



DG Undeb Sy'n Newid UK's Changing Union

Forum 1

A federal future for the UK?

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A report on the proceedings

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Those who attended the UK's Changing Union opening Forum immediately found themselves questioning the relevance of its topic *A federal future for the UK?* As one participant said, if the question was worth asking the UK had to be facing "a big constitutional moment" to which federalism might be an appropriate response. His answer was that just such a moment had indeed arrived:

"The big question is this: do we want a British State? If we do... it's the British dimension we need to concentrate on and in my view that leads us inevitably to considering a federation as the solution. The House of Lords needs to be reformed to become the Chamber of the Union, with a major task of scrutinising and reporting on the health of the union. The Joint Ministerial Committee needs to be strengthened, with a capacity to engage effectively with cross-federal issues, whether they be environmental concerns or fisheries policy say, before these are considered on an English basis."

However, this was a minority view. Most thought the approach was unlikely to be realised, and frankly was rather un-British. One said that such a radical solution, involving a written constitution, would require some kind of 'Ground Zero' crisis to shake-up the general indifference to constitutional change that characterised the British political system. As he put it, "That's not the way we organise our constitution in the UK. In practice we make it up as we go along." Another participant wondered what the problem was that we were trying to solve:

"It can't be that the constitution isn't messy or flawed. That's been the case since the Romans left. Where does the shoe pinch? What's so frustrating that people are clamouring for some major change rather than ad hoc adjustments? The only real place where the shoe will pinch is if or when the devolved governments demand tax powers whose implementation would result in a spill over into England. Corporation tax would be an example. And that has to be settled centrally. England will decide. That's the way it is. How can it be any other way? Those who argue that the West Lothian Question needs an answer, that the English don't have a Parliament and need one of their own, are living on another planet. The English just don't care. They've already got a Parliament - it's the one at Westminster."

In a similar but more positive vein another participant asked what the problem was that Scottish independence was designed to solve, and provided the following answer:

“One corner of these islands draws on all the wealth and influence. Independence gives us an opportunity to change a broken system. According to the No campaign the UK is the most successful union in history. I believe Scandinavia could claim that status. People think that the SNP is about breaking up the UK. That’s not its objective at all. What it is about is creating a more perfect union. We have the opportunity to create a different sort of relationship across the whole of the UK.”

And later, in the part of the discussion that debated the nature of federalism as it might be applied to the UK, he added:

“The difference between ‘devo-max’ and independence is simply this: ‘devo-max’ is what the centre decides to share with Scotland, while independence is what Scotland decides to share with the centre. In the end both could amount to much the same thing, including: a single currency; a single Head of State; enhanced citizenship rights around the NHS; a shared EU structure; a single market for many economic undertakings, telecoms for example; a joint defence and foreign policy; a shared executive, possibly in the form of a Council of the Isles; a shared democratic or representative Chamber of some description. What we call all of this is, what label we put on it, is less important than the substance. We live on the same island in an inter-dependent world. We will share what’s in our mutual interest. Sharing is not a sacrifice of sovereignty; it’s a recognition of mutual interest.”

Much of the Forum’s discussion of the potential of a federal approach to providing an answer to some of Britain’s constitutional dilemmas was prompted by a recent speech made by Welsh First Minister Carwyn Jones. Speaking to the campaign group Unlock Democracy in July 2012, Carwyn Jones called for a Constitutional Convention to be established to examine the relationships between the devolved administrations and the UK Government. The objective, he said, would be to bring a more holistic approach to the way change was happening, in place of the current ad hoc bilateral exchanges. He said it was no longer adequate to continue on the basis of what he called the UK’s ‘asymmetric quasi-federalism’. The union needed to be reformed to bring a more collective approach to problems, for example by giving greater representation to the devolved territories within the House of Lords, and to ensure that changes in one place were not made without consideration of their impact elsewhere:

“Take the Scottish case. If the Scots decide to stay within the UK, we know that there will be adjustments, by which I mean more powers, for the Scottish Parliament. The candidates for the new settlement include the so-called ‘devo max’ and ‘devo plus’, either of which would represent a radically different position for Scotland within the Kingdom. Could that simply be a matter for discussion and agreement between the Scots and the UK Government, or should the other members of the UK club be involved as the terms of membership of another of them are renegotiated?”

At the Forum there was widespread agreement with this analysis. One informed observer remarked that the Calman Commission proposals, recently enacted, that give the Scottish Parliament control of 35 per cent of income tax, were limited to that extent specifically to ensure that the centre would not be affected. Any further powers, such as devolving corporation tax, would require a fundamental readjustment of relationships and bring England as an entity into the devolution picture. It was noteworthy therefore that, a week after the Forum was held, Johann Lamont, Labour's Scottish leader announced the creation of a new Devolution Commission to look at the case for significantly greater devolution for Scotland. Options it would consider included the transfer of powers to raise all income and corporation tax, plus further control over the welfare system and oil revenues. The aim was to put together a coherent choice of more powers as an alternative to independence for Scotland ahead of the 2014 referendum.

