



Political and Constitutional Reform Committee

Oral evidence: [The future of devolution after the referendum](#), HC 700

Thursday 16 October 2014

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The Committee met at the Macdonald Holyrood Hotel, Edinburgh

[This meeting was not filmed or recorded]

Members present: Mr Graham Allen (Chair); Mr Christopher Chope; Mark Durkan; Fabian Hamilton; David Morris

Questions 1 - 62

Witness: **Lewis Macdonald, MSP**, Chief Whip, Scottish Labour Party, gave evidence

Q1 Chair: Good morning everyone. If I may formally start our proceedings, my name is Graham Allen. I am the Chair of the Political and Constitutional Reform Committee. I was elected by the whole House of Commons. Around the table we have Members of Parliament from various parties, each of whom were elected by their own parties in a secret ballot. It is safe to say there are no—I am trying to think of a nice phrase—people who the Whips felt were appropriate to discuss this issue. Let me put it that way; that is the nicest phraseology I can find. So you have a bunch of independent-minded people around the table who want to know how we can take forward the fantastic excitement and democratic engagement that was evident in the referendum recently.

We have a multi-level set of interests. Clearly, we want to discuss the consequences from the referendum for the rest of the UK, but also we are just about concluding a separate inquiry on voter engagement. I think this is the place to learn a few lessons, if there is anywhere in the world to do that, because of the tremendous excitement and turnout that there was around the referendum.

That is just by way of preamble and my first job really is to welcome Lewis Macdonald MSP, who is the Chief Whip in the Scottish Labour Party. Lewis, if you are happy, we will be on first name terms.

Lewis Macdonald: Absolutely.

Chair: I do not know, Lewis, whether you would like to just kick us off with an opening statement or whether you want to jump straight into questions.

Lewis Macdonald: I will simply to record my thanks to the Committee. My party leader, Johann Lamont, the leader of the Scottish Labour Party would have loved to join you had she not had prior commitments but she asked me to come along in her stead. I am delighted to do that, and to take the opportunity to share your views and my reflections, I suppose, on the process that we have just gone through in Scotland, not just over recent weeks and months but over the last two and a half

years. It has been, I think by common consent across parties, the longest and in some ways the most demanding political campaign that any of us have ever been involved in and it produced a turnout unparalleled in recent electoral history anywhere in these islands. It has been an extraordinary experience. I think there are lessons to be drawn from it in Scotland and the other parts of the United Kingdom for the future workings of our democracy at every level.

It is important to say that although the referendum produced a very clear and firm result—over 2 million people who voted to remain in the United Kingdom, and that was a very clear majority over those who voted for independence—nonetheless there is unfinished business arising from that referendum. That is clearly the focus of political life in Scotland at the moment and for the foreseeable future, and it will continue to impact on the political life of the House of Commons and elsewhere. There are other implications that I know communally you have taken a great interest in over a very long time for democracy across the United Kingdom, but you will forgive me if the priority of delivering the devolution settlement in Scotland remains number one for me and for my party.

Q2 Chair: Lewis, thank you very much. Just remind me, Martyn, when we might anticipate concluding this report and getting it out in the public domain.

Martyn Atkins (Committee Clerk): I think we hope to have something in the public domain by the end of the year. We will see what the Smith commission says.

Chair: We would normally take our time. Producing our written constitution took us over four years, because that is worthy of a careful look, but given the political circumstances, I think we are united in wanting to bring something into the public domain quite speedily, not to influence the Lord Smith work, because that is a separate issue—we are not involved in that—but the consequences, the things that arise for the rest of the union are of great interest to us. It is rather a pity, I have to say, to put on record that, having invited the three party leaders to our Committee, they have declined, in Westminster—all the Union party leaders, as it were—and I have made my displeasure known. I think it came out as a press release as “frankly disappointed”, which rather understated how I felt, but maybe it is better to have been understated than overstated. We also invited the Prime Minister to a special meeting of the Liaison Committee in the House of Commons, which is the Committee that has all the Chairs of all the Select Committees on it, but he declined and he will be coming at a later point, I understand.

However, I am delighted, Lewis, that you have not declined because you get us started this morning, and starting our questions is David Morris.

Q3 David Morris: Good morning, Lewis. All the parties have interpreted the result of the independence referendum as a mandate for constitutional change and a move away from the status quo. What do you think the priorities for the new devolution settlement for Scotland should be?

Lewis Macdonald: A timetable has been set and I think the first priority is that that timetable is met. That is the number one requirement and that relates to the date of the next general election. As you will know, what Lord Smith is endeavouring to do is produce recommendations by the end of November, with a view to draft legislation by Burns Night on 25 January. That is the first requirement.

The second requirement is that there should be as broad a consensus and agreement as possible around what that should look like, what that should consist of. I think it is encouraging that the parties that campaigned for a yes vote have agreed to engage in that process but I think it is realistic to acknowledge that they may not be able to reach agreement with those parties that campaigned for a no vote and that are constituted in the commission in order to try to reach a final framework. It would be unwise to prejudge those discussions in either direction and I know Lord Smith will be working very hard with the parties to try to reach agreement.

From the longer perspective of the process of devolution or the journey of devolution in Scotland, the way I described it when I did public meetings during the campaign was that we had started on a devolution journey 15 years ago with the establishment of the Scottish Parliament—arguably a little earlier than that—but that that devolution journey had two possible destinations. One of those is described as self-government of Scotland within the United Kingdom and the other is independence and separation. The choice has been made to go for the first of those destinations and not the second, but the detail of what that looks like is something that has to be worked out both in negotiations within the Smith commission and then in the response of the Scottish electorate to what is proposed at the end of that time. In terms of policy areas, I would simply mention two areas of obvious focus for all the parties, one being tax and the other being spending, particularly in some of the areas of welfare that are primary concerns.

Q4 David Morris: To elaborate on that last statement, what do you think the consequence for any devolution of powers from Westminster to the rest of the UK would be and should the other UK nations have devolution in the form that has been proposed here in Scotland?

Lewis Macdonald: The answer to your second question is: not necessarily. But the answer to your first question is that, yes, inevitably there are ramifications for the rest of the United Kingdom. What that might look like is not something that the Scots can say to the Welsh, the Northern Irish or the English, anymore than it would be appropriate for people from the rest of the UK to lay down what devolution in Scotland might look like.

There is an important point I want to make at this stage about the relationship between England and the United Kingdom. As Gordon Brown described it during the referendum campaign, we are a country, a union of four countries, one of which comprises well over 80% of the whole. Therefore, the kind of federal model, for example, that might work very well in some other parts of the world might not work in the same way here because of that imbalance between the member countries in the union. If you are talking about devolution to England or devolution within England then I am with you; I think that makes complete sense.

I think it is important, though, not to confuse England with the United Kingdom. That is arguably culturally one of the things that has happened in the past and has fuelled Scottish nationalism, a sense that people south of the border did not understand that the United Kingdom was more than simply England and its appendages. It would be a mistake to repeat that now by implying that somehow the United Kingdom Parliament is actually just the English Parliament with a few added features. That is an important point I would make from a Scottish perspective, that we certainly do not want to see a return to the notion that England and the UK are essentially the same thing, because that is wrong and it fuels the wrong responses in other parts of the UK.

Q5 Chair: Just a couple of things from me, Lewis, on that. Is there now a perception, post-referendum, when commitments were made by the big three parties, the Union parties, about the shape and the timetable of further devolution? Clearly, immediately there must be anxiety that that is going to be held to; a perfectly understandable reaction. Do you feel now, particularly having heard the words of the main party leaders and a very clear statement from the Front-Benches in the House of Commons in the debate this week, that there is a sense—leaving aside the fact that there is always be a bit of party politics and what have you—that that is now fully accepted as we are on the way and the timetable has to be met and the oath will be binding and is binding?

Lewis Macdonald: I certainly think it is very clear to me and to many other people that that is the case. I do not think for most people there has ever been a doubt about the commitment that those party leaders gave in order to deliver proposals for devolution according to a set timetable. There are those, and sadly including the Scottish National Party on occasions, who find it useful from their own point of view to sow doubt about that commitment. I think that is unwise and is, I suppose, intended to have some political benefit for them as a party.

