds, generated an enduring quota system at the cost of public discontent at an interventionist common policy (which has some planning echoes in EU agriculture and fisheries).

judicial competence and legal jurisdictions, and parallel citizenship.[39] All have peculiar echoes in EU debates. The first appeared as an issue in the Maastricht Treaty (the Danish Protocol on German holiday homes); the second in the EU involves the vexed issue of primacy; the third, the concept of European citizenship and the rights that may accrue over time from a burgundy passport.

What of the sovereignty issue? The National Congress of American Indians declares that

> *Tribal members are citizens of three sovereigns: their tribe, the United States, and the state in which they reside. They are also individuals in an international context with the rights afforded to any other individual*.[40]

It continues,

> *The essence of tribal sovereignty is the ability to govern and to protect and enhance the health, safety, and welfare of tribal citizens within tribal territory. Tribal governments maintain the power to determine their own governance structures and enforce laws through police departments and tribal courts. The governments exercise these inherent rights through the development of their distinct forms of government, determining citizenship; establishing civil and criminal laws for their nations; taxing, licensing, regulating, and maintaining and exercising the power to exclude wrongdoers from tribal lands.*

To this list it adds those powers that have effectively been devolved from the federal government, listed above. Basically, the sum covers law and order, residency and citizenship, taxation, and welfare. If these are core elements of sovereignty, then we might observe they are also all areas that the EU itself is encroaching on.

In tax terms, Indian country is territorially sovereign but its residents aren't. Native people pay Federal Income Tax, but BIA-managed resources are not federally taxed. States for their part can only directly or indirectly tax those living or working predominantly off Indian country (logically so, given the measure of overlap of competences). Tribal governments themselves are not liable to state or federal taxation, just as state governments are not liable to taxation by Washington. State governments can tax non-members on tribal lands if it is the individual who is the payer. Tribes do have tax raising rights, albeit at the risk of double taxation for non-native residents. The most celebrated example of this has been in the development of gaming and casinos, which the Reservations have used as an alternative to state lottery systems. This is regulated by the Indian Gaming Regulatory Act 1988, and actually governed not by local law but by federal regulations and federal agencies. A peculiar innovation has been the attempt by some tribes to expand into the Cannabis trade,

[39] Judicial/criminal competency is however further limited by applying to cases involving a three year limit on prison terms, and in any event is not universally applicable across all Indian country.
[40] See in particular *Tribal Nations and the United States: An Introduction*, NCAI, 2015.

for example the recent statement from Santee Sioux of South Dakota that they were looking at setting up a marijuana resort. Federal agencies again here appear set to intervene, to limit this to local consumption and individualised sales since the narcotic remains banned as a commercial product under federal law.[41]

Taking the list as a whole one has to conclude that Indian States are not sovereign, or at least not fully sovereign, but are dependent political entities with a significant measure of self-governance. Some of this is devolved, other parts have been retained. This definition helps explains statements such as offered by President George Bush (Snr);

> *This government-to-government relationship is the result of sovereign and independent tribal governments being incorporated into the fabric of our Nation, of Indian tribes becoming what our courts have come to refer to as quasi-sovereign domestic dependent nations. […] Today we move forward toward a permanent relationship of understanding and trust, a relationship in which the tribes of the nations sit in positions of dependent sovereignty along with the other governments that compose the family that is America.* [42]

It is this vocabulary of "Dependent Sovereignty" which is perhaps more useful to remember in the European context.[43]

A Parallel Example

Only Tsawwassen Law enacted by the Tsawwassen Government for which the Government does not have the authority to enact shall be found to be beyond the power of the Tsawwassen Government.

Where there is a conflict between Tsawwassen Law and Federal or Provincial Law, the applicable paramountcy rules established in the Final Agreement or any other agreement in effect between Tsawwassen First Nation and Canada or British Columbia will apply.

Tsawwassen First Nation Constitution Act, 2009, articles 8.6 and 8.7

[41] "Forget Casinos, Native Americans Are Opening the Nation's First Cannabis Resort", Peacefulwarriors.net, 5 October 2015. Cannabis production appears to remain an issue of some jurisdictional contention.
[42] Statement By The President Reaffirming The Government-To-Government Relationship Between The Federal Government And Tribal Governments, 14 June 1991
[43] It is a melancholy contrast to compare the federal interaction with modern Indian land constitutions, with the example of Benjamin Franklin and his colleagues reviewing the federal constitutional practice of the Mohawk federation in the 1750s as they sought to draft the terms of their own political union.

