



Constitution Committee

Corrected oral evidence: The future governance of the UK

Wednesday 16 June 2021

10.20 am

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Members present: Baroness Taylor of Bolton (The Chair); Baroness Corston; Baroness Doocey; Baroness Drake; Lord Dunlop; Lord Faulks; Baroness Fookes; Lord Hennessy of Nympsfield; Lord Hope of Craighead; Lord Howarth of Newport; Lord Howell of Guildford; Lord Sherbourne of Didsbury; Baroness Suttie.

Evidence Session No. 1

Virtual Proceeding

Questions 1 - 14

Witnesses

I: Philip Rycroft, Former Permanent Secretary, Department for Exiting the European Union; Professor Ciaran Martin, Former Chief Executive, National Cyber Security Centre.

USE OF THE TRANSCRIPT

This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Philip Rycroft and Professor Ciaran Martin

Q1 **The Chair:** This is the Constitution Committee of the House of Lords. We are conducting an inquiry into the future governance of the UK. Our witnesses this morning are Professor Martin and Philip Rycroft. Thank you for joining us and welcome to you both.

You will probably both agree that this is quite a big task that we have taken on and there are quite a few dimensions to the issues that have been raised recently. Can you start by outlining what you think are the key challenges in respect of the future governance of the UK and how the Government themselves should be addressing them? Who would like to answer first? Philip Rycroft, thank you. Go ahead.

Philip Rycroft: I can kick off on this one. In a nutshell, the key challenge for the future governance of the UK is sustaining the consent of the people of all parts of the UK to its continuation as a union. That consent is clearly fraying, particularly in Scotland, and it seems to me that it is not sustainable in the long-term to have around 50% of the people of one part of the territory of the UK expressing a wish to leave it. That, to my mind, is the major challenge of governance.

To say a little bit about how the UK Government might respond to that, it requires vision and some courage to take the requisite steps to stabilise the union. The aim is not just about getting that percentage back up to 51% or 52%. If we are to put this question to bed for the medium and longer term it means looking to achieve levels of support for the union consistently over time of 60%, 65% or higher. This is not going to be easy and no doubt we will talk later in the session about the sorts of things that can be done to address some of these issues—structures, intergovernmental relations, the shape of the legislature, the future of your own House, reform at the centre of Government. All those things are important.

I will make two further quick points. First, this cannot be done in isolation from questions about England, about England both as a policy in its own right and devolution within England. Recent polling shows that there is marked indifference—I think that is probably the best word—among English opinion to the future of the union. This is not helpful for those who are concerned about the future continuation of the union. England must be part of this.

Secondly, I think structural change is necessary but there is a question as to whether it is sufficient and the bigger challenge is about remaking the emotional case for the union. I think that is probably the biggest challenge of all. I will pause there, because doubtless we will come back to a lot of these themes through the rest of this discussion.

The Chair: We will indeed. Professor Martin?

Professor Ciaran Martin: Thank you to the committee for the privilege of the invitation. I share Philip's analysis so I will try not to repeat that, but just perhaps make some complementary points.

As part of that emotional but fundamentally strategically political point that Philip finished with, there is an important question for British politicians in power and seeking power at a UK-wide level to think about what sort of union they are trying to preserve. There are arguably two models and as with any bifurcation there will be overlaps and imperfect divisions. On the one hand in recent decades there has been an overtly multinational, diverse, multigovernmental, United Kingdom-stressing partnership between the constituent parts and reflected in the profound changes to governmental structures within the UK in the late 1990s. In terms of Scotland, which Philip highlights as the principal risk to consent in the union, that is consistent with the dominant narrative of partnership union of equals and so forth over the decades and centuries, if not perhaps the Welsh and Irish, later Northern Ireland, union. That is one model.

There is a more assertively singular British states model of unionism that might more accurately be called, as John Denham has called it, Anglo-centric British nationalism, as distinct from unionism. In a sense that is a more assertive governance and a more assertive promotion of British identity, perhaps one might say embodied in the internal market Act and some of its provisions, particularly on regulatory rules. I think both are valid but I do not think they are complementary. I think they are mutually exclusive and lead you down different paths of governing. Both are risky in terms of sustaining the union, but I do not think there are any low-risk options left for maintaining the union. They require profound political thinking.

In my experience, as someone who did not grow up in England, many pro-union English political thinkers start from the assumption that the union is a self-evident good. There are two problems with that. One is that it conveys a message to the large number of people outside England who now doubt its benefits that there is something wrong with their way of thinking and that some way should be found to make them see sense, rather than thinking through a profound analysis of why from nowhere in the 1950s to nowhere in particular in the 1990s, nine in 20 Scots voted to leave the United Kingdom—that was within the last 10 years. I think there needs to be a profound analysis of that.

I also think that it cannot be done in a technocratic vacuum. Something we might come on to—and I share responsibility for this—is the UK state's approach to devolution since its inception a quarter of a century ago, which has been excessively technocratic and not thinking about the vision of the sort of United Kingdom we want to have. It needs to be done in conjunction with the political strategy and one of the major changes that goes unnoticed but is profound or at least underappreciated but is important is the effect of withdrawal of MPs sitting for Scottish constituencies from UK national leadership roles. I think that without that complementary political recovery any technocratic reforms in Whitehall

are going to make it very hard to deliver a union that operates as we are used to it operating in the past. Those are some opening thoughts.

The Chair: Thank you very much. There is a lot to think about in there and it will lead on to discussions. Immediately, it will lead on to Lord Hope's concerns. Lord Hope?

Q2 **Lord Hope of Craighead:** Professor Martin, first, I congratulate you on your paper because I read it through and it was absolutely fascinating. Your thesis is that the union is held together by consent, rather than by force of law, and that raises two questions that I want to put to you.

First, how can consent to the union be measured? If you cast your mind back to 1998 when the Scotland Bill was being discussed, there was no dissent as far as I can recall to the provision in the schedule that says that the union is a reserved matter. Things have changed due to the political change, but does one measure this by elections or does one measure this by polls conducted from time to time, which indicate that things are very evenly balanced at the moment and there is no easy way out?

Secondly, how important is the law in maintaining the union and would it be better if we have in the Scotland Act, as it now is, a provision similar to Article 50 of the Treaty on European Union, which you may remember allowed any member state to withdraw from the Union, as we did, and then directs the European Union to negotiate arrangements for the withdrawal, taking account of the future relationship with the Union?

Can you answer those two questions and then Philip Rycroft, if I could come back to you afterwards, please?

The Chair: Can I remind committee members to mute when they are not speaking? I think that might help with the audio. Sorry, Professor Martin.

Professor Ciaran Martin: First, thank you, Lord Hope, for your very generous comments about my paper. On the question of measuring consent, clearly the only way to measure consent for the union decisively is through a referendum. In the British tradition that is something used sparingly and with no clear guidelines as to how and when. There is a lot of subjective interpretation in this and people have their own views. I suppose the only two objective facts that we can rely on are the union was maintained by consent in 2014. There was, despite rhetoric to the contrary, no agreed timeframe as to the further testing of that consent, unlike, say, the Northern Ireland Act reflecting the agreement in 1998 with a seven-year minimum gap. That is the first objective fact.

The other one is that there is now, for the first time since that referendum, a pro-independence referendum majority in the Scottish Parliament elected on two clear manifesto commitments, but, as you correctly say, without, in my view and the view of many others, the legal powers to implement that commitment in a way that would bind the UK Government.

Everything else is subjective and I think we are in a quite unfortunate position. The principal issue in the Scottish parliamentary election held in May was independence. The two parties that form the pro-independence majority and the party that forms the Scottish Government were explicit in their commitment to a referendum and the UK Government were explicit that it would refuse one in any circumstances whatever the result, and the UK Government's representatives in Scotland took a contradictory position, which was that a referendum, it was implied in their campaign, would happen if pro-independence referendum parties were electorally successful.

I think it would have been better if perhaps it was in the Edinburgh Agreement—although, as I mentioned before, it was not there—what would a no vote mean for future referendums. I can understand why the appetite was not there at the time, but with the benefit of hindsight it might have been better to turn our attention to it in 2014. I think the polls narrowed significantly between 2012, when the agreement was signed, and 2014 when it was a closer referendum than many anticipated. A defeated nationalist movement might have been willing to talk about future rules or, if not, it may have been seen as reasonable for the UK Government to impose such rules.

My own view is that absent other measures it is very hard, given that the only current fact is that there is a clear parliamentary majority for a referendum, to override that because it is seen in a representative democracy that there is a majority for at least saying that consent for the union is on pause. The majority of the elected representatives in the Scottish Parliament and of course the overwhelming majority of Scottish MPs at Westminster, which would have been one of the old measures pre devolution that we could have used, are in favour of testing consent for the union again.

That would be my answer to the first question, and I do think the UK Government have to, at some point, answer the question about, "If not this, what?" rather than just saying, "Now is not the time."

On the question about the importance of law and maintaining the union by force of law and the case for an Article 50 or clarity Act-type arrangement, I am in no doubt the union can be maintained by law. The purpose of those who support Scottish independence is not to achieve a referendum; it is to achieve independence and that has always been assumed to be a lawful pursuit in that if consent for the union was withdrawn explicitly, the UK Government and their legal framework would adapt accordingly and provide for Scottish independence. So, in a sense, while the union can be maintained by law, what is interesting about the UK is that explicitly in the Northern Ireland Act and implicitly—arguably explicitly—in its approach to Scotland it has for many decades argued that it is not indivisible, that pursuit of separation is legitimate and should it achieve sufficient consent in any constituent part of the UK, it will be provided for. That is the risk of the current standoff when, for example, before the election the Prime Minister talked about "nothing until 2055", in effect ruling out legitimate political aspirations, lawful and democratic attainment, for 34 years, or 35 years at the time of speaking

it. That is a profound change in the way that we understand it. The role of law is to facilitate the consensual debate, rather than to be used as effectively saying that you will block attainment of legitimate aspirations.