In terms of what happens now, I think it is important that that timetable is followed as closely as possible and a good start has been made in that direction. It is very important that the considerations that this Committee has and that there will be before the next election around implications for the rest of the UK are not in any way seen as an anchor that would draw back progress on devolution in Scotland. David Cameron's announcement immediately after the referendum result was known certainly played into the hands of those who wanted to suggest there was some insincerity behind the vow that was given. He was very quick, I think it is fair to say, to correct that impression and to say absolutely his commitment to progressing the Scottish devolution was firm, but I hope that he and others will learn from the response to that announcement, and the experience following that, and recognise that anything that suggests that Scottish devolution is not going to be delivered absolutely according to an agreed timetable with the support of those parties would be detrimental.

Q6 Chair: I fully understand that no one nation should tell another nation how to conduct its affairs, and we have to be sensitive about that within the framework of the Union, but I am going to be provocative now, Lewis, and say that if you really believe in serious devolution—and I do and I know you do—isn't it incumbent upon you to help spread the word among those of us who are perhaps a little more backward on devolution than you and the Scottish people? Missionary zeal.

Lewis Macdonald: The approach the Labour Party has taken to devolution across the United Kingdom is one I endorse and support. I talk about the devolution journey. I campaigned for a Scottish Assembly a long time ago when it was first proposed in 1979 and campaigned for it again as a Scottish Parliament in 1997. In that second referendum, we won a clear endorsement from the Scottish people, and indeed in the first one a marginal endorsement from the Scottish people. I have long seen devolution as an important part of the government, not just of Scotland but of the wider UK.

I think what was done in the period following the 1997 election in terms of creating assemblies in Wales and Northern Ireland, and indeed in Greater London, was entirely consistent with what was done in Scotland and pointed in the right direction. Were I in a different position and sitting in the Parliament of which you are Members, I think I would be very much looking to how it could be devolved closer to people in the communities across the UK. Whether that is through regional assemblies, as was proposed by the last Labour Government, or through greater powers to cities and regional authorities, as is currently under consideration, I do think there is a big agenda that needs to be addressed.

If I can offer a couple of reflections on the basis of the debate that we had in Scotland over the referendum period, one of the points that was made during that debate was that the whole United Kingdom had an issue to face in terms of the power and influence of London and the south-east relative to the rest of the country. I think that point is fairly made and there are clearly a number of different ways in which that can be addressed. The idea that Scottish independence would somehow redress the balance within England was clearly preposterous and was one of the things that the Scottish people rejected, but there is an issue of balance within the UK economy. I think we all understand that. My own view, again recognising Gordon Brown's point about the 83% share of population in England, is that if the ambition is to create something that is balanced and has a degree of symmetry, then creating an English Parliament may not be a symmetry and creating regional assemblies would be more likely to do that.

There is the other angle and direction of policy. The current Government have introduced City Deals in a way that has been supported by local authorities across the country, including Glasgow, which is the latest beneficiary. What is devolution about? If it is about anything that we share then it may well be at a local level rather than at a national level.

Q7 Mr Chope: Do you accept that the future of devolution in Scotland is an issue for the United Kingdom Parliament? I presume you accept that. If it is an issue for the United Kingdom Parliament, if the United Kingdom Parliament decides that this should be dealt with in tandem with and at the same pace as constitutional issues in the rest of the United Kingdom, surely as a democrat you could not argue about that.

Lewis Macdonald: I think you are right on one level. It is important to say that political sovereignty, political responsibility, is something that is shared between the people and Parliament and that remains true. What we, the people of Scotland, decided four weeks ago was that we would continue to prove our sovereignty with England, Wales and Northern Ireland in the United Kingdom Parliament. Of course, one consequence of that is the constitutional process for delivering further devolution to Scotland lies at Westminster; that is clear. It is equally clear that the judgment of the Scottish people to vote to remain in the United Kingdom was influenced in some degree by the commitments that were given around that devolution of powers to Scotland and therefore it is incumbent upon the Westminster Parliament to deliver those changes in the way and at the pace that was committed to. If Members of Parliament collectively believe that they understand the will of the people of England as to the future devolution of England and can bring that forward as quickly as they can do for Scotland, given the stated will of the people of Scotland, then that is clearly a judgment for Members of Parliament.

Q8 Mr Chope: Just to correct the record, those pledges were not made on behalf of the United Kingdom Parliament. They were not even discussed in the United Kingdom Parliament. They were not made on behalf of the Government. That was made specifically clear. They were just made by the party leaders and were regarded by the nationalists as being salesmen's puff on which nobody should rely. You are saying that people did rely on those pledges, so-called, but obviously that is a matter for debate. If there is going to be a change in Scotland, with more devolution, that is effectively taking power away from your existing Scottish MPs. It means you are saying to your own Scottish MPs, your UK MPs from Scotland, "You are going to have less power and influence over the affairs of Scotland". What implications do you think flow from that for the number of Scottish MPs in the United Kingdom Parliament, if any?

Lewis Macdonald: On your first line of questioning, I think it is the case that the power that was given, the pledge that was given, was part of the referendum debate, and it had an influence on the referendum debate. It was a clear commitment by the leaders of the three parties that constitute the great majority of Members in the House of Commons, and are likely to provide the next Prime Minister as well, and therefore it was taken seriously by the people of Scotland. I would take the view that the majority of "no" voters may well have voted no without those commitments; that is perfectly possible. Certainly talking to people, as I did in many thousands over the period of the campaign, most people had made up their minds but a small but significant number had not and therefore those commitments had an influence on that small but significant number. I do not think any of the party leaders would wish to be accused of bad faith in not delivering the commitments they have given at such a critical time. It would not be good for the institution or the reputation of Parliament if there was any attempt to renege on commitments given so publicly by such clearly recognised leaders of parliamentary parties at this time.

In relation to your question about what are the consequences or the implications of further devolution to Scotland for the House of Commons, clearly there are such implications and what they are depends on what package is finally agreed. I do not accept the proposition that further devolution to Scotland, or indeed to Wales or Northern Ireland, has any implications for the numbers of Members of the House of Commons representing those countries. It takes me back to my earlier point that there is a fundamental issue of perception. My perception of the House of Commons is not that it is an English parliament with other countries added on. It is a Parliament of the United Kingdom and therefore it is appropriate that the level of representation of the four parts of the United Kingdom should be commensurate with each other. There is no trade-off, if you like,

of greater devolution requires reduced representation. Equally, if there is devolution within England, the creation of an English Parliament or English regional assemblies or a different arrangement around English local authorities, that does not imply a reduced level of representation for England relative to other countries.

What clearly does follow, if you have a process of devolution affecting all four parts of the union over a significant period of time, is that the workload, the remit, of Members of Parliament will likely reduce. There may then be an argument for reducing the number of Members of Parliament, but that is a different argument and that would apply to all four countries in the UK and not just to one.

Q9 Mr Chope: If you say you want to have more devolved powers for the Scottish Parliament, taking away those powers from Scottish MPs, then surely, irrespective of what happens in the rest of England, those Scottish MPs are going to have less to do because they will not have so much influence in Scotland.

Lewis Macdonald: I don't think that is right. The difference I would make is that by devolving more powers to the Scottish Parliament you are taking powers away from Members of Parliament from all four parts of the UK. At the moment, all Members of the UK Parliament vote on income tax rates for Scotland. If you devolve that power in whole or in part then you reduce the influence of all Members of Parliament and not just Scottish Members of Parliament.

Q10 Fabian Hamilton: Lewis, you mentioned earlier the City Deals as an example of how there is now more devolution from Westminster and Whitehall to local authorities like Glasgow. I would argue that that is a handing down, as we have always had, of power from the centre to the regions and to the nations of the United Kingdom, not true devolution. You have to bid for that money, you have to come to an arrangement, and it is thanks to the goodwill of those handing it out, not by right, that that money is received by Glasgow or any other local authority. My question is: do you think, given that imbalance, that there is also a fair distribution of power between the central Government here in Edinburgh and the Scottish local authorities?