At the Forum a good deal of discussion was taken up with how this kind of 'devo-plus' or 'devo max' position could be implemented in practice. It was asserted, for instance, that devolution had already demonstrated that many of the functions of federalism could be discharged without needing the full panoply of federal structures. You can hand out entrenched powers to a significant level of devolved government, it was said. Meanwhile, at the centre – in effect the federal level - you can agree on a set of wider shared functions, including defence, foreign affairs, and social protection. At the same time, however, such a degree of extensive devolution does not allow for other aspects of federalism that characterises states such as the USA with its Senate, or Germany with its Bundesrat. That is to say, you cannot have parity of representation and power at the federal level for the component countries – in the UK case, parity of Wales, Scotland and Northern Ireland with England.

The proponents of devo-plus at the Forum said they were putting it forward in its own right, in pursuit of good governance for the UK rather than responding to the SNP. They argued that it addressed the following issues:

- Providing the Scottish Parliament with entrenched powers.
- Improving funding relationships through reform of the Barnett formula.
- Enhancing relationships between levels of government, by placing concordats on a legal footing.
- Establishing procedures to resolve disputes.

At the same time, it was emphasised that further devolution along these lines would inevitably result in a trade-off, with a reduction in Scottish and Welsh MPs, less of an airing for Scottish and Welsh issues at Westminster, and a greater reliance by the Scots and Welsh on their own resources rather than fiscal transfers. In short, the more tax decisions were made in Edinburgh, Cardiff, and Belfast the less influence the Scots, Welsh, and Northern Irish could expect to have over tax decisions in England.

Of course, this begged the question to what extent was it possible to talk in terms of decisions being made on an English basis. As one participant stated, at the outset of the discussion, "There is a reverse asymmetry to the devolution debates in the United Kingdom because there is no debate taking place in England." Later this was underlined by another participant who said:

“When we refer to England we tend to assume that it is a political entity on a par with Scotland, Wales or Northern Ireland. But England is an abstract concept politically. In fact there is no political entity that is England. Instead, there’s Westminster. How do we create a debate in England? The Labour Party isn’t interested. Centrally, it’s never really been interested in devolution at all. When devolution went through the House of Commons in 1998 there was no enthusiasm or spirit behind the legislation. The real threat to the union emanates from inactivity at Westminster ... there’s no use producing some kind of technical solution – whether its devo-max or English votes for English laws – to what is an underlying problem of political disinterest.”

This perception was confirmed by an account of two problems being experienced by the Mackay Commission that is examining the impact of devolution on the workings of the House of Commons. One was finding an authentic voice for the Labour Party. Individual Labour members had given evidence but there had not been any coherent, definitive position presented on behalf of the party as a whole. The second problem was finding a genuine voice for the view of England. As the Forum was told:

“The Commission has heard from the usual suspects, but how representative are they? Certainly a stronger English identity is emerging in response to devolution, but is it merely cultural? Where is the political engagement?”

Another participant added:

“There is a sense that the English are losing out – in the debates about Europe, immigration and devolution. It is true that consideration of these questions in a distinctively English context is in its infancy. However, Englishness is becoming an important vehicle. Devolution has created a disconnected ever-loosening union. Fiscal transfers are at the heart of it. What constitutes the nation and what are the grounds for redistribution? Answers to these questions are going to become harder in future.”

And a third said:

“There’s some resentful twitching going on in the English brain. Seven years of SNP government have annoyed the English. On the other hand they have not affected Scottish attitudes towards their future constitutional options one iota. It remains the case that even when combined, Scotland, Wales and Northern Ireland only represent 15 per cent of the UK’s population. We cannot persuade the English to change the way they are governed if they don’t want to. That’s a fundamental constraint on the kind of relations we can hope to have with the English. However, the Scottish debate tends to assume that if we construct something the English will want it.”

It was suggested, too, that if the English ever did express their personality in political terms the results might not all be positive:

“Devolution gave the Welsh and Scots a voice and decentralisation. However, giving a voice to England will achieve the opposite, centralisation. There’s a debate about the powers of local government in England but its vestigial. An English Parliament is not going to deliver more democracy, nor will it deliver decentralisation in the delivery of public services.”

It was also pointed out that in England the constitutional debate is very much focused on Europe and not much linked to the internal debate around devolution. Yet in 2014 European elections will be held a few months ahead of the Scottish independence referendum. On the one hand integration within the Eurozone is deepening, while on the other the UK is becoming more detached from European affairs. From this perspective the geo-political consequences of Scottish independence would be immense, with an enormous impact on the power structures within these islands.