Having said all that, I have considerable sympathy with the tone of your final part of the question on rules, and I think we need to look at our learning from when a UK-wide referendum voted for decisive constitutional change—in the Brexit referendum. I think there are profoundly important questions. I know that you, Lord Hope, have engaged in a debate about whether legislation would be required after a yes vote that the UK Government had agreed that would be binding to allow the UK Government to enter into negotiations for their own dissolution. I have insufficient legal expertise to engage in that debate but I think the question could helpfully be answered before any such vote, rather than after it.

For example, I do not think it would be sensible to have a debate about a confirmatory referendum after the first referendum. It should be before it. If you think of the position of the British Prime Minister following the yes vote, if the British Prime Minister is negotiating terms in the hope that Scotland would then reject those terms, that puts the British Prime Minister in one position. If the British Prime Minister is negotiating for a decisive end to the union on behalf of England, Wales and Northern Ireland, that puts the British Prime Minister in a different position and you need to know that in advance. That is just one example of why I think rules for an Article 50 for the United Kingdom are a good idea.

We are where we are on Scotland, which has just voted in an election dominated by independence without any clear rules as to what would happen next. Clearly it is not there at the moment but should the political will be there for another Edinburgh Agreement-type arrangement, issues such as that would have to come much more to the fore, both what would happen following a yes vote and indeed what would happen following a no vote. My paper has sometimes been characterised as arguing for permission for a referendum any time there is a pro-independence majority. I do not think it does that. It says, “absent any clear rules to the contrary.” It is very difficult in a consensual union to resist such a situation.

Lord Hope of Craighead: Thank you. Philip Rycroft, can I pass to you for comment on those two questions?

Philip Rycroft: Thank you, Lord Hope. I broadly agree with what Ciaran has been saying there, with two additional comments. As Ciaran has alluded to, we are where we are in not having a rule book around this, and it is difficult to introduce a rule book mid-stride, particularly when this is essentially contested territory.

The UK Government’s position—in essence, “not now”—works right up to the moment that it does not work. It is obviously a political position. If you look at the politics of where we stand right now, we have a Scottish Government who will say they have a mandate to have a referendum, but it is probably not in the interests of the Scottish Government to hold that referendum any time soon, not least because people in Scotland,

according to the polling, expect their Government to be focused in the short term on Covid recovery.

The politics change, of course. Circumstances evolve and develop and there will come a moment when the UK Government's position that now is not the time is no longer tenable. We will not know until we get there, but we will know when we get there. The illustration of that is a decision by Mr Cameron in 2011 to accept that the election of a Government in Scotland on a mandate for referendum meant that the right thing to do was to offer the holding of a legal referendum, which ended up in the Edinburgh Agreement and the 2014 referendum.

I suspect that like circumstances might arise in the near future after the next Westminster parliamentary election. If I do a little bit of stargazing into that future, let us say the Conservative Party win that election, perhaps with a reduced majority, perhaps with something like 40% of the popular vote across the UK, and let us say the SNP clean up in Scotland with topside 47, 48, 49 seats, maybe 50-odd seats, and perhaps with a majority of the popular vote, claiming a mandate again for a referendum, you would have a clash of two mandates. It seems to me that it would be very difficult in those circumstances for the UK Government to deny another referendum.

The second point is about setting rules. I would be tempted by the notion of some sort of clarity Act, something like we have in the Northern Ireland Act on a border poll and so on. It is tempting, but even if you have that written down in law, it will only act as a guide rail. These decisions will ultimately be politically determined. There is some dispute, for example, about how a clarity Act would work in the Canadian context, I understand, and certainly the Northern Ireland Act is not precisely clear about when the Secretary of State has a duty to hold a border poll in Northern Ireland; in other words, this is politically contested territory and these decisions ultimately have to be political decisions.

Let me make one final point on this. We can look of course at the legal context, how the law operates, but ultimately the only way to secure the union in the long term is to persuade a healthy majority of people in all parts of the union that it is in their interest for the union to be sustained. There can be a lot of diversionary political activity around when the conditions should be right for a referendum, but if we are still asking that question, it is demonstrative of the fact that there are an awful lot of folk in Scotland, perhaps Wales and Northern Ireland as well, saying they are not content with this union and that is not sustainable as a long-term position. The only way to sustain the union in the long term is to win back that consent with a healthy majority in all parts of the union, and I would include England in that as well.

The Chair: Thank you. I think several people want to follow up. I will call Lord Dunlop and then Lord Hennessy.

Lord Dunlop: Thank you. I echo what Lord Hope said about Ciaran Martin's paper, which I thought was excellent and thought-provoking.

I want to delve a little deeper into how we establish consent. I think it

has been referred to that legislation is largely silent on how consent should be established, and reference has been made to the Northern Ireland Act and the conditions that must be satisfied before a border poll is triggered. I think it is explicit in what you both said that a clearer legislative framework around what would trigger a future referendum is required. Can you both say a little bit more on that? If legislation is a good idea, what are the key elements of such legislation?

The other aspect is timing. I think Philip Rycroft said that you cannot just introduce legislation any time. What are the political circumstances that need to exist before such legislation would be effective in strengthening and stabilising the union?

Philip Rycroft: Thank you, Lord Dunlop. It is an interesting question. As I intimated, the timing of when you seek to introduce legislation, which would be very profound legislation if you are looking at legislation that is determining the circumstances under which one part of the UK could seek to leave it—an Article 50 equivalent or a clarity Act equivalent—the timing of introducing that legislation is hugely important. If it were introduced at a time like now, for the sake of argument, when you have a contest between two democratically elected Governments about whether or not there should be a referendum, the legislation would get drawn into that controversy. Essentially, the risk is that it would be delegitimised in that context.

As Ciaran has intimated, perhaps the time to introduce such legislation would be after a referendum, a referendum like that of 2014 when Scotland decided to stay in the UK. That may have been the moment to have introduced such legislation. Of course, in Canada it was introduced after the second referendum.

I come back to the point that such legislation might be a guide to how to conduct a future referendum. One could, for example, take elements of the Edinburgh Agreement and introduce them into the statute book permanently. What such legislation will not do is remove the politics from a decision to have a referendum and the conditions under which such a referendum might be held. In other words, the decision to move into that space will always be contingent on the political circumstances of the time. While such legislation might be useful as a guide rail, it will not be determinative, it seems to me, of how the country moves into its own future.

Professor Ciaran Martin: It is an important question and thank you, Lord Dunlop. Although in terms of the tidy-mindedness of someone interested in good constitutional government it is desirable, I think in the current circumstances it is very difficult for three reasons. One is that it would be preferable to have it UK-wide, but of course that is next to impossible, given it does not seem the right time to reopen questions around Northern Ireland, so it would presumably be confined, in practical terms, to Scotland and, hypothetically, Wales. Secondly, as Philip has already said, it is very difficult to do it post the 2021 election. Thirdly, the ideal way of doing it would be in some form of negotiation, but I

think we have to accept that the principal negotiating partner in Scotland would not have the same interests as the UK Government.

Let us take a hypothetical to answer Lord Dunlop's fundamental question about what the component parts would be. If there were talks either on a Great Britain-wide basis or specifically Edinburgh Agreement-style negotiations about a further referendum now contingent on a no vote or a vote to stay in the United Kingdom for future referendums, I think clearly the issue of gaps of time could be addressed and arguably should be addressed. One of the six points of the Chartists' charter that was never implemented because it did not make any sense was annual elections. We have time limits on how frequently it makes sense to consult the electorate and it is a reasonable position held by many people that constitutional referenda on the continued existence of the state as we know it should have a longer timeframe than single parliamentary Sessions. As a condition of our future union by consent, there is nothing inherently wrong with debating time limits.

Because of the 2011-2014 precedent, triggers other than a parliamentary majority are tricky. But, again, in tough negotiations, given the nature of different electoral systems, finding some way of saying that it is the majority opinion of active Scottish electors as opposed to a parliamentary majority, which can be assembled, as it just has been, with just below 50% of the popular vote, might be something that a UK Government may wish to put in place.

There are things about the conduct of the referendum and I do not mean by that the sorts of things that, frankly, tend to be regulated by the Electoral Commission in practice, even if Parliament gets the decisive vote for things such as wording, funding regulations and so on, but I do think that the things that we were exchanging views with Lord Hope about—what happens after a yes vote in terms of negotiations, in other words, so that there is greater clarity in intergovernmental agreements as to what follows than there was in 2014 or in 2016 after the Brexit referendum—would be the key constituent parts.

Lord Dunlop: Can I quickly follow up on that? We had a referendum in 2014 that was a significant vote for people in Scotland to remain in the United Kingdom. Should one of the triggers be a demonstrable shift in opinion in Scotland against the union, if I can put it that way?

Professor Ciaran Martin: I think the language of the Northern Ireland Act and the experience of the debate around it makes me slightly wary of an assessment by the United Kingdom Government of a demonstrable shift in opinion. I do think that perhaps results of elections is a better way of doing that. In the Northern Ireland context, according to current opinion polls there does not seem to be a basis for the Secretary of State to call for a so-called border poll, but if, for example, given that unlike in Scotland and Wales there is formal designation of political parties as to where they stand on the constitutional question, in a future Stormont parties registered as nationalist had a majority of seats in the Assembly and petitioned for a border poll it would be quite hard to resist that.

In a sense I accept the spirit of what you say, Lord Dunlop, but the measure of it, I think, is elections.

Lord Hennessy of Nympsfield: I am deeply appreciative to both of you for the degree to which you enlist the importance of what one might call the emotional geography of the Scottish question, the question of consent being crucial to that, of course. I have always felt that funding formulae, devo maxing, refreshing of structures and so on are absolutely critical too, but above all it is what General de Gaulle was alluding to in the first line of his memoirs when he wrote, "I always had a certain idea of France" and unless you have a certain idea of the union, really it is all lost. I do not want to sound pessimistic but without that, we have to somehow make sure—and I do not want to put words into your mouth, particularly extravagant ones—that the poetry is not crowded out by the plumbing of the discussions about Scotland and devolution in general.

I have two questions. How can we get the poetry to sing again, on both sides of the border? Do you worry, as I do, that there is a low road to separation, which is through England, rather than the high road through Scotland? The low road through England would happen, I fear, if that substantial chunk of polling data that suggested indifference dipped into "good riddance". As an old romantic about the union, I would be made absolutely desperate by that, as I think many of us would be, because of the cornucopic bounty that Scotland has provided to the union out of all proportion to the size of its population.