Lewis Macdonald: It is a very good question. I completely accept your principal point that City Deals do not represent devolution. They merely represent a welcome recognition of the important role of cities in the economy. My own home city of Aberdeen would very much like to be next in line for a City Deal, and I am sure those conversations are going on even as we speak. It is not the same as devolution but it does point to a recognition, I think more widely than might be expected, that cities and city regions across the whole UK play a very important role in economic development and growth.

Your question about the balance between central Government and local government in Scotland is a very good one because it is a very real concern here in Scotland, particularly in the last seven years where we have had an SNP Government that have centralised power to an extent not known since the 1980s and early 1990s. In areas such as local taxation, although in theory local tax rates are still set by local authorities, in practice they are controlled from Edinburgh; the way in which police and fire services have been amalgamated, the ability of local authorities and local communities to influence the new Scottish-wide services has been very much weakened and reduced. In a number of areas I think we have seen a centralising tendency in a Scottish nationalist Government and perhaps we should not be surprised that a nationalist Government seeks to concentrate at the national level.

Q11 Fabian Hamilton: If I can interrupt you a minute, because Christopher Chope alluded to this and to just build on it: who should redress that imbalance between central and local government in Scotland? Should it be Westminster or Holyrood?

Lewis Macdonald: I think ultimately that lies in Scotland to address. As I said, initiatives like City Deals are welcome in Scotland and Scotland remains very much a part of the United Kingdom, which was confirmed as never before four weeks ago today. So it is entirely right that where there are powers that lie in the hands of the Westminster Government, they should be used as creatively and consultatively in Scotland as they are anywhere else. But clearly we have a position where a lot of powers have already devolved to Edinburgh and more powers will be devolved to Edinburgh as a consequence of the next stage in process, and therefore it is for those of us living and working in Scotland to ensure that we get the right balance between the central and local localities in Scotland. It is a political challenge for what are currently the parties of the Opposition in the Scottish Parliament to make the case for greater power at local level.

I can say that Labour's position at the next Scottish Parliament election is very likely to have a large focus on devolution of power from the centre to local areas, and indeed that is quite likely next year too. But part our critique of why we think the SNP are not delivering as they should for Scotland would be their tendency to centralise so much power in Edinburgh.

Q12 Fabian Hamilton: Let me move us on to the process of constitutional change. The agreement between the unionist parties on the way forward for Scotland in the event of a no vote, which of course happened four weeks ago, came rather late in the campaign, I think you will agree. The settlement that is being negotiated is on an extremely tight timetable so that a draft Bill can be published and scrutinised before the next Westminster election, due on 7 May next year. Do you, as Chief Whip, feel that this timetable is feasible, because it very tight?

Lewis Macdonald: It is a tough timetable but I think that is appropriate, for two reasons: first, because it demonstrates urgency and the priority that this is given by all concerned and, second, because it is clear that the general election in May will feature these issues as an important part of the debate. It is right that, if there is an agreed position among three of the parties contesting that election, that position should be clear to the electorate in good time for people to debate and discuss their response.

Q13 Fabian Hamilton: But, Lewis, is it the best way to achieve constitutional change that has the support of the public? I accept that there is some urgency here and obviously the deadline of the next general election. Of course, Parliament is dissolved on 31 March, so there is an even tighter timetable. Is that how we are going to engage the public? You had a two-and-a-half-year referendum. You said it was the longest political campaign you have ever been involved in. Don't we need more time to consult the public so that the public can be involved?

Lewis Macdonald: There was an enormous level of engagement over that period of the recent campaign and I think what we want to do is to ensure that that level of engagement is continued as far as possible. In an ideal world you can set ideal timetables but in the real world, constrained as we are by the political realities around us, I think it is essential that what is offered is offered to people in a way that they can pass judgment on at the next election. I think that is what this timetable allows to happen. Any consideration to delay would look or feel unfair to some and it is important to show good faith in this and to show that there is a recognition of the commitments that have been given and of the demand for change. One thing for sure I think we all agreed with at the end of the two-and-a-half-year campaign is that there is a demand for change and that has to be met. If you had a lot longer to design and consult, you would perhaps come up with something a little different, but I think the substance of what is intended will be clear by the time the process is over and that is what people will have to vote on.

Q14 Chair: To pick up one point, Lewis, really showing my ignorance because I can't get the paperwork together immediately: am I right in saying that the three Union parties, in their evidence to Lord Smith, have all said that there should be some clear further devolution, or you might call it double devolution, to local government in Scotland? I know there are nuances and differences, but am I right in saying that all the Union parties have committed to doing that? If that is true, I am going to ask you to be the missionary again and say for people like me—and I suspect a number of other colleagues may share this view—who feel a resentment that our cities and towns are governed from Whitehall in the same way as I think underpinned a lot of the resentment towards Westminster, actually, the resentment really should have been directed at Whitehall because of that grip. Are all the parties committed to double devolution and do you think that is an example that can be taken to the other nations of the Union?

Lewis Macdonald: I think the answer to both is yes. The parties that have argued for and who voted for remaining in the Union have also argued that powers should be distributed. That is the point of devolution. It is not about concentrating it at the centre, whether that is London or Edinburgh. Yes, again, there are implications for other parts of the UK, in line with Fabian's questioning around the implications for local government. For example, we are likely to look at areas such as the Crown Estate that has the rental of the seabed and also significant property holdings in Scotland and elsewhere. If the conclusion of the process—and I can't prejudge it any more than anybody else can—is to change the way in which that revenue is used to bring it to a local level, clearly that can apply not just in Scotland but in other parts of the UK. I think in principle the answer to your question is yes; in practice the issue that I hope will be addressed from this process is how more power is devolved to a local level and I think there are some mechanisms for doing that that would apply elsewhere in the UK.

Q15 Chair: You have had some experience of thinking about, if not actually enacting yet, income tax assignment. I believe that comes in on 1 April next year and it seems that all the Union parties are united on wanting that to go further. In thinking about this, because it was spoken about two years ago and a lot of thinking and preparation has gone into it, is this something where you have found show-stopping problems or do you feel this is going to happen nice and gently and smoothly and again could be an example to other nations in the Union?

Lewis Macdonald: We are a little ahead of that. The tax powers that will come in next April are the ones replacing stamp duty, landfill tax and so on. In April 2016 the powers over income tax will come in, but what that means is that we have already had a debate in the Scottish Parliament in the last week over the replacement for stamp duty applying in Scotland from next April and this time next year, next September or October, we will begin the budget process that will set the income tax rate for Scotland. So it is a little early to answer that question in the sense that the income tax side of it has not yet kicked in but I think the expectation is that it will be a focus for a lot of discussion around how—because these powers come in in 2016 and additional powers will follow from that, then clearly that will be an important step towards the implementation of those further powers. Further powers over income tax are among the things that are in the command paper relating to the proposals for future devolution.

Q16 Chair: But I am sure there will be a sense of if this can be done smoothly in Scotland, there is absolutely no reason why it can't be done in the other nations of the Union.

Lewis Macdonald: Yes, indeed. I think it is important to say that one of the quite legitimate arguments around the additional tax powers that are in the 2012 Act that is being implemented at the moment and additional tax powers that are being considered in the future is to tie the decisions about how to spend money to the decisions about how to raise money. Even on the first take, the replacement for stamp duty has already provoked some comment favourable to the Scottish Government for what they propose, and unfavourable to the Scottish Government for what they

propose. Immediately, even at this very early stage, I think it is clear to everybody that as soon as you have a tax-raising power you also have a tax-raising accountability. Perhaps part of the maturing of the institution of the Scottish Parliament is reached at the point when these tax-raising powers are first used. That is perhaps a happy coincidence with the referendum that has just happened, reasserting the devolution within the Union that is the will of the Scottish people.

Q17 Chair: If there is devolution in all countries, particularly devolution that is tied to income tax assignment, devolution suddenly becomes a principle of state. It becomes a common factor rather than an expedient or a tool of crisis management. It looks like we all believe in devolution if all the nations of the union have income tax assignment.

Lewis Macdonald: I think that is right. That is a very fair way to describe it. It implies a level of responsibility on devolved government that is welcome and is surely in line with the purpose of devolution, which is not just to devolve decision-making but to devolve responsibility.