Across the 49th Parallel, the central government institution is Aboriginal Affairs and Northern Development Canada (AANDC). Its tasks are set out as being to improve social well-being and economic prosperity, develop healthier, more sustainable communities, and help them participate more fully in Canada's political, social and economic development. As such it is just one of 34 federal governmental departments engaged with this task. Much of its activity though mirrors in broad brush terms the work done in the United States, the BIA, overseeing and signing off the work done through the Indian Act by the various bands.[44]

There is however a major difference between the Canadian and US systems. While Indian land in the US does constitute a significant part of some areas, particularly in the mid West, it only constitutes some 2% of the national whole. The nature of Canada's geography and population spread by contrast means that the AANDC is responsible for two fifths of the Canadian land mass. In the far north, it has pursued a different model to achieve that.

The Frozen North

The Northwest Territories, alongside the slice that was Yukon, in its old configuration formed the great belt of northern Canada that covered the Arctic regions west of the Hudson Bay. Recognising the immense geographic spread as well as ethnic spreads, in 1999 a new territory was carved up in the east called Nunavut.[45] In 2014, the redrawn Northwest Territories then followed Nunavut in seeing more powers over land and resource management passed down.

In Nunavut there is an outright Inuit majority; in the NWT the First Peoples collectively constitute a small numeric majority. In essence, what this territorial change has meant has been the devolution of powers to regional governance directly to the Inuit, who happen to constitute a majority in the new territorial government, without having to revisit or expand reservation government. Regional government of course also affects non-Indian citizens on non-Indian land, but the lack of a distinction does avoid some of the complexities of sovereign boundaries within mixed jurisdictions.

From an EU perspective this runs in a reverse dynamic, since federal powers are being handed away from the centre.[46] In the case of Nunavut though, breaking off a block of territory has localised the existing structures of federal government for the local Inuit. The

[44] The distinction between traditional territory and actual reserve lands is also maintained. Arguably, the US level of oversight, while too hands-on in the past, is now at an appropriate level of support while the Canadian model which was historically benevolent is now in some locations failing in the supply of modern amenities and suggesting replacements to traditional but declining work. This might be in part explained by Canadian reserves being held in trust by the Crown rather than by a federal appointee.

[45] Its Legislative Assembly generates its own Hansard.

[46] Albeit in this case limited, predominantly covering natural resource management, regional studies, environmental issues and non-compliance fines. Offshore energy production remains excluded as a federal competence. Existing Indian Treaty agreements remain unaffected.

nearest parallel with Brussels is where the Inuit of Greenland localised by voting in a referendum to leave the European Community altogether.

The Far North does not cover all First Peoples Land, and sub-provincial levels of complexity and conflict over sovereignty and jurisdiction remain elsewhere. It is hardly surprising, then, that many of the same issues and campaigns associated with Indian rights are also witnessed in Canada too. Indeed, the most infamous example crossed the border.

Both the United States and Canada tax tobacco, acting as a deterrent to its use on health grounds but also generating significant revenue. But the Mohawk reservation of Akwesasne straddles the border. Under the terms of the 1794 Jay Treaty, Article III provided for duty-free rights on proper goods used by the Mohawks. Canadian legislation providing for these rights to continue subsequently lapsed, but customs practices were allowed to stand. This informal situation became an issue when the open border was then abused by cigarette smugglers, with tobacco being openly sold in ad hoc shacks by the roadside to outsiders driving in to 'stock up on their smokes'.[47]

This was not the end of the matter. Mitchell v Canada (2001) reviewed other items being brought in. While the lower courts initially held that there was a cultural right in play, the Supreme Court overturned them.[48] Aside again from the role of a federal court in assessing breaches of federal sovereignty (Luxembourg style), it is the review of the Inter-American Commission on Human Rights that is of interest to us here.