An alternative, less apocalyptic view suggested that the European dimension might offer a new and more constructive way of looking at internal relationships within the UK. As this participant put it, "In Europe we have the notion of a shared sovereignty that adds value." And another said:

"I don't think federalism provides an answer to the UK's constitutional dilemmas... We should look at how the European Union works. The British are remarkably relaxed about secession, as is the European Union. But Britain has more extensive fiscal transfers. Within the EU there is growing union on the economy but foreign affairs are off limits. Within the UK aspects of economic policy are devolved, but foreign affairs are held solely at the centre. How willing are we within the UK to move towards the European Union model?"

Meanwhile, a danger of the constitutional debate being dominated by a dialogue between Westminster and Holyrood was mentioned more than once during the discussion. Participants were reminded that Wales and Northern Ireland both had an interest in the potential outcomes. For instance, a Yes vote in the Scottish referendum would have profound implications for Ireland, and Northern Ireland especially. The Forum was told that a number of things would flow from this eventuality:

"You would get a much more existential discussion amongst Unionists in Northern Ireland. Could it be that, in these circumstances it will be England that secedes from the union with Northern Ireland? Could we envisage a federal Ireland? Overall, the relationships between Ireland and Britain could be recalibrated to bring in confederal elements. And even if there is a No vote in Scotland many of these questions won't go away. It's not going to be possible to muddle through this."

As for Wales, it was here that most interest in a federal solution was concentrated, exemplified by First Minister Carwyn Jones' interventions in the debate. The Forum also heard that in 1956 Plaid Cymru, the SNP and the Commonwealth Party that existed in England at that time had jointly published a pamphlet *Our Three Nations*. This advocated the replacement of the United Kingdom by a 'confraternity' of self-governing states. An essential question for Wales, and for Northern Ireland, was the extent to which the principle of fiscal transfers from the richer to the poorer parts of the UK would survive any constitutional change:

"For Wales for the foreseeable future the only alternative to devolution is some form of federalism. How could you create an over-arching decision-making process that gives appropriate weight to a Welsh social democratic approach to social security that would be greater than England would be likely to want?"

However, in the immediate, and probably the medium-term future, there was a widespread acknowledgement that the decisive relationship would continue to be between Edinburgh and London. Much discussion at the Forum focused on the run-up to the Scottish referendum in autumn 2014 and how the outcome would continue to occupy the attention of politicians and commentators in the years that followed. From this perspective there was a general acknowledgement that a critical player remained Labour, largely because it was the only party that enjoyed significant representation in all three nations of mainland Britain. However, there was a good deal of criticism of Labour's lack of engagement in the debate at the UK level. More than one participant referred to the danger of complacency, pointing to the clarity of the SNP's independence message compared with the relative incoherence of 'devomax' which very few voters understood. As one participant declared:

"The tragedy is that most Labour leaders are just wandering around and not making a contribution. I'm on the verge of despair. More than ever in the recent past Scottish Labour is led by London thinking. In Scotland the Labour leader Johann Lamont is capable of more, but she is the prisoner of Labour centralist thinking. The No campaign in Scotland is driven by negativity, tribalism, hatred of the SNP, and fear of Scotland's capabilities."

And another said:

"I wish we weren't having a referendum. A referendum forces a binary choice. It's the wrong way to deal with the issues we face. We should be asking which system works best? How can we address the fact that there are a significant number of people in Scotland who think they shouldn't be in Britain?"

It was suggested, too, that political events could conspire to bring about unforeseen consequences. It was pointed out that in the next European election in 2014 UKIP was likely to come second and could even come first. The other parties would then be highly conscious that a coalition would be the likely outcome of the general election the following year, in 2015. There could then follow the possibility of some kind of rainbow Labour-led coalition government that didn't have a majority in England. Something similar had happened in 1964 and 1974 when Labour governed with small majorities that depended on Welsh and Scottish votes. At that time, pre-devolution, it didn't much matter. Today it might force a crisis, the big constitutional moment that was speculated on at the outset of the Forum.

A further potential bear trap would be the outcome of a referendum on the UK's relationship with the European Union, should one be held in the wake of the 2015 general election. Two potential results would immediately create internal constitutional tensions. One would be if enough voters in Scotland, Wales and Northern Ireland kept a No-voting England inside the European Union. An alternative scenario would be one in which England voted to leave, while Wales, Scotland and Northern Ireland opted to stay in. Either could have profound consequences for the union.

All of these matters have the potential to preoccupy the 2015 Westminster Parliament. Yet there is little sign that either the Labour or Conservative parties at Westminster are giving them much thought. Inevitably, however, in the next few years they will be faced with the consequences of the 2014 Scottish referendum, the

Silk Commission recommendations on the powers of the National Assembly in Wales, the result of the 2015 general election with its potential constitutional implications, and whatever situation develops within the European Union. One way or another if not 'a big constitutional moment', the Westminster Parliament will have to deal with a very large constitutional agenda between 2015 and 2020.