



DG Undeb Sy'n Newid UK's Changing Union

Forum 5

Better apart, together **The Centre and Inter-governmental Relations**

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A report on the proceedings
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The Forum began with an assessment of the present character of the machinery and politics of relationships between Whitehall and the devolved administrations. What impact is the forthcoming Scottish independence referendum having on day-to-day inter-governmental relations?

It was pointed out that at the start of the devolution process, in 1999, the essence of these connections was informality. This was because the Labour Party was simultaneously in power at Westminster, Holyrood and Cardiff Bay. When difficulties arose they could be settled by a telephone call between Ministers in their respective capitals. However, this ended in 2007 with the advent of the first SNP Government, prompting a statement and question that informed much of the Forum's discussion:

“When the SNP government came in things changed. A political dynamic was infused into the system. You can't criticise civil servants for the problems that arise. All this is politically driven – the politics have been leaping head of the inter-governmental mechanisms. Whether Westminster likes it or not the Union is changing. And the question is: does Westminster have the ability or the interest to transform the system?”

This led to a debate about the present structures of inter-governmental relations and their future prospects in the event of either a No or a Yes vote in the forthcoming Scottish independence referendum on 18 September. An underlying problem, it was stated, was that while the Scots see their Parliament and Government as equal with Westminster, the same is not the case when viewed from Whitehall which regards Scottish institutions as subordinate. There was also a need to take account of the departmental nature of the central institutions with a consequent lack of communication across Whitehall. It is difficult to make the system work in a holistic way when so many intergovernmental negotiations are undertaken on a bilateral basis. As one participant put it:

“Whitehall is a strange hybrid. Its heart is English but its policies have knock-on effects across the territories of the UK. The extent of this varies from

department to department. So, for example, the Treasury is a fully UK-wide department. On the other hand Defra, Transport and the Home Office are hybrid departments in the sense that their main focus is England, but their policies have knock-on effects for Scotland, Wales and Northern Ireland.”

It was suggested that the formal part of the inter-governmental machinery – the Joint Ministerial Committee (JMC) – works relatively well. However, in the main relationships have developed opportunistically, on a bilateral basis, addressing needs as they have arisen. Compatibility between administrations depended on the subject matter at hand. On European issues, for example, there were a lot of shared interests in putting together a UK position. It was not coincidence that the JMC Europe Committee was the best working part of the mechanism. Its processes were also driven by a timetable, with meetings of the European Council providing a framework and a rhythm. On the other hand, with such matters as sharing out resources across the UK, and who pays for what, there was inherent conflict. As another participant reflected:

“Generally speaking agreement is easier to reach at lower, civil service, levels beneath the political surface. The weakest part of the JMC system is at the top where there is always a temptation for politicians to seize an opportunity for grandstanding. This is especially the case when different political parties are involved.”

Devolution means the public sees governments competing and criticising one another on the delivery of public services. Civil servants working for the SNP Government in Edinburgh or the Labour Government in Cardiff say one thing, while those working for the Conservative-led Government in London say another. While that was understandable, since they worked for different masters, from time to time it led to strains and tension. A current example was the so-called ‘War on Wales’ with Conservative Ministers, including the Prime Minister, attacking the Cardiff Labour administration for its alleged failures in delivering health policy. The Forum was told that it took the Department of Health just 12 hours to respond to a Freedom of Information request about Welsh health statistics from a politically motivated source. By mistake, the Welsh Government received an e-mail from Downing Street headed ‘Cameron’s line to take on Welsh health delivery – please check the facts’. As the Forum was told, “All this makes it difficult to have conversations with health officials in Whitehall.” A contrary view was that the episode represented a maturing of the system:

“The ‘War on Wales’ is a good thing. Until now the devolved administrations have felt it OK to shout at Whitehall and Westminster but they haven’t been allowed to shout back. The fact that they are now doing so suggests that greater equality is entering into the system. The devolved administrations need to be able to take criticism as well as give it.”

It was generally agreed, however, that connections between the civil service within Whitehall and the devolved administrations were loosening. In part this was an inevitable consequence of the devolution process. For example, in 1999 the Welsh Office had 2,000 civil servants. Today the Welsh Government has 5,000 officials, recruited in the main from local government, the voluntary sector, and public agencies such as the former Welsh Development Agency. The result was that the traditional civil service element within the Welsh Government had been diluted.