> *The petitioners argue that trade is an integral aspect of Mohawk culture that is protected under Article XIII of the American Declaration. As part of the right to take part in the cultural life of the community, the petitioners contend that the Mohawk people have a right to trade within their own nation and with other member nations of the Iroquois Confederacy, without the imposition of customs and tariffs. Canada's imposition of taxes and duties on goods brought over the border interferes with an activity that is central to Mohawk cultural identity and integrity*.[49]

It seems that the Mohawk have a greater appreciation of the political aspects of sales taxes than VAT-ridden UK residents do… The response was equally signatory;

> *The State asserts that the imposition of taxes, tariffs, and restrictions on imported goods is an attribute of sovereignty, and that they constitute reasonable limits on trade.*

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[47] The effect rolled outwards, resulting in some remarkably cheap cigarettes openly available even from dépanneurs in Montreal itself.

[48] Largely on the basis that the supposed cultural activity of gift giving was not an ancient one that ran along the trade route in question, so the gifts Grand Chief Mitchell was bringing over such as a washing machine did make them subject to federal taxes.

[49] REPORT NO 74/03, PETITION 790/01, October 22, 2003; REPORT Nº 61/08, CASE 12.435 July 25, 2008

The IACHR concurred. In doing so, it reminded us of the significance in sovereignty terms of handing over such powers to the European Commission to regulate.

Sovereignty in these communities has clearly remained a live issue. The Oka Crisis proved the most extreme example in latter years, resulting in a fatality and the brink of martial law. Disaffected youth, frustrated by failures in their eyes to address grievances, lost faith in a parallel government structure.

It would be a bold man who claimed to see clear comparisons between federal policy towards the Indian tribes, and the division of federal competences at Brussels; it would be an absurd one who claimed that the nation states were being turned into reservations. What these cases more properly demonstrate is that the vocabulary of sovereignty is tainted. Tribes are sovereign in that they have right to land, water and resources. The management of everything else across government is far more complex, some falling to the federal government to provide oversight, some to the regional government, some to the local representatives themselves. Sovereignty is a matter more of physically being anchored to the land, and culturally being anchored to the ancestor, rather than being swept away into the melting pot and dissolved.

In practical terms, being a “sovereign indigenous nation” means being a legitimate constitutional authority, one with socio-political continuity running back to before treaty days. It does not mean that the community leaders enjoyed the same sovereign power that they did three centuries ago, even if more power is being devolved down and band councils are becoming tribal governments. Wider jurisdiction is far more circumscribed, just as municipal councils are limited in their functions by the constitution, and so are the states or provinces.

This circumstance demonstrates the absurdity of those who express themselves in terms of the “pooling of sovereignty” in the European context. Sovereignty once pooled means a competence is decided at a different level of governance, one at which you no longer form a majority. It is hardly surprising, then, that the sovereign Indian tribes have spent so much effort in recent decades seeking to demonstrate their sovereignty by asserting that they already possess it. It is more surprising that EU peoples more attached to their democratic past should endeavour to wilfully lose it.

Conclusion

The city hall, or Rathaus, of mediaeval Cologne was embellished with statues reminding councillors of the examples they should live up to. A group of eight prophets in particular formed a set that would become known as *Die gute Regierung* (the Good Government). It appears that a similar set needs to be set up in Whitehall. The UK has signed up to a singularly poor model of intergovernmentalism and doesn't know where to find the inspiration to extricate itself.

The Americas provides the student of EU development with many lessons, but three in particular. Firstly, set federal constitutions are an improvement on the centripetal agglomeration of powers that the EU system operates under. Secondly, states do not need to build a government in order to trade amongst themselves, and they add political risk if they do. Thirdly, the merging of states in regional blocs as political rather than trading units runs counter to national self-interest in a world of growing global cooperation, since it adds an unreliable agent as a middle man.

The contrast between the EU system of governance and the Regional Trade Agreements (RTAs) in the Americas can perhaps best be evidenced by their impact, and here we can use the European Commission's own estimates of the damage it has been doing to the European economy. The Commission justified its 'Smart Regulation Agenda' by confirming a ball park estimate of EU red tape costs to be running at a level a Commissioner had suggested a decade earlier, and which it had then responded to by trying to suppress.[50] The Commission then decided on a target that it thought achievable of a reduction in red tape of 25% over a five year period. Notwithstanding whether that target was ambitious enough, that was estimated to result in an increase of 1.4% in EU GDP, equivalent to €150 billion over five years (the end figure reached was a cut of 33% and a figure of over €200bn).