The Chair: Philip Rycroft, I see you nodding. Do you want to come in there?

Philip Rycroft: Yes, thank you, Lord Hennessy. This is the most difficult question, no doubt about it. The committee will no doubt want to spend time thinking about the law, how the law might work, whether there are legislative means to guide decision-making into the future as to how the union can operate. You refer to the structural stuff and we will come on to that, no doubt, but without that emotional underpinning the risk is that the union continues to fray. You have seen the steady increase over the last little while in support for independence in Scotland; you have seen the uptick in support for independence in Wales. Northern Ireland is in a particularly difficult position, and, as you rightly say, without an upwelling of feeling in England that says, "This union is still working for England" how do you reknit this together, how do you find the emotional bonds again?

The honest answer to that is: I wish I knew. There are many folk who have been thinking hard about this, and have been thinking hard about it since before the 2014 referendum and subsequently. I think there are some ideas around all of this that are worth exploring. There are some practical things that can be done to seek to reknit the union together. For example, I believe there is thought abroad about what you might call an internal—I am not allowed to use the word "Erasmus" any more—Erasmus-type scheme for universities across the UK to encourage more student experience in different parts of the UK. That has diminished since devolution and it is not a great thing to have to win that back. In

the cultural sphere as well, the UK Government have a role there to overcome the inertia, almost, that has come with devolution from more sharing of cultural experience.

Beneath that I think it has to go a lot deeper and wider. People have to feel connected to the union that they see as working in their interests and in the interests of their kith and kin—a union that is visibly functioning well for all its parts. This is why I think the levelling-up agenda, to use the Government’s own terminology—the strengthening of the economic and social experience in all parts of the UK, particularly in the north of England, so that people in Scotland are looking south of the border at a union that is seen to be working for their near neighbours—is hugely important. I would also put a cast on that of a sense of solidarity that this is a union that works for all its people, that when there are problems in one part of the union, other parts of the union will come to the aid of all in the union to ensure that solidarity and that experience. There is a progressive tilt to this, it seems to me, which is hugely important.

In the circumstances that we are in at the moment, post Brexit, obviously very divisive, with the extent of regional inequality across the UK, this is difficult territory, but it seems to me that the emotional case for the union ultimately lies in people’s acceptance that this is a union that stands by all its parts, works for all its parts, is ultimately a union, if you like, of co-operation, a union of solidarity.

The Chair: We have spent a lot of time on this, but it is central to all that we are discussing. I am going to let Lord Howarth come in for a supplementary on that.

Lord Howarth of Newport: In making the emotional case for the union do you see a role for the Crown and the Royal Family?

The Chair: Professor Martin, a nice little easy one to throw in there.

Professor Ciaran Martin: Let me take both together. I will deal with the Crown first. I have to tread very carefully with constitutional issues involving the monarchy. In the sweep of recent history, the monarchy, particularly Her Majesty the Queen, has made the correct judgment, which is to be a steadfast and highly dutiful Head of State for the entire United Kingdom. I think people will respond to that. I think most British people, wherever they are, will assume that the private preference of the Royal Family is for the maintenance of the United Kingdom and I do not think there is much need for that to be made explicit. As we saw in the late 1970s, it can be counterproductive and controversial if it is seen to be. I would urge caution but I think that the way in which the Royal Family do their jobs on a UK-wide basis will continue to be something that is valued. Indeed, interestingly if you go back to the 2014 debate and something that I thought was a rather weak part of the independence argument, the Scottish nationalists talked about the “six unions”, including the monarchical union, retention of the union of the Crown, so back to the early 17th century. That was an interesting acknowledgement of the power of the institution of the monarchy, even if exercised in an understated way.

If you will allow me, Lady Taylor, I would like to take a minute to respond to Lord Hennessy's excellent question and I will confine the remarks to Scotland because with Northern Ireland—the other part of the UK where the risk of leaving is highest—the situation is quite different.

On the whole emotional point, if you had asked me this when I was in the Civil Service there would not have been a line to take, or the line to take would have been that this is the most successful union in history. There is a very strong case for making that assertion about the Anglo-Scottish union but I am not sure what relevance it has now. When the history of this period, and I am talking about the last quarter of a century, is written and all of us around at the time have some responsibility for this, I think the sheer technocracy with which we responded to devolution will be seen as a weakness, a failure to grasp the extent of the cultural, emotional and national identity changes, particularly in Scotland.

When I was preparing for this hearing, and I am free to quote this with consent, I was talking to my old boss, who will be known to you—Lord O'Donnell, the former Cabinet Secretary—about the attitude of the Treasury, for example, in the late 1990s and early 2000s when devolution came in. I asked whether I was going too far in characterising it a bit like how some people who strongly advocated Brexit criticised the Civil Service for seeing Brexit as a risk to be managed rather than a set of opportunities to be seized, and was devolution seen as some sort of crazy idea? We had just come out of the early 1990s recession, Black Wednesday; we had tamed inflation; we had the public finances under control. "Whose crazy idea was this and how can we limit the damage?" If you contrast the pageantry of the official opening of the Scottish Parliament in 1999 with Her Majesty the Queen and Donald Dewar and all of that, with the obsession—and I would call it that—with just making sure that these new bodies were under control, the failure to engage with that debate about the emotional re-engineering of the union will not be looked favourably on, I think. Having said all that, it is difficult for Governments to do.

As for how you recapture the poetry, I will quote something to finish, which I think is quite poetic. It comes from someone Lord Hennessy will know—Robert Saunders of Queen Mary University—who said that the problem at the moment is that there is a risk that the Government's approach to the union, their love for the union, if you like, is like the love for a possession, something one owns, rather than the love for a partner. I think this is the poetic bit: "where you choose to act differently for the sake of the partnership". I think one of the problems with the execution of Brexit, as distinct from the vote to deliver it, and with some of the governing choices since, is that it is difficult to point to an example where the UK Government, ensconced safely with their legitimately-won UK-wide parliamentary majority, have chosen to act differently for the sake of the union as opposed to for the sake of the electoral majority that sustains them, and I think that is the hard question that needs to be considered in the context of this debate.

The Chair: Thank you very much. That very neatly brings us to the next

area that we would like to discuss: intergovernmental relations. You reminded me of the phrase “devolve and forget”, which probably reinforces the kind of remark you have just been making. Baroness Fookes wants to come in on intergovernmental relations.

Q3 **Baroness Fookes:** I am afraid that this relates much more to plumbing than poetry. Over the last five years we have had, as has been mentioned, Brexit and the pandemic. What has been learned, if anything, from the way that intergovernmental relations have worked during those five years? Have they been shown to be fit for purpose or very unfit?

Philip Rycroft: Perhaps I might refer you to the piece of work that I did with Mike Kenny and Jack Sheldon from Cambridge University, *Union at the Crossroads*, looking at the history of intergovernmental relations since devolution. We go through it in some detail, in a sense seeking to answer the question: “Have those structures been fit-for-purpose? How have they withstood the twin shocks of Brexit and Covid?”

I do not have time to go through the whole of that story but, in a word, the answer to your question is: no, they are not fit-for-purpose. The arrangements for intergovernmental relations that were put in place in 1999 were not designed for, and certainly have not been capable of, carrying the weight put on them by Brexit and by Covid.

You might say that in the context of Brexit that is hardly surprising because the Scottish Government were viscerally opposed to the concept of Brexit and to the manner of Brexit. The Welsh Government, even though Wales voted leave, are certainly not content with the way that Brexit has been seen through, and of course we know beyond a shadow of a doubt about all the issues and concerns raised in the context of Northern Ireland because of Brexit.

If you come to Covid, of course the story is rather different, because there was an absolutely transparent requirement for the four Governments of the United Kingdom to work together against a virus that clearly would not respect borders.

The net experience of those two shocks has been to illustrate the weakness of the institutional infrastructure. The structural point has been compounded by two other things—and this is to pick up what Ciaran was saying about where Whitehall and Westminster are vis-à-vis the devolution settlements. These are: the weakness of understanding in-depth in Whitehall but I would say also in Westminster about devolution and the politics of the devolved parts of the UK, compounded in recent years by an unwillingness, a political failure, to accept the legitimacy of the voices of the other parts of the UK and to give them due accord in the important debates on the issues of the day.

That does leave us in a position where the intergovernmental relations structures that we have are widely seen as not fit for purpose and as in need of reform. Indeed, Lord Dunlop’s review makes some proposals in that direction. The UK Government are in discussion with the devolved Governments to come up with a new set of propositions for the reform of

intergovernmental relations. It is important in my view that these are taken forward but I come back to the point that the structures themselves will not be enough to renew that sense of four Governments working together in the interests of the whole of the UK. That requires a spirit of co-operation to infuse whatever structures are put in place.

Professor Ciaran Martin: I will be brief because I know we are pushed for time. I spent four and a quarter of the last five years in government but working on neither Brexit nor Covid. I endorse as a general analysis the widespread consensus embodied in what Philip said about the weaknesses of some of the current systems and his endorsement of Lord Dunlop's ideas, which I think are very interesting.

Given that there is a certain gloominess to some of this discussion, a brief remark on what I was spending the last five years doing and some of the issues I was dealing with might be interesting. I was running cybersecurity in the National Cyber Security Centre, from within GCHQ—actually, sometimes I think that national security is a decent example of UK intergovernmental relations working well and working quite flexibly. There are no formal co-ordination mechanisms for them, other than COBRA itself, but I think back to 2007: within weeks of the SNP taking power in a minority Administration we had the terrorist attack on Glasgow Airport and there was a lot of uncertainty, but it was a crisis and you did not have time to think about how those mechanisms would work. Clearly, countering the terrorist threat to Glasgow is a UK-reserved matter and nobody disputed that, but a lot of the operation on the ground—I do not mean the security operation but a lot of things in relation to people and evacuations and reopening and so forth—fell within the purview of the Scottish authorities. That worked quite well and one of the things was there was an attitude and response from the likes of the then director-general of MI5 that they were going to be open and treat these people like grown-ups and share information and not get too fussed about administrative boundaries and so forth.