Q18 Mark Durkan: I want to follow up on some of the points already made before I touch on the issues like voter engagement and registration and some of the questions that are raised from that. On the process point, on the date point, if the imperative is to have these negotiations completed by a deadline before the election so that the deal can be published and all the rest of it; if the deadline is imperative, what does that then say about the deal, if some people—and we know there are parties—are taking the view that you can't have devo-max without West Lothian?

Lewis Macdonald: I think it is important to not be drawn too much into some of the sloganising that goes on around this. There is no commitment from any party to a thing called devo-max. This is something that in a sense has been elaborated on the back of things that have been said, and on the back of models of self-government that apply elsewhere, but you are certainly right to say that increased powers for a devolved parliament by definition mean reduced powers at the centre. The timetable is constraining in the sense that clearly the longer you have to negotiate, the more chance there is to iron out details, but I think what we are talking about here is probably less about ironing out the details than agreeing something that as a whole is coherent and makes sense that can be put to the people at an election.

Q19 Mark Durkan: The imperatives of dates and deadlines, from my experience in Northern Ireland, mean that people either find themselves making choices that they later then try to resile from or—and maybe we have seen this before the referendum—they quickly differ on what the commitment that they have made actually means. I was not in the debate the other day, not because I did not want to be but I was on another committee, but it seems to me that that debate basically seemed to boil down to “How now brown cow” and nobody seemed to agree on the answer.

Lewis Macdonald: I am not sure that is right. I caught some of the debate and had a look at some of the reports of the debate and there were certainly clear differences around the way forward in England particularly, but in terms of the implementation of the commitments that were given in Scotland, I thought there was quite a broad set of agreements within that. Clearly there are going to be issues that may not be resolved and certainly there will be issues that may not be resolved to the satisfaction of absolutely everybody, but I think the imperative of reaching an agreement according to a timetable is one that will bear heavily on all the parties.

Q20 Mark Durkan: Are you also clear that that agreement has to be very much one that for these purposes centres on Scotland? It can't be a case of there being a wider negotiation that sorts out what the next tranche of devolution is in Northern Ireland and Wales, because for all sorts of reasons that could take a long time.

Lewis Macdonald: Indeed. I think it is fair to say we have had the longest debate on our constitutional future that I can recall. That has been conducted at full pelt in Scotland. It barely surfaced elsewhere in the UK, I think it is fair to say, until the last month of the campaign. Then the debate has begun elsewhere—and certainly the work of this Committee has contributed to that—but I don't think it is anywhere near the stage of maturity of the debate in Scotland that has been contested sharply over a long period of time.

Q21 Mark Durkan: So the next level of devolution for Scotland is going to be on the basis of the old canon, "I've got mine and it doesn't matter about anybody else"?

Lewis Macdonald: I don't know if it does not matter about anybody else, but I think there is one area of devolution that is subject to clear commitment and that is currently being negotiated in detail among all the parties and there are other areas that are not clear and where there is debate between the parties as to the way forward. I think the consequence of that is that in Scotland there is every chance that there will be a single package put by the three major parties to the people of Scotland; in England, Wales and Northern Ireland I think there is less chance.

Q22 Mark Durkan: By the time the current devolution process that we are going to be looking at is finished, there will then be three Scotland Acts dealing with the powers of the Scottish Parliament and Government. Will that mean anything for the public understanding of how Scotland is governed? Are people going to be quoting these different Acts or whatever, or is there a case for consolidating the Acts?

Lewis Macdonald: As I said a few minutes ago, I have always regarded devolution as a journey. Donald Dewar, who was the first First Minister of Scotland, described it as a process not an event, and I think that is right. Simply accounting for the fact that there have been three main events, three Acts of Parliament, that have contributed to that process, I do not think the next Act of Parliament is the end of the process. I am sure the process of adjusting the relations among the constituent parts of the United Kingdom will go on. I am not sure there will be an advantage in consolidating the Acts because it is an organic process that will continue to develop over time.

Q23 Mark Durkan: If you do not want to consolidate the Acts, you would not see any need for some instrument of entrenchment either?

Lewis Macdonald: I do not want to prejudge what will come out in the discussions that are going on in the Smith commission, but part of what I suspect they will be discussing is the entrenchment of the Scottish Parliament as a permanent feature of the British constitution. It may well be that the Act that comes from the Smith commission will include an element of entrenchment that will say, "Here is the Scottish Parliament. It is a permanent feature of the British constitution".

Q24 Mark Durkan: Given some of the issues that you answered earlier in relation to representation in the UK Parliament, do you have a concern that without entrenchment people in the UK Parliament could see voting rights within the Parliament as being a mere matter of standing orders, as some Members seemed to be saying this week?

Lewis Macdonald: I certainly think it would be a mistake to use the agreed position on the devolution of Scotland as a means of obtaining party political advantage. I think entrenchment will have broad support because the political reality is—and I think everyone understands the political reality—that a Scottish Parliament, once established and that is maturing and acquiring additional powers, is not something that could be abolished in political reality by the whim of any future Parliament. Nonetheless, I think a measure of entrenchment that makes that clear beyond peradventure would be a good thing.

Q25 Mark Durkan: Would that entrenchment extend to underlining the position of local government as well?

Lewis Macdonald: Again, I would not want to prejudge the discussions that go forward within the Smith commission. We have acknowledged today that the relationship between local government and the central Government in Scotland is an important part of the picture. Whether it would be something that is specific entrenchment at the next stage I don't yet know but I can certainly see an argument that says it should be.

Q26 Mark Durkan: Moving to a different process question, which is the electoral engagement question, there was a huge turnout in the referendum, very strong, hugely high levels of registration compared with 64% voting in the 2010 general election and in the low-50s in the 2011 Scottish Parliament election. What lessons do you think we could all draw from the level of voter engagement in the referendum?

Lewis Macdonald: There are a number of lessons. As a Member of the Scottish Parliament, I am one of those seeking to draw some of the lessons too. I am the deputy convenor of the Referendum Bill Committee that is engaging now in some post-legislative scrutiny to examine some of the evidence as to how the referendum process worked. Particularly we are looking at the issue of 16 and 17-year-old voters who turned out also in very high numbers and took part in the referendum, so we will be doing some examination of that as a parliamentary committee over the next period.

But in more general terms, I think what happened in the referendum campaign is that there was a long period of intense debate around issues that by the end of the process people clearly understood made an enormous difference to everyone's lives. From my experience campaigning on the issue in north-east Scotland, it was clear to me that a lot of people who had regarded it as something for the politicians to worry about, in the last few weeks, recognising that the vote might not go the way they expected, turned out in very large numbers to vote for Scotland to remain in the UK, and I think that was a pretty general experience. So I suppose on one level you could draw a negative lesson that if you threaten the things that matter most to people, that would be the most likely to encourage them to take part, but on the positive level I think it is fair to say as well that if politicians, and not just politicians but civic society, are pushed one way or another to consider what is important and to explain that to themselves and understand it for themselves, that will create a level of political engagement.

I think what we saw in Scotland in the last two or three years was an increasing level of engagement with the issues, and there are positive lessons to be learned from that and opportunities to replicate that in different ways. But above all giving voters the sense that what they want will be delivered is perhaps the single most important feature of that campaign on voter engagement.

Q27 Chair: Lewis, am I right in thinking that all the union parties are committed to some extent to a written constitution for Scotland or at least some fundamental entrenchment of the settlement in Scotland?

Lewis Macdonald: I think not in terms of the big picture, a written constitution. I would hesitate to speak for other parties on that. My sense is that the question of entrenchment of the Scottish Parliament in one form or another will certainly be on the agenda for those discussions and I would expect a proposal to come out from that. I don't think the wider issue, which I know is so important from your perspective, of a written constitution or a codified constitution or some other form of consolidation of constitutional matters, is per se one of the things that the parties have committed to at this stage.

Q28 Chair: There is currently a consultation taking place on the Scottish constitution, a written constitution for Scotland. It was authored by the Scottish Government and that is still out there for discussion. Presumably, rather like our own effort for a UK constitution, which needs considerable amendment in this regard if not many others because of the Scottish referendum, no doubt this will now be a document that requires a lot of reconsideration given the outcome of the referendum.

Lewis Macdonald: Again, I would not want to speak for the SNP or the Scottish Government but my understanding of that document is that it was presented in the context of the independence referendum. It is not for me to say that it is a dead letter but I suspect the SNP might assume that it would apply in the event of Scottish independence but not otherwise.