Today there are only a dozen or so civil servants left from the old Welsh Office days, which has implications for relations with Whitehall. As the Forum was told:

“There are very few people left who have direct experience of Whitehall, in terms of working there. Indeed, a lot of our people have only a limited understanding of how the Parliament at Westminster works. So when we talk of the Welsh Civil Service it’s quite different from the traditional Whitehall conception. There is little sharing of understanding between the two.”

Another participant reported that changes in the way civil servants are recruited has also resulted in reduced interaction with Whitehall:

“It’s not a managed process any more in the way it was in the past. Posts are advertised rather than people placed in a considered, strategic way. Permanent Secretaries say they want interchange between departments but in practice it doesn’t happen. People would like to broaden their experience but it is difficult to achieve in practice. The mechanics for doing it aren’t there.”

At the same time, despite the Home Civil Service now working for four different governments in the UK, they continue to share core values such as giving primacy to serving the interests of their Ministers. As one participant observed:

“What’s happening in Scotland is a tribute to the civil service. In the main there is no difficulty. Even on the referendum where there are two democratically elected governments with polarised views, the civil service is operating effectively. In fact, it’s much easier when you know where your masters are coming from.”

And another added:

“It is noteworthy that before it came into office in 2007 the SNP had a manifesto commitment to create a separate civil service in Scotland. They wondered if the civil service would be supportive of their objectives. They were, and the commitment to create a separate civil service has been quietly dropped.”

However, the same participant later said:

“You cannot describe the Home Civil Service as one organisation any more. Despite the fact that organisation of the senior civil service is a reserved matter, terms and conditions of service have been devolved. It feels more like a federation of organisations – with a senior leadership committee on top. It’s more like a number of separate organisations that happen to share a senior professional code.”

Of course, the Wales, Scotland and Northern Ireland Offices provide a major civil service interface between the governments and there was discussion at the Forum about their future. Their role was to negotiate inter-departmental disputes within Whitehall over devolved matters and act as a conduit to and from the devolved administrations. These tasks provide as many opportunities for conflict generation as resolution. It was pointed out that politicisation of the territorial offices had increased in proportion to the decrease in their administrative functions. In Wales,

for example, the present Secretary of State has declared his role is to “vigorously police the boundaries of the Welsh devolution settlement”. In addition to creating stand-offs with the Welsh Labour Government this had added to difficulties within his own party, as one participant explained:

“We have a problem with a Secretary of State in the Wales Office who is not signed up to the Welsh devolution project. This is creating a conflict with the Conservative Group in the Assembly. Will the Welsh Conservative Party continue to develop its Welshness? Such conflicts are creating major issues for the UK state-wide parties.”

The territorial offices also had a difficulty with their relatively small scale and resultant lack of a critical mass for effective policy making. There was general agreement that an amalgamated office for the Nations that could provide the UK Government with a capacity to look at constitutional issues in the round would be a welcome development. However, so long as devolution remained an unstable process it was agreed that this was unlikely to occur. As one participant stated:

“The UK Government wants an integrated view. But it's all about politics, especially when the constitutional argument is unsettled. And that's been the case in Wales from the start, and it's certainly the case now in Scotland. If the constitutional landscape was more settled the case for looking at the role of the territorial offices and amalgamating them in some way would be stronger. However, this will only happen when constitutional issues are not burning.”

This view prompted the Forum to turn to a discussion about the consequences for relationships between Whitehall and the devolved institutions of the two possible outcomes of the referendum in Scotland this September. One participant laid out the issues as follows:

The key question is: what does a No vote mean? If we can't define what a No vote will deliver there will be an inclination amongst many to vote Yes. However, there's no consensus in Scotland about what would follow a No vote. The country is bitterly divided, and there may well be a narrow result either way.

“If you have a proper constitutional settlement there will be less need for elaborate arrangements for inter-governmental relations. A proper structure would deal with the issues as they arise. Some form of federalism needs to happen. But England is the elephant in the room. We don't have to have a constitutional settlement in which the constituent parts are equal. But in future we will need a partnership of equals. Managing decline is no longer an option. We need transformational change. If Westminster doesn't rise to the occasion, Scotland will.”