In the less crisis-ridden aspect of cybersecurity over five years there were all sorts of arguments we could have had about reserved versus devolved powers. The powers of interception for the purposes of cybersecurity on, say, Russian and Chinese hostile state attacks are squarely reserved. Nobody doubts that. Arguably, the protective advice to Scottish, Northern Ireland and Welsh businesses is devolved. A lot of the regulatory stuff is devolved, but I think partly because it was not politically contentious but a deeply important subject, there were ways of establishing real partnerships. Indeed, although because of the pandemic it has not happened yet, the successful agreement to hold the UK-wide cybersecurity conference under the auspices of the GCHQ agency in Belfast, which was due to happen this year but will now happen next year, is an extraordinary and historical context. I think it shows that there are aspects of UK-wide governance where you can show that you are adding value, you have the right approach, you share the appropriate information, you establish the right procedures, and that there are good examples of how UK-wide governance can work, and I think it is worth thinking about some of those.

Q4 **Baroness Fookes:** Yes. We do have a package of Government measures before us with the Dunlop changes as well. What is your assessment of them? Are they going to be of any value? If not, what would you suggest, apart from this change of emotional feeling and commitment?

Philip Rycroft: Perhaps I can pick that up, having worked on something similar in 2015 and 2016. Indeed, we received a proposition for the reform of the Joint Ministerial Committee in front of the plenary session in October 2016, but unfortunately, as there was resistance from a couple of the devolved Administrations, we could not get it over the line.

The package that the Government are discussing with the devolved Administrations now seems to contain a lot of sensible propositions: annual meetings of the overarching councils; standing interministerial committees; subject working groups; refreshing dispute resolution mechanisms; a joint secretariat. They are all, I think, necessary and all pointing a positive way forward.

There are four questions that the committee may want to consider. First, should all of this go on a statutory footing? It may make little practical difference but it is symbolically important, I think. Secondly, where is England in this? Indeed, where are the metro mayors or the regions of England? Do they have a place—England as a policy in its own right, and the regions of England—in such intergovernmental structures.

Thirdly, importantly, do these intergovernmental structures get teeth? Short of an absolute veto on the part of any one Government, as in the Carwyn Jones proposal from the Welsh Government, should the UK Government need at least one other devolved Government on side to take a proposal through? These things should operate largely by consensus, but if that consensus is always subject to an override from the UK Government, does that make it work?

Fourthly and finally, it needs commitment from all the Governments. The UK Government have a particular position. It is no good saying, “Well, we will only behave if the others behave.” The UK Government are the only Government who speak for the whole of the UK and it worries me that one of the outstanding issues appears to be whether the Prime Minister will as a matter of course chair the meetings of the council under the proposed new arrangements. Of course the Prime Minister should chair that meeting; it is one way to show respect for the interests of the devolved Governments and to demonstrate that the UK is working for all its parts.

Professor Ciaran Martin: I endorse Philip’s analysis. To answer Lady Fookes’s question, I think Lord Dunlop’s proposals are stronger than the government package that preceded them and I am not just saying that because he is on the committee.

I also think Lord Dunlop’s analysis of the need for change is worth reading. On page 31, on as to why in the middle part of the last decade some of the arrangements may have frayed from a not particularly strong point, he mentioned three reasons: the devolution of more

powers to Scotland and Wales—and this goes to Northern Ireland—through justice and security; Brexit and things such as the internal market Act, and changes to the constitutional settlement; and the emergence of different parties of government in the different capitals.

Lord Dunlop was probably too polite to say what I think is a fourth one. We can be very hard on the UK Government in these discussions but it is a fact, and I do not think we necessarily need to be critical of the Scottish National Party for acting like Scottish nationalists, but I think it is different dealing with, say, a Conservative-Labour rivalry when Labour is in power in Wales but both are unionist parties committed to making it work, and dealing with a Government and a political party that in the long term have, quite legitimately, no interest in making the United Kingdom work. That is a factor that makes some of this very difficult. That does not mean, and I think the Cameron-led coalition was quite attentive to this, that they should not try to look reasonable. To that end I agree with the Dunlop reforms by and large. I could quibble with bits and pieces of detail but I will not do that now.

Baroness Fookes asked: what else? There are probably two things that are semi-concrete as distinct from emotional. One is a genuine interest in public service collaboration and learning from each other. There was a bit of that in yesterday's governmental reform announcement from the Prime Minister and Cabinet Secretary. If you look at the United States of America, where you have 50 constitutionally equal federal states, and you have two parties that share power between them, there is a genuine interest, and you get the same in Australia. In the so-called policy laboratory context, what are other parts of the UK doing?

This goes to Lord Dunlop's third caveat: the only time I saw genuine interest in what other parts of the UK were doing was when the Conservative-Liberal Democrat coalition came to power in the 2010-2015 Parliament, and of course Labour was in power in Wales, as it has been continuously, the record, good or bad, of the Welsh health service became a staple in Prime Minister's Questions. In other words, rather than being interested in what the Welsh Government were doing and how they were different from England and what they might learn, it was, "Can you dig up some dirt on underperformance in the Welsh health service so that I can use it at PMQs?" That is reflective of an attitude. I am not saying that PMQs should not be political but we should think about that in terms of collaboration between the health departments in the Administration in London and the Administration in Cardiff, with the incentive being that this was being debated on the floor of the House of Commons.

The other thing that I think is more serious is UK-wide issues and how you deal with those. Realistically, I think it would be crazy in a future decision on military deployment in support of the Americans to have a council of the United Kingdom to decide whether or not the UK joins it. That is squarely a matter for the UK Government, but I am mindful also of Philip's point about metro mayors and so forth. Trade negotiation postures in future trade deals, regional interests, interests for specific Scottish industries, Northern Ireland industries—what are the

mechanisms for doing that? There might be something like “It will always be for the UK Government to set immigration requirements.” To what extent are needs and opinion listened to beyond the English majority that can deliver an electoral majority for an immigration policy? I think that input into some policies—not all, because defence and foreign policy, core traditional foreign policy, will always be done at British state level—is another thing worth thinking about.

Lord Howell of Guildford: The conversation so far has been wonderful at distilling the fundamental difference between the emotional issue, which is all about sovereignty and a certain idea of Scotland and its place in the world and so on, and the practical and administrative aspects of devolution that we have all been discussing.

We are on intergovernmental further measures now. I confess that because of the strength of the emotional side I am obviously a bit sceptical about whether Mr Gove’s latest package is going to have more infrastructure, more help directed at the Aberdeen City Council and so on and this promotion of the Civil Service activity is going to cut much mustard at all.

I think Lord Dunlop’s idea for seeing that there are civil servants in every department thinking about the Scottish dimension is an excellent one. However, this is not an area where the major opinion in Scotland—the major aspects of consent that are very hard to measure anyway, are changing all the time and may be different now from two months ago—is going to be altered.

Therefore, I ask the question: are there areas that overlap between the emotional, nationalist and so on and the practical, administrative that could make a difference? One of them, which has been widely touted, is in the area of foreign policy. Scotland is a tiny nation with a vast global cultural footprint and an enormous influence on its neighbour, England, and on many other countries. Yet when it comes to foreign policy there does not seem to be much distinct recognition from our great diplomats of Scotland’s position and views. I wonder whether if that changed a bit, in the direction that many people in Scotland are arguing about it, it would help to make some difference and might even intrude on the emotional area and swing that vital central section of opinion in Scotland, which is rather hostile to London at the moment but could be swung back.

Philip Rycroft: Thank you, Lord Howell. Again, that takes us to the heart of the issue: that space between the formal, the structural and the emotional where Governments can act.

UK Governments over the years have been supportive of the devolved Governments and their outreach externally, to be fair to the Foreign Office of the day on how it supported that. Indeed, one of the high points of intergovernmental relations under the old iteration was in fact the arrangements that are in place to discuss the position the UK would take, for example, on the fisheries or agricultural councils. That sort of thing has worked in the past.

I very much agree that there is scope to extend that. The word I would like to bring into the debate here is “respect”—the UK Government, through their actions, demonstrating they are respecting the interests and history of the different parts of the UK. You are absolutely right, one way of doing that is by showcasing and supporting the different parts of the UK as they engage internationally, particularly on trade, obviously, but also culturally and in other dimensions. Of course, we have to recognise there will be tensions here, because with the Government in Scotland and at least one of the parties in the Executive in Northern Ireland committed to a very different future for the UK, they will not switch off those views just because they are on foreign soil. However, if, through the structures we have, the UK Government showed sensitivity to the particular position of the devolved parts of the UK, that would be one way of showing respect.

I absolutely endorse what Ciaran has said about also demonstrating that in some decisions in reserved policy the UK Government have shifted their view on representation from different parts of the UK. I accept it is difficult politically to do that but there is always a balancing of these things between speaking—if I can put it like this—to an English audience and speaking to an audience across the whole of the UK.

We come back to it: it is the way in which the UK Government approach this. Are they doing it in a conflictual manner to try, as it were, to keep the devolved Governments in their place or are they doing it in a way that invites them into the tent to become part of the solutions for the whole? That is absolutely critical, in my view.

Professor Ciaran Martin: I have relatively little to add. I think that a strict confinement of the devolved Administrations abroad, as some have recently argued for, in the context of post Scottish election and reorganisation of Scottish ministerial responsibilities, would be a mistake. An edict forbidding subnational representation abroad would be a mistake.

While obviously the circumstances are very different in Northern Ireland from those in Scotland, the Northern Ireland Bureau in Washington is an excellent example—for over 25 or 30 years, going back to pre-devolution and pre-agreement times—of getting a balanced and influential voice for Northern Ireland in Washington. It has had spectacular successes, achieving overrunning meetings with President Bush for the First and Deputy First Ministers about 15 years ago, regaining the confidence of the British embassy as well as of the power-sharing Executive. As Philip said, there will be some tensions.