Q29 Chair: Just so I am really clear about it: do you think this was written really as an independence document rather than a “hedging the bets” document that now needs to be refined?

Lewis Macdonald: Yes. My understanding is that that was a proposition, and part of what the SNP and the Scottish Government were proposing was that in the event of a yes vote and indication of a separate Scottish state, one of the first things to do was propose a written constitution. I think without that, that document does not have the same—

Chair: I am very conscious of the time and our next witnesses.

Q30 Mr Chope: Are you in favour of a UK constitutional convention?

Lewis Macdonald: I am. I think that is a good idea. I think that would be a way to approach some of the questions we have been talking about.

Q31 Mr Chope: What form should it take?

Lewis Macdonald: I do not think that is for me to say in the sense that the lead on that should come from the United Kingdom Parliament, but I do think there should be representation from the devolved Parliaments and Assemblies that already exist as well as from the UK Parliament. If it was to follow the model of the Scottish constitutional convention of the 1990s, which was a successful model, it would engage as much of civic society as possible beyond the political parties.

Q32 Mr Chope: Would it not have been better to have had such a convention before the referendum campaign so that the United Kingdom Parliament as a whole could put the best offer agreed by Parliament on the table for the Scots to compare with the alternative option of independence?

Lewis Macdonald: It is a very interesting question, partly because what is striking about the Scottish independence referendum is that it was a decision put to the Scottish people and made by the Scottish people but of course, as you implied, absolutely had huge implications for the rest of the UK. We are talking today about what the implications are of a no vote impact on further devolution. I just imagine the implications of a yes vote for a separate Scotland for the United Kingdom would have been very significant indeed. I think the political realities were that that vote in Scotland came about because it was the mandate of the Scottish Government to hold that vote and therefore, in a sense, the decision taken by the UK Government was to concede that the Scottish Government should both set the date and write the question.

Had this been approached from a different angle, had the question of Scottish membership of the Union arisen as part of a reform process of the Union, what you described would have been valid, but it did not. It arose as part of a drive by one party in one part of the Union to leave the Union and to end the Union between Scotland and the rest of the UK. Therefore, again a little like a point that was made earlier about how long it takes to agree the best possible settlement, while what would be the optimum way to propose the settlement in theory may be one thing, in practice the

political reality is that was not possible. But I do think there is no time like the present and the questions that are raised now are ones that a constitutional convention could help with.

Chair: I think there is a little bit of “I told you so” in that the Committee felt that a discussion about a constitutional convention should have been before the referendum and we could all have had a broader view of these things, but we can draw some small comfort from that, I think. Lewis, thank you so much for your time today. We really appreciate your coming along. It has been very informative. Thank you very much for your time.

Witnesses: **Professor Michael Keating**, Director, Scottish Centre on Constitutional Change, and **Professor Nicola McEwen**, Associate Director, Scottish Centre on Constitutional Change, gave evidence.

Q33 Chair: We are going to move straight along, if I may, to Professor Michael Keating and Professor Nicola McEwen from the Scottish Centre on Constitutional Change. It is very good to see you, Michael and Nicola. If you are happy to be on first name terms, so are we. Would you like to say anything to start us off or—we are a little bit late—do you want to jump straight into questions?

Professor Keating: I think we will go straight to questions.

Q34 Mr Chope: Everybody seems to have interpreted the independence referendum result as a mandate for change and a move away from the status quo. What do you think should be the priorities for the new devolution settlement?

Professor Keating: In Scotland, there are two issues that are very large—one is about taxation and the other is about devolution in the field of welfare—because most of the big things are already devolved. That would require a great deal of thought, which the Smith process does not provide. It requires deliberation in Scotland and the rest of the UK; it requires legislation in both Parliaments. Frankly, I think that the timetable we have been given to do this is not realistic. We are doing a lot of work on taxation and welfare but we simply have not been given enough time to make an input into this that would get not just the principles right but also the technical details that are very important when it comes to taxation and the interrelationship of taxation and public spending.

Professor McEwen: One of the things that is interesting about the Smith process is the way that it has opened up the discussion and the debate beyond what the three UK parties have proposed before the referendum. I am not sure of their thoughts on this but one would have thought it would have been politically more preferable for them to come to an agreement before the referendum because that would have created a situation where you were looking for overlaps and complementarities between those three proposals, but we are not in that situation any more. The Smith process, as you know, incorporates the other parties but there are also very active discussions within civil society that are bringing into the discussion issues that are beyond tax and welfare. The business community, for example, is openly discussing things around immigration and energy and other areas of reserved competence. I agree with Michael that the process itself does not allow time to consider properly even some of those issues, let alone adding any other more complex ones.

Q35 Mr Chope: How much time do you think should be given to this, if the present thing is too short?

Professor Keating: I would have thought a year would be reasonable. Get the UK election out of the way. We had expected that the UK parties would bring their proposals separately at the UK elections. They would have an idea about what the debate was. Here in Scotland we could have

debated that in the context of the UK election. Then after the election the governing coalition, or better still the parties as a whole, could have come to some kind of agreement and there could have been more of a deliberative process in Scotland to reach a consensus. We had a referendum campaign in which 45% of the people said they were unhappy with the constitutional settlement. That certainly was a vote for the Union but it was not an unambiguous vote for the Union. There is clear evidence that there is a desire to reform the Union.

We were not allowed to have a second question in the referendum. This was something that came up very late in the campaign, that there would be an alternative, that “no” in fact meant more devolution, and we have not had enough time to think that through. I am not talking about stringing this out indefinitely and having endless discussions but at least a year seems to me a reasonable time to put together something that will work and will get the technical details right so it will not unravel and have to be returned to again.

Q36 Mr Chope: In that very rational response, do you think there is any chance of that finding favour with the powers that be rather than this mad rush into a rushed job?

Professor Keating: No.

Professor McEwen: No. In the political context, there is an election around the corner and these create imperatives. I think that the timetable is not about to be changed. There are two things stemming from what Michael was saying that are of concern to me. One is that I think that there is probably enough time to get a set of ideas, a heads of agreement we are talking about now, but they will not scratch beneath the surface to explore whether these are workable ideas, what the implications of introducing those new responsibilities would be and how it might unfold. I suspect that means that whatever comes out is probably not going to be sustainable and we will be back here within a few years talking about either fixing that or what next.

The second thing is that you talked earlier with Lewis Macdonald about the extraordinary public engagement with the referendum process, and from whatever side you were on that was a phenomenal achievement. There is no scope whatsoever for that public engagement to take place in this process and because the agreement is going to be increased, the legislation proposals increased before the election, there is not even going to be an opportunity to give consent as part of the normal electoral process. I think almost an exclusion of the public from the process as it is now is very unfortunate.

Q37 Mr Chope: In this Committee we have always argued for pre-legislative scrutiny, but it seems all that has been abandoned and we are heading for potentially a very bad botched job.

Professor McEwen: Potentially. That is interesting, there is pre-legislative scrutiny in the Scottish Parliament, as you know, and again the role of the Scottish Parliament in this process is also unclear. It would have to have it all, it would have to give its consent, but at what point in the process that would happen and how much scope there would be for public engagement at that point has not been made clear so far.

Professor Keating: As far as the Scottish Parliament is concerned, during the referendum process for the last few years this was handled in the Scottish Parliament in a very partisan way. It was a very divisive question. Both of us have been to committees of the Scottish Parliament when they were simply rehearsing the merits of independence, and that is not surprising. It is not a criticism; it is not surprising. But this time round, now that the independence question has been settled, there would be an opportunity for the Scottish Parliament to have a more reflective and less partisan consideration of the issues here. That is very important and if it does not have that, that reflects something seriously deficient with the whole process.

Q38 Mr Chope: What are the consequences of all this for any devolution of powers from Westminster to the rest of the United Kingdom?