However, another participant responded by saying:

“How much is the Union prepared to change in order to save itself? Activists in the Yes campaign are people who have given up on Westminster. They've come to the view that it won't and can't change. Are there Unionists willing to change in order to contain Scotland? We argue that we have first to break the Union in order to reconfigure it.”

It was then argued that a problem for No campaigners in the referendum debate was the difficulty they appear to have in putting forward a positive case for Britain. As one participant said:

“Unionists find it difficult to put their case. They’re inclined to obdurately defend the old union rather than provide inspiration for a new one. We need a new vision. If Scotland votes Yes, the remainder of the UK will have to be reconfigured on a federal basis. But suggesting anything along these lines in advance of the vote is seen as representing a concession. Unionists have lost the chance to confidently project an alternative vision. Is there a desire for Britain to survive or not? That is a big question.

“The people of Scotland want a form of federalism. Gordon Brown is stumbling to this point of view. But it’s all so reluctant and late. We have a real problem because of the way we have approached this. We could inadvertently end up with an independent Scotland.”

Yet if it is the case that the Scottish electorate wants some form of federalism other participants at the Forum did not believe this applied to the English. It was pointed out, for instance, that there is great resistance to regionalism within England. And even if that were to happen it was argued that English regional devolution would not be legislative and so would not answer the West Lothian Question. And as for creating an English Parliament, in the unlikely event of that happening it would not be seen as part of the devolution process.

In any event the English already have their Parliament, at Westminster, and instinctively turned to it to solve their problems rather than look to local government or, less likely, some form of regionalism. As one speaker argued, while federalism might be a logical answer to the constitutional problems of the United Kingdom, the English simply didn't want it:

“Gordon Brown is calling for a constitution for the United Kingdom to entrench Scottish devolution. And in logical terms the case is unanswerable. But to accede to it you have to acknowledge that Parliament is not sovereign. That, too, is logical. We abandoned the sovereignty of Parliament when we entered the European Community in 1975. But none of this is acknowledged in a formal sense. There is an analogy here with a tennis club. If you want to join do you ask to see the rules? If you did where would they find them? The reality is that the United Kingdom is a club in which if you ask to see the rules you don't belong.”

If federalism is not an accurate response to the meaning of a No vote in September Forum participants asked whether it might be found in ‘Devo-Max’. However, there was difficulty in achieving a consensus on what that might mean in practice. As one contributor said:

“What is Devo-Max? We know that the SNP thinks it means full fiscal responsibility, opening up Work and Pensions functions. Gordon Brown has also spoken of enhanced fiscal powers and entrenching the constitutional settlement. There’s also talk of giving some kind of constitutional status to targets around issues such as child poverty and climate change. But such

proposals don't fit easily with the way the present UK constitution works. In fact, as it is, it is not possible. So Devo-Max implies moving to a federal UK."

This prompted another speaker to declare that both federalism and Devo-Max were lazy concepts:

"What is their underlying meaning? Federalism is not simply devolution in an asymmetrical UK. As for Devo-Max it is a cure looking for a disease."

He went on to argue that in all decentralised systems there tends to be a common approach to taxing and spending, with taxation held centrally and spending powers decentralised. However, there should be scope for bringing them together around decentralising welfare payments following a No vote, while at the same time sustaining enough social solidarity at the centre to maintain the integrity of the UK state:

"It is the élites rather than the people who argue that Scotland is a different country from England in terms of its social democratic values. Our constitution isn't as bad as the tennis club we heard about. We do have a territorial constitution even though we haven't written it down in one place. For instance, the powers of the Scottish Parliament cannot be changed without its consent. We are moving towards a federal type arrangement in which each layer of government can legislate in its own sphere without interference. There are a bundle of more powers coming in 2016 as a result of the Scotland Act and there will be further developments. Can we codify them bit-by-bit? The challenge will be to get through the two-year period following the referendum. Do we have the statecraft to achieve improvements for Scotland and the UK amidst the chaos of two elections?"

However, others at the Forum felt that such an approach, while sensible, did not offer the kind of substantive change many Scots were seeking. As one of them put it:

"We need a form of federalism as a counter offer to independence. It doesn't require a symmetric system, although it has to allow for the acquisition of powers by the constituent parts. We cannot just drift in the way Belgium has. We need to entrench the powers of Westminster around defence and foreign affairs. There is an issue of welfare and the extent that can be decentralised from the centre. But we don't have to solve all the problems on Day 1. Federalism is a bargain. Are we prepared to make it? The English have to answer that question."