Your expertise in this, Lord Howell, will be much greater than mine but I would draw the distinction between traditional and important geopolitical interventions—such as what has been happening this week at NATO, for example—and some of the issues about the UK’s place in the world, particularly on trade. Every time we hear about trade—I am not a trade expert—we hear about Scottish industries in particular and the impact on them being showcased. But what is the involvement of Scottish electoral representatives of some sort in that process? What you want to avoid is

the position at the time of the TCA at the end of last year, where in essence—I remember it because there was some pressure or attempts at putting pressure on the Scottish National Party and the Scottish Government and talks of “no-deal Nicola” and so forth—all elected Scottish representatives were irrelevant to the final Brexit deal, which they were. Essentially, the discussion was with the Conservative Parliamentary Party holed together in the House of Commons to vote on the deal. By the historical standards of the union that is an extraordinary moment. It is that sort of signal in terms of relations with the rest of the world that unionists will want to avoid in the future.

The Chair: Thank you very much. We will move on then. Lord Sherbourne.

Q5 **Lord Sherbourne of Didsbury:** Thank you. Both witnesses have talked about the emotional challenge of winning consent. Obviously that derives from the perception that there is a lack of parity between the constituent nations of the United Kingdom. That raises the question of a federal solution. I know there is a huge number of issues and complications that would arise if one were looking at creating a federal system in the UK.

I want to ask two questions. The first is: is the disproportionate size of England a complete barrier to there being a federal system? Before you come to any other issues: is that something that makes it impossible? The second question is: are there any other countries in the world that have a federal system where one of the constituent countries is disproportionately larger than the others?

Professor Ciaran Martin: Thank you, Lord Sherbourne. The second one; not to my knowledge, but you may know differently. I do think for a genuinely federal country—clearly I am not in any way likening the United Kingdom to this, given its dictatorship status—the former Soviet Union was apparently a federation where the Russian state was predominately dominant within it. That no longer exists, of course. I cannot think of an example of a genuinely federal democratic state with such imbalances.

Genuine federalism—in the sense of my constitutional understanding of the term—is, if not impossible, very, very difficult in the British context, and particularly difficult at this point in time.

The generic difficulties are, first, it is not just the dominance of England and the lack of interest—I understand that this is one of the oldest continuous nations on the planet—in England in subdivided government that might make more balanced units for a federation. It is also about what the United Kingdom Government of a federation would do. You can devolve more; I am sure we will come on to that. We have devolved more and whether there is any more to devolve is a different question. Just like independence is profoundly different from devolution—it is not the next step—I think federalism is also profoundly different from devolution. It replaces an asymmetric devolution where there is a national UK-wide Government who take care of UK-wide matters in the UK and England-only matters in England. You replace that with a

different Government. Taking the historical political contribution of Scots to UK-wide government, what do Scots do at the UK-wide level and what does the UK Government do? If you are the head of the UK federal Government and there is a separate Government for England, and you are in the same party—as you probably would be—you can probably quasi-direct domestic policy, much like the French President and Prime Minister. But if you are a Scot, what do you do at the UK-wide level for domestic policy for the bulk of people who live in the United Kingdom: in other words, in England? I think that is very difficult.

One difficulty at this point in time with the sovereignty conundrum—others may disagree and obviously there is considerable expertise on this committee—is that I do think proper federalism requires renunciation of the doctrine of parliamentary sovereignty. I do not see how it can work otherwise. That being the case, it would seem to me to meet the threshold for a referendum on the oldest constitutional principle in England. How would that process of consent work? Would England vote for it—having, as a UK, torn ourselves into considerable political difficulties over five years on questions of sovereignty—and voluntarily accede to such a limitation on sovereignty at this point in time? Would there be a single UK-wide expression of consent? If not, does one party have a veto? How does it work in Northern Ireland? There are close to prohibitive difficulties with federalism in my view—but I accept that there are different views, of course, and am happy to debate them.

Philip Rycroft: I agree. I think the federal solution does founder on the asymmetry of the United Kingdom—I cannot think of any equivalent example around the world—and the question of consent, whether the people of England would consent, is a very good question.

However, there are waystations, if you like, on the road to full federalism. You could argue that the UK is to some extent already quasi-federal. That term is thrown about a bit. There are ways of looking at what we have now, if you think the status quo is not sustainable, and making quite significant changes in our constitutional make-up. We talked about intergovernmental relations, maybe even putting that on a statutory basis. We could look at reform of the centre and, dare I mention this again, reform of the legislature. You will be familiar with the notion that the second Chamber should be one representing the nations and the regions. This is not full federalism, but it may be that some see it as a step on the road to that.

There is one other point to raise on all of this. You are absolutely right to talk about the dominance in numerical terms of England within the union. This has been the case, in Scottish terms, since 1707, since the Act of Union. If you go back to the history of that, some perceptive Scots were supportive of the Act of Union because it was seen as a way of containing the hegemonic weight of England on these islands and of preserving the identity of Scottish institutions in those days, not least the church. Ever since then England, in a way, has exercised some self-restraint in the way it has operated within that union. It has not done so by force of law but because that was seen to be the right thing to do. In other words, England has not sought to assimilate Scotland, Wales and

Northern Ireland in different ways into the union to make a homogenous union where all institutions are equivalent.

One of the problems we need to face—it is a reality now—is that Brexit has broken that tradition. Brexit and the form of Brexit was a deliberate choice to prioritise the leaving of one union over the sustaining of the other one. It was an expression, as Ciaran has described it, of predominately Anglocentric British nationalism. That, of course, did not concur with the opinions of people in Scotland or, indeed, Northern Ireland. Brexit is a fact—we have to get over that and have to get used to that—and it is difficult to see anything as big as Brexit happening again in the near future.

However, as Ciaran has said, there are, if you like, mini-Brexits happening all the time with the Internal Market Act and trade deals being signed. It is important that in the future of the union and with the weight of England that that self-restraint still operates in terms of decisions being visibly taken on behalf of the whole of the UK and not just from the English perspective. That is the problem Brexit has given rise to and it is a problem that needs an answer in the way the country is governed looking forward.

The Chair: Lord Sherbourne, did you want to come back in?

Lord Sherbourne of Didsbury: I have just one question, which is a little bit different. We are talking about parity between the nations and one of the problems being this perception that there is a lack of parity. We are talking always about the perception in Scotland. We know there is growing English nationalism, which partly manifested itself in the Brexit vote. We know that as more powers are devolved to Scotland there is sometimes resentment about the financial payments being made to Scotland from England. So if there ever were included in legislation a provision to allow at some stage or at intervals a referendum on Scottish independence, would it be unfair not to include in that a similar right for England?

The Chair: Who wants to take that? Maybe we should park it and include it in the next point, which I think is relevant and the two could be merged a little. Baroness Suttie.

Q6 **Baroness Suttie:** Thank you. I would like to thank both of you for such an interesting and thought-provoking discussion this morning. It has been absolutely fascinating.

Professor Martin, you have said that “devolution is not quasi-independence or quasi-federalism and has reached its limits”. Do you think there are any circumstances where greater devolution could be used to strengthen the union?

Professor Ciaran Martin: I struggle to think of any.

To deal very quickly with Lord Sherbourne’s follow-up question, if there is ever political momentum for England to go its own way or to leave the United Kingdom, I think a way will be found. To go back to the exchange with Lord Dunlop a while ago, if we were having GB or UK-wide

discussions on future separation arrangements or, to Lord Hope's question, Article 50 for the UK, you could easily put in provision for England. If there was some sort of English nationalist party that had that sort of manifesto, a way would be found.

To come back—Philip emphasised the point as well—while there is some resentment about fiscal transfers and so forth, the dominant force electorally at the minute is not English nationalism, because English nationalism would not tolerate that sort of fiscal transfer; it is an Anglocentric British nationalism. In other words, the majority—the English majority—has a particular world view, is redefining the state on that basis and those are the terms on which the rest of the United Kingdom is welcome to stay in, including fiscal transfers. If that is not the case and if they do not wish to, then they can, regrettably, leave. However, it is the absence of doing things differently that I think is the tension at the moment. Anglocentric British nationalism is subtly different from English nationalism.

On the question of further devolution, I will make three points. There are things you could list that are devolvable that are not currently devolved. I do not think there are very many of them and I do not think they would make a strategic difference to the question at the heart of today's hearing. Secondly, what is more important is not so much the powers devolved but recovering a sense of what Professor Sir Tom Devine, a great historian of modern Scotland, has called the management of the union—in other words, people in UK-wide government paying attention to these issues. We have discussed this ad nauseum before. It is not just about the formal workings. In a sense Sir Tom Devine's narrative builds on the Linda Colley narrative about what created Britishness; Protestantism, joint pursuit of empire and so forth. To this Devine adds management of the union, respect for Scottish differences, a tolerance of messy arrangements and the fascinating way in which post-war Conservative opposition under Churchill resisted what they saw as the Anglicisation of Scottish industry through nationalisation and insisted on separate Scottish arrangements and that sort of thing. It is that thoughtfulness around the maintenance of the union that I think has been absent.

To get down to the nuts and bolts of the technocracy of devolution, one of the historic strategic mistakes—which goes back to this point about particularly the Treasury's terror of profligate Scots and Northern Irish in particular wrecking the hard-won fiscal stability of the late 1990s—the sequencing of devolution was all wrong. We devolved all the spending power and virtually none of the taxation power initially. That created the ideal ingredients for the politics of grievance: "We haven't enough to spend. If we spend well we get the credit, if we don't spend well it's because we haven't enough money." That has been rectified in law but I think in the first 10 years of devolution, when it was not really in law, it created an expectation that London funded and the devolved Administrations spent, which I still think has taken hold.

I do not know quite how to do this but I do think, frankly, for the general good governance of the United Kingdom finding a better balance

between the two sides of the fiscal equation, which is there in law but not in practice, is probably a good idea. We have enough experience to know it will not bankrupt the United Kingdom. That would be an area of strategic statecraft that is worth looking at and making a reality of the fiscal side, the revenue side, of governing, rather than more powers to spend.

Philip Rycroft: Thank you. Again, an interesting question. Having been responsible on the official side for devolution, as it happens—the last in the Scotland Act 16 and in the Wales Act 17—both of those are devolving considerably more to Scotland and Wales, more to Scotland clearly, in terms of revenue and welfare. If you look at the proportion of revenue that Scotland is now capable of raising for itself, in international terms and even against federal policies it is very high.