Any trade manager who can let that amount of red tape sink in is failing catastrophically at his job.[51] It is not even clear from the reporting how much of these savings are in fact future red tape costs and notional savings arising from the Commission deciding not to add new unnecessary costs.[52] Even on current trends, what the Commission portrays as a wildly revolutionary approach to government is cutting EU regulatory burdens from its current

[50] Press Memo, Commission initiatives to cut red tape and reduce regulatory burdens – Questions and Answers, 19 September 2013: <http://europa.eu/rapid/press-release_MEMO-13-786_en.htm>. To be compared with similar estimates made by Commissioners Verheugen and subsequently Mandelson.

[51] The irregularity in meetings of the High Level Group on Administrative Burdens of itself no longer inspires confidence (its last one was in September 2014). We suspect it probably only achieved what it did thanks to the presence of the likes of Bavarian Edmund Stoiber as chair.

[52] A spot review of legislation revoked by the Commission supposedly under regulatory cost-efficiency includes a significant number of items no longer time-relevant, rather than regulations that have been identified as poorly drafted, suggesting the 'SMART' process has been bulked up for PR purposes. Other areas see technology taking the slack rather than good policy making, for example changes in rules for e-invoicing of VAT for which the Commission attributes a potential €18bn saving. €5.1bn is expressly referred to as additional future savings from cutting further red tape merely in the pipeline at the time of release.

levels by a third – but from a starting point the Commission itself estimates runs at €124bn a year. From a UK perspective, that alone suggests that the cost in membership fees and red tape burdens has significantly outweighed the trade benefits of EU membership.

The examples generated by RTAs in the Americas demonstrate that these sort of costs are not needed to make trading easier between countries – unless the intent is specifically to generate an institution that aspires to something far greater than trade, but is the building block of a future political union.

The example of early United States constitutional development separately demonstrates that the UK experience is only going to get worse if it maintains strong institutional links post-Brexit, as power accrues regardless of safeguards and minority intent. Professor Richard Epstein of the University of Chicago made the connection back in 2004 while the EU Constitution was being debated.[53]

> *On every dimension, then, there is, as a brute political fact, less predictability about the business of constitutional law than one might have supposed. Certainly anyone who thinks that the law evolves independent of the will of the judges has not encountered the work of the most influential, and often the most able, members of the United States Supreme Court. Adopting a constitution, even a well-drafted constitution, is a bit like buying a pig in a poke. The question here is not whether there are right and wrong interpretations of particular provisions. I think that typically there are. But the operative question is the extent to which the "right" interpretations will dominate in practice, or be pushed aside as other views take over.*

It is a reality that the drafters of the EEA agreement identified when, for instance, they removed the ECJ from the role of interpreting what the agreement was about, and set up an alternative EFTA court to fulfil that role instead.[54] The fundamental problem however is that it is not just one court which is an element of integration; the whole structure is.

Professor Epstein productively suggests, "It seems clear to me that one of the chief benefits of a federal system is that it allows for competition between sovereigns as an antidote to government power." Merger in a federal European Union, however, is an expensive way of applying the lessons learned from the United States constitutional development, especially if those principles are then not successfully applied.

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[53] American Lessons for European Federalism, adapted lecture to the Cass Business School, published by New Frontiers, 2004 (online at < https://dominiccummings.files.wordpress.com/2015/05/05-epstein-american-lessons-for-european-federalism.pdf>).

[54] Notwithstanding its flaws. Epstein cites the 1824 case of *Gibbons v. Ogden* as an example of where a federalist judge, and subsequent case law, can limit or overturn state rights: "the history of the Constitution showed that all apparent guarantees of local autonomy could not resist the pressure for expansion once the justices were convinced that only national solutions could deal with the complexities of modern commerce and the dislocations of the depression."