Professor Keating: My view of the United Kingdom is that the various parts will proceed at their own pace. The agenda, demands and circumstances are quite different. In the last 15 years we have had a lot of constitutional change that has proceeded in parallel. That is in many ways healthy because I do not believe that the whole of the United Kingdom could be put into a single political or constitutional box. It is a very diverse place and the Union is understood very differently in different places, but there are two qualifications to that. One is that there are things that immediately spill-over into other territories. So if you are talking about finance you are talking about the Barnett formula and immediately that affects Wales and Northern Ireland, so you cannot just do that for Scotland. Secondly, although I think that the various bits of the United Kingdom should advance at their own pace when they are ready, nevertheless there has to be some kind of consistency here—not the same treatment but some kind of consistency—otherwise we are going to create all manner of anomalies within the system. The West Lothian question, for example, is an anomaly in the system that at some point will have to be addressed.

Q39 Mr Chope: Do you think all these things should be addressed at the same time as resolving the—

Professor Keating: No. I think that would be a serious mistake. Nicola, maybe you could—

Professor McEwen: No, because they have their own dynamics and their own solutions, in a sense, I do not see the advantage in trying to do it all at the same time. That would probably force the pace in some areas that would not help, and hinder progress in other parts of the country where there is more of an immediate demand. I do not see the rationale for doing it all at the same time in the context perhaps of one single constitutional convention.

Q40 Mr Chope: How about the interaction of the Barnett formula? How is that going to be resolved? Surely that relates to both of these issues.

Professor McEwen: Take that issue, look at the Barnett formula in isolation and think about the interactions there. You don't have to do that while looking at everything else at the same time.

Professor Keating: The territorial distribution to expenditure is an extremely difficult issue to address. You can come out with all kinds of formulas but they all involve winners and losers, but that is something that at some point must be addressed. We have muddled along for 35 years saying, "It is not going to last for very much longer" but with the public expenditure being so squeezed and the issue being so open and publicly debated now, I don't think it is sustainable for very long.

Q41 Mark Durkan: It was interesting that, in your very opening remarks, and maybe you have touched on them just now as well, in the context of talking about constitutional change, you also talked specifically about being able to test exactly what the implications of variable options might be in relation to tax and welfare and so on, whereas many of the parties seem to treat tax and welfare as completely separate constitutional questions as they see it. I was struck by the fact that you see them very much together. Do you think that in the context of the sort of process that we are being told needs to happen before the next election that any of those issues are going to be scoped out in any way that means that parties who are in those negotiations have a handle on them, never mind the people who are not in those negotiations?

Professor Keating: No. That is exactly one of the sort of the issues we are referring to that has to be got right. The parties are proposing bits on taxation, mainly to do with income taxation, and then there is a separate debate about how much welfare you can devolve, which has not been terribly well explored and elaborated, but the two are connected. One of the most important things in public policy, whether it is at the UK or the devolved level, is the balance between spending and taxation: if you are going to have taxes, what are you going to use those taxes for? It is about the interrelationship between welfare reform, which is a huge programme, and, on the other hand, what you are doing about taxation, what the taxation implications are, and they need to be brought together at all the various levels and you need to get the details right because the devil is in the details. In Northern Ireland, there is a big issue about that. It has caused all kinds of problems that were not really anticipated. That is just a foretaste of what could happen.

Mark Durkan: Some of us predicted them.

Professor Keating: Yes. That is a foretaste of the trouble you can get into if you don't think these things through clearly.

Q42 Mark Durkan: Again, in that context, and I suppose it could be a new variant of the Barnett formula in a sense, is the welfare cap, not to be confused with the benefits cap. It seems to me that very little attention has been paid at any level to what the possible implications are in future of the welfare cap that was passed after a 90-minute debate this March as part of a budget charter by Westminster. In many ways, that creates a scenario for a Barnett formula attaching to annually managed expenditure such as welfare, but nobody else seems to be talking about the implications of that in the context of devolution and devolution options.

Professor McEwen: I think you are absolutely right. One of the fundamental things if you are talking about devolving aspects of welfare is how you finance it, how you sustain it, how you do it in such a way that helps maintain the social union that everyone talked about in the context of the referendum campaign, whether it is through existing mechanisms and how you adjust it. We have seen prolonged debate between the two Governments about how to do that in relation to the Scotland Act 2012. Even with those small devolved taxes, I am not sure whether they have come to an agreement now, but at the point that the taxes were presented last week, there was no view on how to do that. These things are incredibly difficult and complex to manage.

In terms of devolution, it is not always clear what we are talking about. Are we talking about empowerment to do things fundamentally differently, to shape legislation in such a way that the programmes can be completely redesigned and offered differently in Scotland, or are we talking about devolution of social security in the way that it takes place in Northern Ireland, which does not allow for that level of empowerment to do things differently for a variety of reasons, or is it about flexibility at the margins? No one has yet presented a set of proposals that clarifies those options.

Q43 Mark Durkan: Some people would say on paper social security has devolved to Northern Ireland because we have a separate social security agency and the Assembly has to pass legislation, but it is karaoke legislation. The words and music are set by Whitehall and if it is not done then the block grant is spent, which is a completely new feature alongside the Barnett formula. Again, on the issue of entrenchment in respect of devolution, we have a situation that the current Whitehall Government, with no basis in law whatsoever, are imposing a fine on the block grant, the Barnett formula allocation to Northern Ireland, on the basis that the Assembly has not passed the karaoke Bill for welfare reform. It throws up just where exactly the protection is for the devolved position in that situation.

Taking that forward, if the current negotiations, as we heard from the previous witness and given the strength of the commitments from the three main London parties, are to do something for Scotland before the end of March, essentially, what position does that leave the people of Scotland in, do you think, in terms of knowing what the position is in the election? There will be a Bill published. Do you expect that all the parties will contest that election on the basis of agreeing on that Bill or supporting that Bill, or seeking mandates to do something very different in relation to that Bill?

Professor Keating: We were told that there was a Bill that was going to go to Second Reading and that this was just a draft Bill, so I am getting very confused about what they intend to do. The understanding is that Lord Smith would try to broker an agreement among the parties but we do not know whether that would actually happen because that would depend on the parties agreeing to the compromise.

Professor McEwen: We have seen as part of the Smith process that the Scottish Government and the Scottish National Party have submitted a proposal that is considerably beyond anything that the UK parties proposed. Obviously they have done that not because they think that is what the agreement will look like but to redefine the terms of what people mean when they talk devolution-max. I find it difficult to imagine an agreement being reached that can satisfy all the parties. I do not envy Lord Smith his task, actually. The idea that the SNP would enter the 2015 general election campaign signing up to everything in that Bill as a settlement does not seem very realistic to me.

Q44 Mark Durkan: How would you advise Lord Smith, Governments, anybody else, on how best to foster public support for whatever change is going to emerge from this process that is going on here?

Professor McEwen: Talk to the public in the first instance, because that is not happening, and engage people in debate. Make it a more deliberative process rather than—Lord Smith's task, as I understand it, is to broker, to facilitate an agreement between parties. This is not even a convention or a commission where you have experts and representatives in a room trying to think through and reflect on the issues. It is not that at all. It trying to find an agreement between political parties and that is probably the last way I would recommend to nurture consent and agreement among the public.

Q45 Mark Durkan: As a reflection of my own, having been involved in negotiating the Good Friday agreement and the implementation, I have observed long before the current context that one of the regrets I had with our process was that after the high water mark of the referendum, north and south in Ireland to support the Good Friday agreement, the process was too quickly privatised to the politicians and that is then where a lot of the implementation failure and stalling and frustration emerged from. In terms of some of the issues, we have obviously talked more in relation to devolution as Westminster and tax and welfare and all the rest of it. Going back to the questions then about the position of local government, and we are talking about engaging the public, what would you say about the balance of power between central and local government in Scotland at present?

Professor Keating: I think that it is a problem for the Scottish Parliament and it is not a problem for Westminster. It is quite clear that the structure of local government is devolved and that is a matter for debate within Scotland. My own view and the view of many people is that Scotland is accessibly centralised, but I do not think that is within the remit of a Westminster committee, nor do I think it would be appropriate for Westminster to legislate on local government for Scotland. That would be a breach of the Sewel convention and would require the assent of the Scottish Parliament and possibly the amendment of the Scotland Act itself.

Q46 Mark Durkan: Should it be the case that, depending on what powers still exist at Westminster in the future in relation to maybe some bespoke areas of taxation, in the context of City Deals that may continue to be available in England, Westminster is able to make City Deals available to local government entities in Scotland if they wish it or should that all be brokered in Scotland?