To add one thought to what Ciaran has already said, the original devolution settlement was very delineated. There were some jagged edges but education was devolved—very little reason for Whitehall to get involved in that—with immigration policy and so on. It was quite a delineated settlement. What was perhaps missing from the mix was the notion of shared power, again we come back to it, and the visibility of the Governments working together in the interests of the whole of the UK. Both the Scotland Act and the Wales Act compel more shared power, the working of shared power. You cannot operate either welfare or the tax provisions without the Governments working together. Of course, Brexit has also increased the scope of shared power, with all of those powers that come back. Almost by definition, they were held at a level in Brussels because they have cross-border impacts. The way you manage your sheep farms in the borders of Scotland, if you are putting a subsidy on each of the ewes raised on the hills of the borders, has a direct impact on the farmers over the border in Cumbria and Northumberland because they are selling into the same market. In other words, you need to work together. That is recognised clearly in the arrangements that have been put in place since Brexit. So that notion of shared power does, it seems to me, give us a way forward.

Contrast the Internal Market Act, where there was imposition of a view from the UK Government. That is the distinction we can draw from how to operate in this space. Do you seek to go down a road of collaboration and co-operation or do the UK Government seek to impose their view, whatever the thoughts of the devolved Governments? Again, it comes back to the point of how the union is operated as much as the structure of the union.

The Chair: Baroness Suttie, do you want to come back there or shall we move on?

Baroness Suttie: No, we should move on. I think that has been very comprehensive, thank you.

Q7 **Baroness Corston:** Does there need to be a distinct voice for England within the UK's constitutional arrangements? If so: how would we achieve it?

The Chair: Philip Rycroft, do you want to start this?

Philip Rycroft: Yes, I am very happy to go into that territory. It is an interesting day to do it, of course, when there are reports in the newspapers this morning that the Government are contemplating getting rid of English votes for English laws—another of the exercises I was involved in when I was working in the Civil Service.

As I said earlier on, I absolutely believe that we will not find a way forward for the UK unless we consider the place of England within it as well. To make the distinction, England, as a polity, is the only polity within the UK that has no formal representation of its own other than, interestingly, through English votes for English laws. Then there is the question of devolution within England as well. I will leave that to one side; it is another subject but an important one.

How do you recognise England in the mix if we not going full-hog federal? I agree, I do not think an English Parliament would be necessarily workable. However, there are other ways of thinking about this. I happen to believe that English votes for English laws is one of them. It is interesting that the Government are thinking of maybe getting rid of that. The reason David Cameron stepped into that space was, I think, partly in response to a lot of opinion polling over a long time demonstrating, first, that English people were concerned about the representation of England in decisions made within the UK and, secondly, that English votes for English laws was a popular mechanism for giving England some recognition within that. It is therefore interesting the Government are moving away from that. As a tangential comment, I suspect if there was ever a prospect of a Labour Government coming into power without a majority in England, the demand for English votes for English laws would come roaring back pretty rapidly—but that may be by the by.

Thinking about England within the legislature remains important, notwithstanding what the Government are doing. However, there are other mechanisms as well. What about a Minister for England? Coming back to Lord Dunlop's review, a Secretary of State for the union within the workings of Whitehall: is there a place for England in that? I think there is an argument to say about departments where self-evidently 99% of their business is English business, why not make those explicitly English departments? People may say, "Won't that detract from the union as a whole?" I think clarifying where power lies and where responsibility lies will help people to understand the nature of the union as we have it now, post devolution.

Whether there is a place for England in the structures of intergovernmental relations has been mentioned already. At the moment the UK Government wear both the UK hat and the English hat. That militates against coming to conclusions in that context where the UK Government can be seen to be operating for the whole of the UK.

So there is a series of ideas that stop well short of an English Parliament but where there is a recognition that the voice of England is important

and deserves status, if you can put it like that, within the structures of governance.

Professor Ciaran Martin: I have three quick points. First, I share Philip's views on English votes. It is a surprising development because, in terms of formal constitutional structures, while the timing of the announcement of the move to English votes on the morning after the Scottish referendum was unwise, I think the substance of the measure is imperfect but not unreasonable.

The second point is that, while I have expressed scepticism in the course of this hearing and elsewhere about the prospects for a major renegotiation of the terms of the United Kingdom, federalism or whatever, if there is such a discussion about constitutional conventions—intergovernmental negotiations on the terms by which the United Kingdom is sustained and broken up—I do think that not repeating the mistakes of the past and having an explicit English consideration in those discussions is most important. I have a lot of sympathy with the argument, which was put forward by many what you might call traditional Conservative unionists around the time of devolution and subsequent to it, that there is a fundamental difference between acknowledging, say, Scotland's right—and Wales's right, but more pertinently at the moment Scotland's right—to leave the United Kingdom as distinct from its right effectively to be seen to unilaterally dictate its place within it. If there are further discussions about rearranging the intergovernmental point, the English dimension has to be recognised much more fully.

The third point is that this issue has been around for a while, it was clearly very much on the mind immediately after the 2014 referendum and, as has been said by members of the committee, it was a contributing factor in the Brexit dynamic and so forth. We have to acknowledge that the dynamics are now very different from before the Brexit referendum: what John Denham calls 'political England'. Political England has won. It was aggrieved prior to the Brexit referendum in terms of the constitutional arrangements of the United Kingdom. It was aggrieved about preferential treatment for Scottish MPs and so forth and the lack of a voice for England. While there is still a lack of a voice for England, the political English Anglocentric British nationalism has eviscerated its political opposition within the United Kingdom. The United Kingdom has been redesigned on the basis of an electoral majority in the referendum in 2016 and in the election, although not an outright majority of votes cast, in 2019. It has brought about the most profound political change based on its world view. Therefore there is a difference now in the dynamic. There are some legitimate grievances in terms of the treatment of England within the United Kingdom, but it is harder to sustain the argument that the English voice is being ignored when some of the most historically important constitutional changes of the post-war period have been brought about by a predominately English-voting majority. That is a very significant part of the analytical backdrop to whatever happens that we need to consider.

Q8 Lord Howarth of Newport: We are all agreed on the necessity for improved intergovernmental arrangements, better consultation and better engagement. My question is: to what extent do you think we should attempt to formalise improved arrangements to get people to work together constructively and with greater mutual respect? There is a spectrum, is there not, ranging from greater emphasis on good will and good sense, which Professor Martin described when he was talking about joint working on security issues, all the way through to some sort of attempt to embed improved arrangements in the constitution? Where do you think we should land?

Professor Ciaran Martin: It will be hard to embed formalised arrangements for this sort of thing, particularly at the moment. There are memoranda of understanding, and always have been, in terms of things like the Joint Ministerial Committee, but they atrophy easily without momentum. A lot of this is about sustained political effort. We are learning that, for example, at the minute over Northern Ireland. That is a completely different political challenge to, say, Scotland or intergovernmental relations with Wales. With regard to the sustainment of the power-sharing Executive—I am not absolving Northern Ireland’s political leaders of their responsibility in this—the level of engagement with political leaders and the institutions in Northern Ireland with the London Government is very different from 15 years ago. While some of that is necessary, and indeed desirable, I think at the current point in time it is not. I do not think any codification would help with that.

I personally am at the softer end of the spectrum, partly through lived experience and partly because of the nature of the constitution. I am very wary about getting into the details of the Miller judgment and so forth, given who is on the committee but, from my amateur reading of it, any codified arrangements are easily changed. You can do an awful lot in this country with a 50-plus-one majority in the House of Commons. Therefore there is a point where if the underlying trust is not there—given the ease with which any formal arrangements can be ignored and changed—trust and that sort of attitude, hard though it is to deliver, is the essential prerequisite.

Philip Rycroft: I agree with that; it is absolutely essential. You can raise the bar, of course, by statute. We attempted to do that in the 2016 Act by putting the Sewel convention and the requirement for legislative consent motions on the face of the Act, and you see that in the Wales Act 2017 as well. Clearly that did not work, as the Miller case fairly roundly told us. However, you can see an argument for, for example, making intergovernmental relations statutory so that you raise the bar if any particular Government, but particularly the UK Government, are not respecting the intent behind those structural mechanisms. Maybe we should look at the Sewel convention again. Clearly what was attempted in the 2016 Act has not worked. Should there be a requirement, for example, if the UK Government wish to act in the teeth of opposition from the devolved Governments, for a second look, for a delay? There are mechanisms. Of course Ciaran is right that all of that ultimately is subject to override, a change in that statute. However, what it is does is

raise the political bar and hopefully give pause for thought to Governments who are acting in a way that does not respect the interests of all parts of the UK and breaks the trust that needs to be implicit in successful intergovernmental relations.

The Chair: Lord Hennessy, I think you wanted to come in here.

Q9 **Lord Hennessy of Nympsfield:** Thank you, Chair. Ciaran, I was very struck when you were speaking just now, when you were voicing the deeply felt views of generations of Whitehall guardians of the constitution, the ancients of your old tribe; the aversion to writing things down, the aversion to having a design, the fondness for and defence of a constitution's historical accretion that has adapted and evolved, a thing of beauty and magic self-righting. It was a beautiful piece of evocation, if you do not mind me saying so.

However, if I was Prime Minister—a job to which I have never aspired—and I asked you two to go back to your Cabinet Office jobs of a few years ago and put some design for me into this to make it better, how would you set about it?

Professor Ciaran Martin: I would not really like to in all circumstances. In answer to previous questions like Lord Hope's characterisation of an Article 50 for the UK, I think that can reasonably be written down. Again, it can always be overridden by further statute but that would be a very significant bar, to borrow Philip's analogy, so it is useful in some areas potentially, and I rather regret it was not done post 2014.

If you asked me to codify a set of principles, you take what is there. You would try to, of course, make sure things like the Joint Ministerial Committee met. Relying on answers I have previously given, you would probably borrow quite a lot of Lord Dunlop's language. You would try to make sure verifiable department capability on devolution was there. To rely on points I have already made, you would probably do something on public service co-operation and respect to try to make sure that devolution was a way in which different approaches to public services could be tried. I think this would be an important constitutional development that could usefully be codified; you would find ways of securing UK-wide input into reserved matters, or at least many reserved matters, the ones Philip and I have been talking about such as trade. That will be your heads of agreement, if you like, Lord Hennessy.

Lord Hennessy of Nympsfield: It would be better back of the envelope, would it not?