So all told we should be wary of associating ourselves structurally too closely with a defined federal state, or even worse our current krypto-federal one. We ought also usefully talk more openly about its nature. Sovereignty is a term often bandied around in the context of complex new treaties. Judging by its application across the Atlantic, it is a term open to some abuse. Clearly, independent states can “pool” their sovereignty, surrendering their freedom to take unilateral action in a given area. But their sovereign status diminishes with each agreement. At some point, and the point is probably only ever reached in retrospect, the concept becomes a fiction. This is not merely because the majority of decisions are made at a new supranational level, or even that the most important decisions are made there; it is about there being a sense that the decisions are being made on behalf of a commonality of interests and identity. In other words, Idaho may be a “sovereign” state, as too might Chihuahua according to their respective constitutions; but sovereignty in such contexts simply means a measure of devolved power for citizens who otherwise feel a commonality of interests and identity with the residents of Maine or Tabasco.

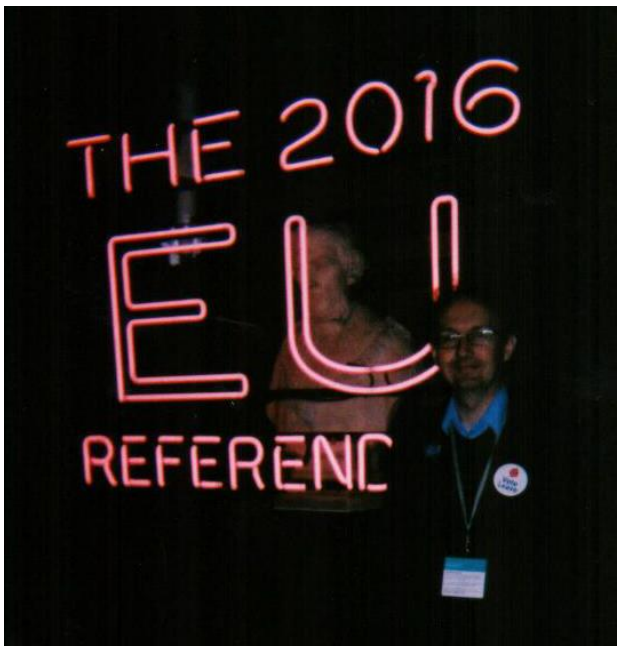
The concept of the UK pooling its sovereignty is therefore as absurd as considering as sovereign a county such as, say, Lincolnshire. Lincolnshire has a flag, an anthem, and a capital city. It has a police force, and a Crown representative (the Lord Lieutenant). It has a history as a separate kingdom, Lindsey. It has a government (county council) and devolved structures (district councils). Variously they run an education system, transport infrastructure, local planning, housing, culture, and a variety of issues that any local councillor will already be familiar with.

Nobody would pretend for a moment that Lincolnshire is a sovereign state. The fact of administration does not of and by itself make a nation.

Brexit has provided the United Kingdom with an escape clause. The country will not be a full member of the European Union. Rearguard talk of ‘associated statehood’ demonstrates, however, that key strategic risks remain, as aspects of administration may yet be pooled. It would be a core and generational mistake.

The examples of the Americas inform us that Sovereignty resides where the public identifies it as lying. It becomes a fiction when no one is prepared to defend it resting at a given level other than as an issue of administrative practice. The United Kingdom is not yet at that place. Though other EU states perhaps are.

About the author



Dr Lee Rotherham has been an adviser to John Major's whipless rebels, Eurosceptic MEPs, three Shadow Foreign Secretaries, the Conservative delegate to the Convention on the Future of Europe, a delegate to the Council of Europe, and government ministers. He was Head of Opposition Research for the No Campaign in the AV Referendum, and Director of Special Projects at Vote Leave, the designated pro-withdrawal campaign during the 2016 referendum. Outside of Westminster he has worked in publishing, teaching, heritage, and in Defence.

He has been very extensively published in academia and across think tanks. His publications as author or co-author include *The EU in a Nutshell*; *Ten Years On - Britain Without the European Union*; *Change or Go*; *Plan B for Europe*; *Controversies from Brussels and Closer to Home*; *Manning the Pumps*; *Hard Bargains or Weak Compromises*; *The Hard Sell*; *Bloc Tory*; *Common Ground*; *A Spotter's Guide to Sound Government Policies*; and the award-winning *Bumper Book of Government Waste* and *Brown's Wasted Billions*.

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