Professor Keating: I was surprised to see the City Deal with Glasgow and I think it was unfortunate. The Scottish Government and the city of Glasgow went along with it because it provided extra funding from Westminster, but this was outside the Barnett formula, which I think is problematic. Where this has happened in other federal or devolved countries, it just creates all manner of complications because Westminster intervenes, gives a certain amount of money to Glasgow, which requires matching funding from Glasgow and from the Scottish Government, and that distorts the priority setting in the budget procedure in Scotland. They take it because it is new money but I do not think it is good policy. I think that belongs within the devolved sphere and that funding should have been put through the Barnett formula and then it is up to the Scottish Government and the city council of Glasgow how to manage those kinds of programmes.

Q47 Chair: It is always interesting to see the interface between academia and politics, with the academics saying, “This isn’t rational and if only we had the right length of time” and equally politicians failing to take rational decisions over the last 50 years. One could argue that if they had done so there would not have been a referendum in the first place, but we are where we are, aren’t we? After a serious political process, that there is some sort of suspension and all that that would mean from people who said, “Yes, we told you so, they weren’t going to deliver on their oaths”, is totally unrealistic. Won’t we all have to try to make this work once we have settled these big principles that came up in the referendum? They were not the subject of a yes or no in the referendum but don’t we, as politicians, all of us collectively, have to deal with that and then, sadly, imperfectly deal with the detail and often make a mess of it, but at least the tectonic plate moved finally and a proper possibility for more serious devolution took place?

Professor Keating: That is how constitutional change happens. It never happens for rational reasons or philosophers thinking through what a good constitution would be. It happens because a political opportunity opens, tectonic plates move and then for opportunistic reasons politicians do something that may represent genuine progress. It is how devolution happened, the extension of the suffrage and all these great things, but nevertheless you can move too rapidly for short-term political considerations and end up making your problem worse because you have created a system that is not going to work. When we can see that happening, I think it is up to us to say, “Hold on a minute, you are creating problems for yourself”. The problem will not go away, allowing you to move your agenda on. It will come back again very quickly. I think that is what will happen if we rush through this later stage of Scottish devolution without proper consideration.

Professor McEwen: There is a difference between deliberation and suspension and I don’t think anyone is saying we should suspend.

Chair: I think some people will say that they are the same.

Professor McEwen: They will. Well, we are not.

Chair: Sorry for that little intervention there but I get that feeling arising.

Q48 David Morris: 85% of the Scottish electorate voted in the independence referendum, 64% of the Scottish electorate voted in the 2010 general election and just over 50% voted in the 2011 Scottish Parliament elections. What lessons should we draw from the level of voter engagement in the referendum and how can the political system in Scotland sustain this level of voter engagement in the future?

Professor McEwen: To your last question, I don't think it can. I don't think this means that in the elections next year and in 2016 we will see similar levels of engagement, unfortunately. I wish that it would be the case but I doubt it. There are two lessons, I guess. One is the thing that we know anyway, that people turn out for things that they think are important, so it is the responsibility of politicians to stress that elections are just as important as an issue of the constitutional future of the UK. The other second lesson I would take is that engagement starts long before polling date and in the context of the referendum, there was an extraordinary effort put in by the campaigns, civil society, the universities to engage people and to help inform them. My sense, talking to people, was that they felt an enormous sense of responsibility to do this right, to make the decision that was right for them. You don't get that so much in elections—that sense of a momentous occasion does not come round with elections, and that will have an impact on people's perceptions of whether it is important to participate.

Professor Keating: Something that struck me during these campaigns was that there were almost two campaigns. There was the campaign between the politicians in the media and then there were campaigns on the ground and sometimes they took the issues out of the hands of the politicians and redefined them themselves. We attended many meetings at which people said, "No, we don't accept your question. This is the question we want to answer" and it unleashed a debate about taxation, young people, welfare, all sorts of things that people were just waiting for an opportunity to talk about. So they hung that on to a debate that is ostensibly about independence but really was about the future of the country.

Q49 David Morris: You felt that it was a more encompassing debate than just a debate in a referendum?

Professor Keating: Yes, because there was scepticism about what both sides were offering, particularly when it came to adding their sums up and all the expenditure implications. People were rightly sceptical about that and they were looking for answers to questions that affect their daily lives.

Professor McEwen: I think there was a lot of frustration. You often heard people suggesting that people wanted facts and I am not sure that is necessarily what they were wanting. When we talked to people, when you get into discussions, there was an awareness that you can't necessarily always know, that things are always going to be subject to negotiation, but they wanted a sense of the complexities. The public can handle complexities. I think that is a lesson from this process, one that you might take into a referendum on some other innate issue, should that emerge on the horizon. The public are quite sophisticated and mistrusting of either side making bold statements about the future, so I think it is time to make sure that discussions engage people in such a way that it is genuinely informing and maybe talking about probabilities and risks and opportunities but in a way that is convincing.

Q50 David Morris: By the time the present devolution process is finished, there will be three Scotland Acts dealing with the powers of the Scottish Parliament and the Scottish Government. What will this mean for the public understanding of how Scotland is governed?

Professor McEwen: Nothing, because they don't know how it is governed at the moment. Maybe there is survey evidence that suggests that there is not a clear understanding of what is devolved and what is reserved, but maybe that is presenting a sophisticated understanding of the interactions between these things because they are not that discrete and there are implications and overlaps. One issue that concerns me a bit is that whatever settlement emerges from this process, it looks likely that there will be more shared powers emerging rather than, "This is reserved, this is devolved" but actually a lot more things; so income tax is now a shared power. How that is managed as we go forward and the extent to which Governments continue to work together needs to be clarified but

also that does raise issues for accountability when it comes round to election times. Politicians will play one side over another and where there is an opportunity to perhaps blame someone else for a policy mistake, they will do that.

If part of your question is about do we need to consolidate that into a single document, I am not sure that would make much difference but there could be more public education, public awareness of what the powers and responsibilities are.

Q51 David Morris: How would you go about entrenching any settlement? From what you are saying to me, there is the case for consolidation of the Scotland Act. How would you see an agreement being reached and going forward on this issue?

Professor Keating: There is a degree of entrenchment already, in two ways. One is by the Sewel convention that although Westminster theoretically could legislate in devolved spheres, it has agreed not to do so other than with the consent of the Scottish Parliament. The other is it is simply political, which is probably the strongest entrenchment you can get. To abolish the Scottish Parliament would clearly be a big constitutional act, let's say. It would have huge political consequences and no party is proposing it. No party is suggesting that that might even be feasible. It is probably as well entrenched as anything is in the British constitution. How far you entrench the details is another matter. The Scotland Act itself talks about rather broad fields. It does not get into detail and there is always argument about the edges. I would leave it like that because I think it is a mistake to specify too much detail. It just creates scope for arguments. Compared with other federal systems or devolved systems, the Scotland Act is pretty clear. I know it has all these schedules and complications, but compared with other countries it is fairly clear—here are the things that are reserved; everything else is devolved—and I think that is probably a good way of doing it.

Q52 Fabian Hamilton: Michael and Nicola, whatever the outcome of the devolution process that is currently underway, do you believe that a form of UK constitutional convention is now absolutely necessary? You may know that we have been working on the report that we published recently, “A New Magna Carta”, and that that is something we are proposing, but I wondered what your thoughts are.

Professor Keating: It depends what the constitutional convention is going to do. I think it might be useful at some point to have a pan UK-wide conversation about how all this fits together. I am sceptical about putting everything about the constitution in a single document because that would just raise problems about how you interpret things that are better left a little bit ambivalent or better left to evolve at their own pace.

Q53 Fabian Hamilton: But, Michael, other countries do this. In fact, most other countries of the world, bar five, do this.