Professor Ciaran Martin: Well, there is no harm in creating a set of expectations. Given the challenge you have put to me and given the original question, could a codification of that type give useful guidance to Ministers and civil servants about expected standards of conduct? Yes. Could it give guarantees that the system would not buckle under the strains it has been put under for the last five years? Absolutely not. I suspect we will come to the Sewel convention, but I think that is a profoundly important lesson. You can write these things down. You can

articulate them. You can practise them for many years. However, ultimately in our system they can be overridden when it suits.

Philip Rycroft: It is a lovely counterfactual. The matter is, of course, we were not asked when we were sitting in those seats. There was no sense that at any moment the Ministers we worked for were looking to us and saying, "We need an overarching view of the constitution". Nobody ever said to me, "Can you get your team sat down and start thinking about a written constitution?", for example. The notion of constitutional convention, of trying to look at the constitution as a prelude to codifying, was much in demand, as it happened, in 2014-15 after the Scottish referendum. However, Ministers at the time simply did not want to go there. For that Government, pre Brexit referendum, there was a thought that the Scotland Act, the Wales Act, English votes for English laws and a tidying up of the rough edges of the devolution settlements would be sufficient to put everything back on a stable footing. Indeed, I think there was some justice in that assumption. If you look at the way the 2016 Scottish election was conducted there was the beginning of a sense that it was going to be focusing more on domestic issues of tax and welfare than on the constitutional question. That, of course, was all blown out of the water with the result of the Brexit referendum.

I agree with Ciaran, as I have said previously in this session, that looking at putting things on a statutory basis does not guarantee that that will be respected and upheld, but it does, in my terminology, raise the bar. There is a question as to whether the UK would ever be prepared to move into the space of a formal written constitution in the way that pretty much every other democracy in the world, as we know—bar New Zealand and Israel, to memory—has. We have never had that sort of foundational moment where that has been required. You could argue that muddling through—going back to the 1832 Reform Act and all major subsequent reforms since then—has sort of worked for the UK. I do wonder, however, whether we have reached the moment—with all the things we have been discussing today and also with the way in which the conventions that have hitherto propped up our constitutional arrangements have frayed or been seen to fray—to step back and to say, if not a full-blown written constitution, "There is more of this stuff that needs to be written down".

One final point on this: if that is to be the case, I think the impetus for that will not come from within the Government or necessarily either of the major parties. If you look at the history of constitutional reform, and indeed, deeper reform in the UK over the decades, it will require a certain amount of pressure from outside Parliament. I just do not see that at the moment. This is not something that preoccupies many people beyond those who think and worry about the constitution, the popular demand is not there. It maybe comes over time, but that does seem to be a critical missing element of the fundamental changes that you imply might be necessary.

The Chair: Thank you. Lord Faulks, I think that brings us to you.

Q10 **Lord Faulks:** Thank you, Chair. To some extent you have already

answered the question I was going to ask you, which is about the future of the Sewel convention. It is a convention and we know from the whole Brexit litigation and the Brexit process the limits of the convention. Is there anything that can be done about it? Should there be something done about it to improve things or do we just accept it is a convention with, as it were, limited force?

Philip Rycroft: Yes, I am sorry to have slightly pre-empted your question. In a way, what you do about it is respect it. However, that moment seems to have passed. Of course, if a Government are in the habit of essentially ignoring what the Welsh Parliament and the Scottish Parliament, or indeed the Northern Ireland Assembly, are saying, it is difficult to overturn it.

I will come back to this point about English votes for English laws and the decision the Government are apparently contemplating. Is that of a piece? I ask the question because I do not know whether it is a view that this is a unitary state with a Parliament that is representative of all parts. All of those MPs, if you get rid of EVEL, operate on equal status. Therefore decisions are taken by those MPs acting in the collective interests of the UK and that downplays the need for things like the Sewel convention. I wonder whether there is an element of that in the air.

I think, personally, it would be a grave misreading of where politics—particularly in Scotland—is at, at the moment. Although it is not, as they would say in Scotland, a “steamie”, in terms of the Sewel convention being what people will chat about—they are slightly more worried, I suspect, at the moment about the football—nevertheless these things do count. People notice. A UK Government who get in the habit of overriding the democratically elected Scottish Parliament will, I think, lead to further erosion of trust in the UK Government in Scotland. Therefore if the Government are wise they may say, “Make us honest. We will put in place some sort of statute. We will raise the bar here so we know if we wish to pass a piece of legislation that does not get legislative consent we are going to have to wait a year.” There are ways of giving it teeth that would, as I say, give Governments pause for thought. I think that is very important. It is obviously a bit of technical constitutional kit, but the impact of it runs very deep.

Professor Ciaran Martin: In terms of the question of legislating for Sewel, first of all, if the Sewel convention is to survive it needs to be reset—to use that ghastly modern word—or revived. It needs a clear statement, I would have thought, of recommitment to it from the UK Government, acknowledging the exceptional circumstances of the last few years. I am very much reminded of a conversation between a very senior British national security official and an American one explaining the concept of constitutional conventions, explaining the difference between a law and a convention. He said to his American counterpart, “In Britain a convention is something that applies all the time until we decide it doesn’t”. Sewel is probably the embodiment of that.

In terms of legislating for strengths and procedures, it does remind you of that famous passage in Dicey about the Act of Union and likening it to

the Dentists Act. It may be politically mad and difficult to go against its terms, override it, doctor it, repeal it and so forth, but it is of no more constitutional standing and can be waived at any point. This is where a bit of Lord Hennessy's codification might come in. There is an Institute for Government reform on the Sewel convention. We now have to operate on the assumption that the United Kingdom Government will, from time to time and possibly quite often, override the wishes of the Scottish Parliament, the Welsh Senedd and the Northern Ireland Assembly. That is the only sensible basis on which to proceed. How are those differences going to be articulated? How are they going to be negotiated? How are they going to be transparent and debated? How, if at all, are they to be constrained? If you look at the IG report—in the interests of time I will not list all the recommendations—there is a useful framework for the sort of processes that could happen in the event of those disputes.

Going forward, we are left with a very different Sewel convention understanding from the one Philip and I worked on together for many years pre 2016, where it was a convention that was to be observed pretty much all the time, with very few and very serious exceptions to what we have now.

Q11 **Lord Hope of Craighead:** [*Inaudible.*]

The Chair: Sorry, your sound is not good again, Lord Hope.

Lord Hope of Craighead: I am doing my best. Can you hear me?

The Chair: Just.

Lord Hope of Craighead: [*Inaudible.*]

The Chair: Sorry, can you speak up again? Sorry about this, but we cannot hear you properly. If you can absolutely speak into whatever microphone you have.

Lord Hope of Craighead: I am doing my best.

The Chair: Yes, that is better.

Lord Hope of Craighead: [*Inaudible*—do not see any prospect that the Government could raise the bar but is the best way forward—*Inaudible*—the value of the convention? It does appear a lot over time and it does appear to be terribly important to people.

The Chair: That was very difficult to hear. I do not know if either of our witnesses could catch that. I think, Lord Hope, we will have to leave Sewel there and follow that up on another occasion because the sound just was not enough.

Lord Howell, you want to come in?

Q12 **Lord Howell of Guildford:** Yes, please. I wanted to come in on the last question. I will make two quick points. I must confess some slight surprise when I hear our two witnesses being rather doubtful about ending English votes for English laws. We all know that was brought in at a time when there was the problem of small majorities and the power of

the SNP to change the whole direction of UK law. That is not the situation now. Surely the whole aim is to reinforce the union Parliament as the bedrock of a continuing, whether reformed or not, United Kingdom. I was surprised to hear that our witnesses held a different view.

On Sewel, which we are on now, is not an additional point the danger of embedding Sewel in law in any form when things are changing extremely rapidly? Sewel was thought about long before any of us had thought about Covid, the pandemic, vaccine and all the rest, and all sorts of other issues on the technological side. A mass of technological issues is coming up that can only be dealt with by smaller and larger nations operating together, whether it is the British United Kingdom or whether it is the European Union. Would not the witnesses agree that the digital revolution is changing the whole basis on which you can judge what ought to be reserved and not reserved, and what can be embedded in aspic as permanent and what should be kept extremely fluid?

Philip Rycroft: A quick response on that: of course, a lot of the statute that is determinative of standards regulation for new technologies and so on is reserved. In that context, on quite a lot of this the Sewel convention would not kick in.

You referred to Covid where, in a sense, we are at the other end of the spectrum, where an awful lot of the response to Covid was very much in the devolved space. It reinforces the point, certainly about Covid, that while the powers were distinct and in many ways separate and it was for the devolved Governments to pursue a path forward on Covid—with the UK Government acting largely, in many contexts, for England—it would have made a lot more sense for there to have been more co-operation throughout this process. It is one of the extraordinary things of the Covid story that it was not a story of the four Governments working together in a united fashion, demonstrating the power of co-operation, but became a story of the different nations going down different pathways and essentially allowing the whole thing to be politicised.

Of course you are right, in the fast-evolving world we live in the ability to move quickly, particularly in response to technological change and so on, is hugely important. Two points: first, as I say, all that stuff is reserved anyway and, secondly—and again we come back to this—the engagement of the devolved Governments in these sorts of issues would ultimately, in my view, be productive of more stable legislative solutions for the whole of the UK. In other words, co-operation in its own right is a good thing. Whatever arrangements we put in place, whether by statute or not, that seems to me the way forward one should be recommending to this or any other UK Government.

The Chair: Thank you. We had better move on to funding arrangements because we are running out of time.

Q13 **Baroness Drake:** Thank you. Going back to our funding issue that provokes great emotions, the funding arrangements for devolved Governments can give rise to much commentary and concern, and have. In your view, what impact do the current funding arrangements for

devolved Governments have on the stability and the effectiveness of multilevel governance? Now we have left the EU and no longer receive the structural funding administered by the different nations, the Government have pledged to set up a shared prosperity fund. How, in your view, will the shared prosperity fund potentially impact these arrangements?

The Chair: Philip Rycroft, do you want to start that one?