Yet there was a strong view amongst a number of participants, especially those with an inside knowledge of the way Whitehall works, that this was a question unlikely to receive a positive answer. One observed that there was already a substantial backlash to the attention being given to Scotland as a result of the independence referendum, especially amongst Conservative politicians:

"Their reaction to a No vote, even within the margin of 55 to 45 per cent, will be to say, 'Phew! Thank goodness that is out of the way. Now we can turn our attention to the general election'. I don't sense that Westminster politicians are remotely engaged with proposals to enhance the Scottish devolution settlement

in the event of a No vote. Rather, they tend to view devolution as a mistake altogether.”

That may be a reality in Whitehall. But as another participant countered, there is another reality in Scotland where voters in the referendum this September have a real choice:

“The essence of the choice is whether an independent Scotland would be better off with a better quality of life in relation to issues like poverty, equality, and the bedroom tax. For the ordinary voter this is the nub of the matter rather than abstruse arguments about independence versus federalism. Threatening them with sterling, Europe and pensions doesn’t address the essence of the choice they face.”

The Forum then turned to a discussion of what might ensue in the event of a Yes vote, with the SNP aiming for 18 months of negotiations leading to Scotland becoming independent in March 2016. Proponents claimed that could be achieved in a relatively seamless way. The Czech-Slovak so-called ‘velvet divorce’ provided a model in which the main protagonists met over a weekend and agreed the big-ticket items, such as the national debt, leaving much of the detail to be negotiated later. Everything did not have to be dealt with at once. Instead a two-staged process was envisaged: (i) an in-principle agreement with enough finalised in the first 18 months to allow independence to be legally declared by March 2016; and (ii) a further period of perhaps five years in which a smooth transition could be undertaken.

It was envisaged there would be two strands to this independence process, running in parallel. One would be the negotiations themselves on the detail of independence, and the other work on planning the transition. As the negotiations proceeded towards an end point, work on the transition would increase. It was assumed that most of the legislation leading to independence would be made in Scotland.

It was acknowledged that many issues would need to be addressed in this process. The UK state system would receive a shock from which it would need time to recover. There were questions, too, around who would make up the negotiation delegations from both sides. Other hurdles included the 2015 UK general election, followed by the Scottish Parliament election a year later. However, it was felt a lot could be learned from the process that led to the Edinburgh Agreement in October 2012, and also the negotiations to form coalition governments that have taken place in both Scotland and London in recent years.

Many at the Forum were less than sanguine about the prospects for such a smooth transition to Scottish independence. A raft of difficulties was raised. As one sceptical onlooker observed:

“The scale of the challenge a Yes vote would present us with is eye watering. There would two sets of negotiations, one with rUK and the other with the EU/Nato. The rUK would be a common player in both. The rUK may change its tune after the vote. Others may not. For instance, Spanish politicians might harden their response after a Yes vote. There would be different incentives on each side to reach a speedy agreement. Who would negotiate? Would the Scottish MPs and representatives from Wales and Northern Ireland be involved? All this cannot be done in a weekend. It took more than 18 months to

negotiate the Edinburgh Agreement. It is inconceivable that the independence negotiations could be completed in the 18 months being suggested by the SNP government.”

Another sceptical observer added:

“We would need to take account of world reaction. There would be shock that a stable democratic state like the UK was breaking up. There would be profound implications for other states elsewhere. The Spanish Government would be particularly exercised. Both Scottish and rUK Governments would have a lot of diplomatic work to do in providing reassurances around the world. A major test will be how the Trident issue at Faslane is resolved. Prime Minister Cameron might be toppled. Certainly an unstable situation would be created.”

There were different views on whether the Prime Minister would have to resign. Another participant suggested that the Conservatives would simply blame Labour and the Liberal Democrats as they had been mainly responsible for the No campaign in Scotland.

There was a good deal of discussion about how the European Union would react. It was pointed out that each state in the EU has to agree to the accession of a new country, whether by Parliamentary approval or by a referendum. Consequently the timescale would likely be much longer than the 18 months being envisaged.