Professor Keating: I lived for a long time in Canada where they have been trying to do it since 1867, to amend the constitution, and they have never agreed because the agenda just gets overloaded. There are too many diverse realities and so sequentially they never resolved the position of Quebec or the aboriginal people. So maybe I am marked by the Canadian experience, trying to impose a single cage on a very diverse reality. The genius of the British constitution so far is that it encompasses a union of very different nations, people with sometimes very varying national identities in Scotland but even more so in Northern Ireland, conflicting national identities. That is okay, that does not matter, because you are allowed to express different national identities but be part of the broader political community. It has also allowed a degree of flexibility that could deal with a particular problem in relation to Northern Ireland that was different from the problems

elsewhere. It has allowed Scotland to evolve to deepen devolution and it has allowed Wales to in some ways catch up with Scottish devolution at its own pace, when it is ready, not being forced into the same framework. I think that is a good way of making a constitution in a plurinational state.

Q54 Fabian Hamilton: So you don't support a written constitution. Do you support a codified constitution?

Professor Keating: I don't support a constitution that would try to enunciate fundamental principles from which everything else stems, because we disagree about the fundamental principles. It does not mean we can't live together but we disagree about the fundamental principles. A normal constitution has some forming statement, "We, the people of, say, the United Kingdom". Immediately that opens up a whole can of worms there: who are the people of the United Kingdom? Nor do I believe that you should too rigidly write in the details of the relationship with the various component parts of the United Kingdom, certainly not yet because they are evolving and they should be allowed to evolve. I do see utility in having a constitution or convention in the form of a conversation so that we can make sure that these various projects in various parts of the United Kingdom are commensurate with each other, that they will link together in their different ways, but I don't think this is a country in which you can have a constitution of the United States or French type, which is symmetrical, which lays down the details of everything. We are much more like Canada or Spain or Belgium.

Q55 Chair: Is anyone suggesting that?

Professor Keating: I am just saying that these are not ideal.

Q56 Fabian Hamilton: No, certainly that is not what we are suggesting. Let me put to you that the other side of that coin is that whoever has a majority in the House of Commons effectively controls the constitution and can do what they will with it.

Professor Keating: That is not so, because there are conventions. Our constitution works on conventions.

Fabian Hamilton: Conventions but not statutes.

Professor Keating: Conventions are more difficult to change than statutes. You can change statutes with a parliamentary majority. If you are going to entrench through statute you have to have something beyond parliamentary sovereignty or you have to have a special amending formula. That is the implication. Again, there may be a good reason for having that special amending formula but I just blanch when I think about what would be involved, the concurrent support of the constituent nation, supermajorities, the second chamber; how would you actually do that arrangement other than a declaration of the Parliament like the Fixed-term Parliaments Act, which could be repealed tomorrow. Throwing the question back to you, what sort of entrenchment are you talking about that goes beyond the conventions we already have?

Chair: That is a lunch-break discussion, if I may.

Q57 Fabian Hamilton: Before I ask Nicola to come in, surely, as you said earlier, it is in theory possible for Westminster, the House of Commons and the House of Lords, to repeal the Act that set up the Scottish Parliament. I know it would be absolutely inconceivable.

Professor Keating: But Parliament can prolong its own life; it can stop having elections. These are governed by conventions. That is what the British constitution works on, conventions, and at certain points the conventions break down and then you have to write things down. Even then they

are only written down in statute but that is a way of reinforcing the conventions. That is the way I would see entrenchment rather than a single Act.

Professor McEwen: I think if your concern was that a majority Government could be extremely radical and do things that seem to us to be inconceivable, perhaps without having majority support in the country for that, that there is electoral reform. But we have been there and it did not quite work out. I am not against a written constitution; I am not particularly in favour of it either. My concern would be that it was done in such a way that reflected the plurinational nature of the UK, that was not so binding that it was static, that it was a living constitution that could change and adapt. One of the difficulties with any constitution would be securing agreement on how you change in a way that was deemed acceptable and fair to the different parts of the UK. You talked about the UK being relatively unusual in not having a written constitution. It is unusual in all sorts of ways. The UK is incredibly asymmetrical—extremely, unusually so, if you compare it with others. Things that work elsewhere are not necessarily suitable for the UK. If the purpose of having some sort of constitution is to help bind the UK together, that is a political objective and maybe there are other ways to do that, but I think it is fraught with political challenge.

Q58 Fabian Hamilton: Is codification desirable, Nicola?

Professor McEwen: For what purpose? That is what is not clear to me, the purpose of doing it, and consolidation too. If you try to consolidate, you would probably leave things out and what then is the status of a consolidated document beyond the original?

Q59 Chair: The purpose is always to confine executive power and you are talking as if we had not been days away from the fracture of the Union. Everybody south of the border feels, “Thank goodness Scotland stayed”, or many people do; I can’t speak for the whole population. I think many of us feel how wonderful it was, a great democratic exercise, Scotland stayed with the Union, and suddenly we have forgotten that even a matter of days before the vote there was a real chance that our United Kingdom would be fractured. That is not evolution, Michael. That was nearly, for many of us, a doomsday scenario.

Professor McEwen: Let me come back to that, because that is not a very confining executive power. That is about maintaining the Union. If the purpose of a constitution was to maintain the Union, if at some point in the future it is the democratic preference of the people of Scotland not to do so, then that should be their right.

Q60 Chair: Of course, but it was executive powers, incompetence and inabilities that led to the understandable annoyance and resentment of many of us, may I say, not necessarily just people in Scotland, about Whitehall’s over-centralisation and dominance of the Union. So that is a failure of executive power and if we have the wit between us to work out a constitution maybe that scenario, where we came so close to the edge of the cliff, may not happen again because we have worked it out ahead of time.

Professor Keating: Presumably a written constitution would have to say something about whether Scotland could have a referendum or not. The Northern Ireland settlement already provides for that and there would be demands in Scotland as well.

Chair: Your rationality, Michael, keeps emerging. We would not have all the detail in a written constitution, whether it is one for Scotland, like the proposal here from the Scottish Government, the properly duly elected Scottish Government, or indeed our own blockbuster that we have had over the last few years. This is such an interesting debate. I could monopolise everybody’s time but I am not going to do that. My members are getting itchy for their lunch. Fabian, have you finished your—

Fabian Hamilton: I am just going to come back with one question.

Chair: Please do and then I will have to close it down because there are people waiting.

Fabian Hamilton: Mark wants to come in.

Q61 Mark Durkan: Just on the very point that you touched on when you referred to the document that the Scottish Government have produced, your attitude to a written constitution in respect of the UK, given all its particularities, anomalies, absurdities and all the rest of it, as to why maybe a written constitution would not necessarily in your view be needed, do you think that would have been so for an independent Scotland? Would people really trust the idea of a new state being formed with an unwritten constitution?

Professor Keating: No, because that touches on the relation between the Executive and the legislature, which we are not here to talk about, but is really important and unbalanced. A lot of people were expecting that in an independent Scotland, if that were to happen, there would be more restraint on Executive power. There would be a different kind of constitution, not the Westminster kind.

Q62 Fabian Hamilton: My final question was based on something I asked Lewis Macdonald earlier about the relationship between central Government and local government. One of the things that annoys me hugely, and I know irked a lot of people in Scotland during the referendum campaign, is the fact that the local authority of which I am part in Leeds, a big city of 800,000 people, is dictated to day in, day out by people in Whitehall who have absolutely no idea what the needs are in my city. Just yesterday a school was appropriated by the Government and given to a free school, in spite of the need locally. That cannot be right.

Chair: You are getting towards a question, I assume.

Fabian Hamilton: My question is: would not some kind of codification do what the Chair says, which is curtail Executive power and hand back a lot of that Executive power to the locally elected people in local government? We do not need new laws. We just need local government to be empowered.

Professor McEwen: In theory, yes but it depends on what is in it, because you are making a lot of assumptions about what would be in that codified constitution. It could do precisely the opposite. The Canadian constitution, I think, is a constitution that gives the federal spending power the opportunity to intervene. It depends on what is entrenched in that constitution, but I think there is an issue there that does need addressing.

Chair: I am going to curtail this very interesting conversation but suggest that colleagues do not rush off and that we carry on informally, because I find it fascinating. All I will say is I wish I was living in your world, Nicola and Michael, rather than the sordid, horrible political world that we inhabit, whether it is in Westminster, Holyrood or anywhere else. Seriously, Nicola and Michael, thank you so much. It has been a very thought provoking, very interesting and very challenging set of observations that we will take extremely seriously as we come to draft our report. Thank you so much for your time this morning.