Philip Rycroft: I am very happy to. I will try to keep this brief but, of course, this is a huge subject, much discussed over the years and is quite complicated in how it all operates. There are two issues here. One is the underlying funding arrangements basically through the operation of the Barnett formula. If you step back from this—and there is no reason why we should not from time to time—and if you were looking at an ideal system of resource distribution across a state, arguably it should be transparently needs based and also seen to be equitable. As many say, Barnett is neither of those things. However, those who have worked in this space know—others in the room have done as well over the years—changing Barnett is extraordinarily difficult from a political perspective. The 2017 Act for Wales brought in a funding floor to try to address the issues Wales has with Barnett. However, Barnett does not look great if you are looking at it from the perspective, for example, of the north-east of England.

I think, personally, that part of the answer to this over time will come with proper fiscal devolution within England. That will, I think, help to address some of these issues, with more power over raising money locally in England. But what that will not do is deal with the differential in favour of Scotland, which is the cause of some resentment in England. I have to say, rather feebly, that I see very little immediate pathway to resolving that. If it erodes over time it will do so—as we have seen over the last few decades—slowly, if at all. It may be that we just have to accept that that is part of the price of union; it is sort of baked in. So that is the overall funding arrangement.

On more specific things such as the shared prosperity funding, as Ciaran alluded to earlier on, one of the faults of the original devolution settlement was that there were not sufficient fundraising powers for the devolved Administrations themselves. There were also no programme budgets for the territorial departments: the Scotland Office, the Wales Office and the Northern Ireland Office. If there had been, that would have established the habit of Governments working together on public policy issues, with contributions from the Whitehall/Westminster side of things as well as from devolved pots of money.

Personally, I am not opposed in principle to the UK Government spending money, for example with the shared prosperity fund, in areas of devolved competence. However, it comes back to the way in which that is done. In my view, if that is done over the heads of the devolved Governments in a way that creates conflict, it will be counterproductive. If you look at the polling, repeated time and time again, people want the two Governments in Scotland, the two Governments in Wales and the

same in Northern Ireland to work together. That seems to me to be the key to this.

Professor Ciaran Martin: Thank you, Baroness Drake. I have relatively little to add. I think Barnett has survived for getting on for half a century because it is fiendishly difficult politically to replace. There is no way mathematically of doing a proper objective needs-based assessment of funding requirements in the UK that would not involve bringing down the relative proportion of public expenditure going to Scotland and the Scottish Government substantially, and there is an inevitable political hurdle to that. Therefore, as and until political circumstances would allow for such a contentious measure or a Government are willing to incur the high political risk, including in union terms, of so doing, I think we will be stuck with Barnett or modified Barnett. I do not think either Philip or I will be able to solve that in one hearing; it is a desperately difficult problem.

In terms of spending funds, I will be even stronger than Philip; I am not relaxed at all about some of the provisions in the Internal Market Act. I foresee great difficulty with the regulatory provisions of it and how that will undercut devolved lawmaking. On UK government spending, as a matter of principle I see no difficulty with it at all. However, I think it was unwise for it to be presented as cocking a snook at the devolved Administrations. Indeed, in most federal/quasi-federal/asymmetrically devolved—take your pick for constitutional arrangements—countries, it is entirely uncontroversial for the national state Government and the federal or national capital to be spending state-wide money everywhere.

The only thing I will say both about the shared prosperity fund and the wider ideas, including, for example, some of the recommendations in Lord Dunlop's report—it is a slightly quirky personal view—I would be wary of the concept of complicated challenge funds assessed by Whitehall in whatever the circumstances, whether that is English metro regions, English county councils, the Scottish Parliament and so forth.

I remember working for Philip and the then Deputy Prime Minister, Nick Clegg, on city deals. My abiding memory from that point is only in Britain would we tax people locally and give it to central government, then give it back to localities laden with conditions assessed by civil servants, including me, who had never even been to that place. I was responsible for a city deal in East Anglia between Norwich and Ipswich. I travelled there and met some people. They would submit detailed proposals based on extensive local knowledge and it would fall to me to assess, literally, planning for bridges and road upgrades in East Anglia. It would involve much more junior people. Then it would go to ministerial committees, then it would be presented and there would be all sorts of debates in Parliament about political bias and marginal constituencies. That is not devolution and it is not locally empowering. It is just bad government.

I am not making a point about the union. I think challenge funds are inherently difficult. Even when they involve revenue-raising powers, as some of them do, essentially the attitude of many of the local communities is, "Thank you for giving our money back to us". We need

to be a bit more grown-up about this. While it is asymmetric, we do need to think about this in the English context. It is such a centralised country and remains so, even with some of the metro mayors. It is less centralised than it was a decade or two decades ago, but it is still pretty centralised by international standards. We need to think about this really, really seriously. Having spent nearly quarter of a century in Whitehall, I can say that there is still the question, does the person in Whitehall know best? On stuff like this, of course they do not.

Q14 **Baroness Drake:** I am conscious of the time. Professor Martin's last comment could lead me into the Whitehall question, if you wish, Chair?

The Chair: Yes.

Baroness Drake: I will pick up your last comment, Professor Martin, and reflect on a comment you made earlier that the Treasury failed to engage with emotional and cultural drivers of devolution and was more defensive about the powers of the devolved Governments. Others have expressed views that there is a low level of understanding of devolved government, politics and cultures in the different parts of the union within central political institutions. This can lead, as you have described, to insensitivity to the impact of decisions on the devolved areas and their Administrations.

The question is: what is your assessment of the overall level of understanding across Whitehall, and how influential has this been in contributing to the emotional shift in favour of independence in both Scotland and Wales?

Professor Ciaran Martin: I will defer to Philip on this, as he has run it for longer and more recently.

My own assessment is that technocratically it is pretty good on the plumbing, although as Covid has shown—albeit a crisis of historic proportions—it has been tested and found wanting in terms of the knowledge of how emergency provisions, intergovernmental co-operation in a crisis and even things like airport regulations work, so I think there is more on that to be done.

A better word for it, given that it is very difficult to put emotional intelligence on territorial aspects of the union into a Civil Service competency framework, is it is a sort of state craft of the union. This is one of the areas where, for better or worse, we have a largely English Government in terms of where the Members of Parliament who sit in the House of Commons represent. I am making that point because it is factually true at the moment. That matters because you do not have that political drive from all the different parts of Great Britain—you never had it from Northern Ireland because the main parties did not contest it. You do not have that drive from political leaders about how this will play in Scotland, how this will play in parts of Wales and so forth that you might have had a generation ago.

If you go back to the late John Smith's stories about working for Willie Ross in the 1970s, the Secretary of State for Scotland, as a Minister of

State in the Department of Energy, his characterisation—obviously I am going on what I have read rather than what I know—was the Secretary of State for Scotland had placed people in major departments saying, “Represent Scotland’s interests in the Department of Energy”, and that was the way the system worked.

In terms of Civil Service capability, you do not get paid or rewarded to think about the strategic statecraft of the United Kingdom. For example, to go right back to the very first point I made, ultimately what form of unionism or of preserving the union this Government seek to maintain—whether it is quite assertive British nationalism or a messier partnership Union—is a political judgment. If you compare, for example, the statecraft that went into many, many years in extraordinarily difficult circumstances—over both Conservative and Labour Administrations—that led to the settlement in Northern Ireland in 1998, and you look at many of the papers that have been declassified, and you look at the profound thinking given to things like the statements in the Downing Street Declaration and the initial statement authorised by Mrs Thatcher about no selfish or strategic interests in Northern Ireland, that cut-through, that strategic emotionally sharp political statement followed through into action in terms of the agreement with the Irish Government in December 1993, it is hard to see that sort of strategic thinking incentivised in the Whitehall that I left, in constant constitutional policy terms in late 2013 and fully in operational terms in the middle of last year.

So perhaps statecraft is a better way of thinking about it than emotional, and I think that is what is most deficient.

Philip Rycroft: Thank you for the question. It was part of my job for seven years to try to improve the understanding of devolution across Whitehall. It was uphill work. As Ciaran has said, clearly parts of Whitehall perforce had to understand what was going on in the devolved parts of the UK, because there was practical interchange at a detailed policy level, particularly in departments like Defra, agriculture and fisheries, transport and so on. There were elements of policy where good collaborative working was essential for good administrative order. So credit to those civil servants who did get that and who worked hard on that. Credit to the team I had the privilege to lead that worked very hard on this, particularly after we created the UK Governance Group in 2015. That was an attempt—to pick up what Ciaran was saying—to get the understanding of the constitution and devolution more centred in Whitehall, including getting a voice around the Permanent Secretary’s table to remind them constantly that they had to be thinking about the whole of the United Kingdom.

But we were working against the tide because, as Ciaran has alluded to, the incentive structures simply were not there to encourage people to devote time and resource to thinking about the devolution settlements within their own departmental context. The way Whitehall operates, the incentive is to support your official team working for your Secretary of State. Many of you have experience of this. In my book, the UK Government come down the pecking order and second in that hierarchy. As to the future of the UK, in my personal experience it was rather a

distant third to get people to think about it. The result of all of that was that devolution tended to be pushed to the periphery of departmental understanding, departmental management and departmental attention; that was both political and official. We made some progress over those seven years but, frankly, with the demands of Brexit and then of Covid, of course this has had to take bit of a back seat.

It seems to me there are ways of dealing with this, but you have to come back to that incentive structure. Again, I defer to Lord Dunlop and the ideas in his review.

One of the things I would encourage, to leave a final thought with you, is that if you aspire to be a senior civil servant working for the UK Government, it seems to me that before you pass that boundary you should be able to demonstrate that you have had experience outside Whitehall—in local government in England, in a devolved Administration, perhaps working in the public service, in the health service and so on—to break that metropolitan bias in people’s thinking and experience, so that the Civil Service does become, in its thinking, more representative of the whole of the UK. It is not just a question of sending jobs out of London but of how decisions are made in London that is critical, and for that, changing the experience set and changing the incentives in terms of people’s learning and understanding are absolutely critical.

The Chair: Thank you. We have had a very long session, but it is been absolutely fascinating to hear your perspectives, which have reinforced many of our fears and concerns but have perhaps also given us some thoughts as to what aspects we might want to develop further. It is a big inquiry, we acknowledge, and we are very grateful indeed to both of you for giving up so much time this morning. I place on the record our thanks to you both.