There was also speculation about the impact of a Yes vote would have on the general election in 2015, with some foreseeing alarming prospects. What would happen, for instance, if the Conservatives were short of a majority by about 50 MPs, equivalent to the number elected for the other parties in Scotland? The following answer was suggested:

“An obvious route would be for the government at Westminster to form an arms-length cross party negotiating team made up of senior figures who would be charged with reporting back to Parliament after the 2015 election. If that election produced a Labour government dependent for its majority on Scottish MPs it would announce that it would call a further election the day Scotland becomes independent.”

There was some discussion too, about reactions to the likely narrowness of the vote, and speculation about potential divisions within Scotland if some regions voted No. As one participant suggested:

“A lot would depend on the size of the majority for Yes and on the turnout. Would a small majority be accepted? Given that the 2015 general election would be looming could that be mobilised in some way as a re-run of the referendum, combined with a firmed-up offer of Devo-Max?”

Others argued that, as in Wales in 1997, even a very narrow vote in favour of independence would be regarded as decisive. It was pointed out, too, that at the time of the Crimean referendum to join Russia - announced and organised within a week in March 2014 - the Foreign and Commonwealth Office had published a graphic comparing it with the legality of the Scottish referendum:

“The reality is that the UK Government will accept the result, just as Serbia accepted the result of the referendum in Montenegro. The rUK will seek to do what is right in its own self-interest. This will be no unilateral declaration of independence. We will have done it legally, like Canada or Australia. And such a constitutional process does not pose a threat to Spain.”

However, it would certainly have major repercussions for the rest of the UK, and especially Wales. As another participant said:

“There are massive implications for Wales. We’d be left with the company of England on one side and Northern Ireland on the other. We would need to consider the constitutional structure of this new entity. Our First Minister has been calling for a Constitutional Convention, but we have to concede that that probably won’t happen. However, the Silk Commission has called for more formally institutionalised inter-governmental arrangements – a Statutory Code of Practice and a Welsh Intergovernmental Committee jointly chaired by the First Minister and Prime Minister. Certainly, our existing inter-governmental machinery would need completely reconfiguring. There are questions whether the relationship would be viable in the long term. Wales has nothing in common with Northern Ireland. After the dissolution of Yugoslavia, Serbia and Montenegro fell apart.”

Others felt that all these various scenarios were too apocalyptic. In the event of a Yes vote it was suggested that the House of Commons would welcome being more English, while the rest of the UK would have no option but to adjust. The participant who made this point said:

“The difficulties emanating from a Yes vote have been exaggerated. It will be treated as a *fait accompli* and Whitehall will revert to ‘business as usual’. Most people in the world already think England and the UK are the same anyway. The UK’s international reputation will demand that we deal with the ramifications properly and reach an amicable separation. Two pressures will demand a return to normality as soon as possible - a need to reassure the markets and shore up the value of sterling, and a wish to secure as good a deal as possible for the rUK. The independence date will be a bargaining chip. We’ll need to create a sensible timetable. Problems with the EU can also be exaggerated. Scotland has already incorporated all the ‘*acquis communautaire*’ - the accumulated legislation, legal acts, and court decisions which constitute the body of European Union law. There will be no compliance problems.”

It was argued, too, that pragmatism and goodwill would combine to enable the many, admittedly difficult, issues to be resolved in a reasonable way. This optimistic outlook was accompanied by an observation on the contrasting nature of the Forum’s discussion of the two possible referendum outcomes. As one participant put it:

“When we were dealing with the consequences of a No vote many of us were agitated about the prospect. It was emphasised how unprecedented and complex the situation would be. On the other hand, when we moved to discussion on the consequences of a Yes vote we were more positive, shifting to a mood of creative problem solving.”

The Forum drew to a close on what, for some at least, was a note of constructive speculation. It was suggested that an alternative might still be possible to the Yes/No options presented in the referendum:

“The Scots cannot unilaterally set a date or the terms of independence. We might find ourselves negotiating a third way. The Scots want Independence in the UK. The rUK says No. We might end up with some form of confederation. Certainly, that would be easier to sell to the international community.”

In the final contribution to the Forum’s discussion another participant concurred:

“The best liberal approach would be to develop a structure for co-operation beyond the traditional multi-national state. It would be generous to start thinking in terms of a confederation as the best way for managing the processes of change, and especially as they’re likely to affect Northern Ireland. This would open up productive possibilities, certainly for Wales and could also embrace the Republic of Ireland.”