



Select Committee on the European Union

Uncorrected oral evidence: Brexit: Devolution inquiry

Tuesday 7 February 2017

11.30 am

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Members present: Lord Boswell of Aynho (The Chairman); Baroness Armstrong of Hill Top; Lord Jay of Ewelme; Earl of Kinnoull; Lord Selkirk of Douglas; Lord Whitty.

Evidence Session No. 7

Heard in Public

Questions 63 - 70

Witnesses

I: Sir Emyr Jones Parry, Chancellor, Aberystwyth University and former UK Ambassador to NATO and to the UN; Gerald Holtham, Economist.

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Examination of witnesses

Sir Emyr Jones Parry and Gerald Holtham.

Q63 **The Chairman:** We start our second formal session by welcoming Sir Emyr Jones Parry and Gerald Holtham to explore some of the issues we are looking at today about the implications of Brexit for the Welsh Administration, Wales and the people of Wales, with an economist's and diplomat's overlay because of your distinguished interests in the past. These things are meant to try to build up a picture of the overall situation that Wales faces, and we are very grateful to you for spending time with us.

The sensible question with which to open the bowling is to ask both of you to give your reaction to the Prime Minister's speech setting out the UK Government's approach and the White Paper that followed it. What are the political, economic and legal implications for Wales of the Brexit model that the UK Government, even if they have not defined it, are at least pursuing?

Sir Emyr Jones Parry: I am conscious that the second part of that is a massive question, but let me start with the first. The Prime Minister's speech took time to come. I thought it was well crafted. For me, there is a mistake in the approach within it and in what Ministers say. There is too much dogma attached, in the sense that, "There are clear things we will not accept—we will not accept X and Y". In a negotiation, it is unwise to be quite so categorical. You always need somewhere to go, and I am not sure that the Prime Minister left herself and the Government sufficient space.

The Chairman: The red lines are up front.

Sir Emyr Jones Parry: For example, it is unwise to say, "We will accept no jurisdiction of the European Court of Justice". Why do I say that? The principle is that we will not accept interference from any outside court, but in reality British sovereignty is limited in all sorts of ways. We are tied up in some 300 international conventions. If we are full members in our own right of the WTO, we have to accept arbitration panels. There are judgments from outside that are binding upon us, so if the sense is that we will accept nothing from outside that is an impossibility, why be quite so clear?

The White Paper was helpful background. I did not see in it very much about what was to be sought, and I saw even less about how it was going to be achieved. It was background, but it did not go much further than that. Perhaps I should stop there to let Gerry respond.

The Chairman: We might come back to the specific Welsh connection in a minute.

Gerald Holtham: I was unsurprised but regretful about the speech and the White Paper. I agree with what Sir Emyr said about the inevitability of

external adjudication if you are in an international agreement of any sort whatever, so I am not sure why people are so neuralgic about that.

My view is that it was probably wrong to dismiss out of hand, on the basis that we would not accept external adjudication, any membership of EFTA, the European Economic Area or anything of that sort. Indeed, in the White Paper, the implication is that we would not remain within the customs union. That puts an enormous burden on the negotiation of things ab initio, which is very unlikely to be accomplished in two years. I think we can say with confidence that the consequences for Wales would be much worse than those for the UK as a whole if we hit the air pocket and dropped into WTO arrangements.

The Chairman: Do you want to say why that is more intensely a Welsh problem?

Gerald Holtham: First, the Welsh economy is specialised in a couple of areas that are very dependent on European trade. The most important is the automotive industry. The farming industry is equally dependent. It is much less important in GDP terms, but it has a certain cultural importance because Welsh language and all of that is still based largely in the rural areas. There would be considerable cultural loss if that already precarious economy was further undermined, and that would lead to a lot of anger and alienation. In the pure economic sense, we have the aerospace industry and, more particularly, the automobile industry. We have two engine plants in Wales that export between 80% and 90% of their product to the European Union, and import about 70% from the European Union. We have a very tangled supply chain in that industry, which is absolutely dependent on being able to shuffle stuff back and forth across the border without bureaucracy, as well as without tariffs. Although I am sure that it is sufficiently embedded not to suffer immediately, the consequences for long-run investment in that sector must be very adverse if we are outside any arrangement to preserve the single market in automobile products. Wales is a small economy and is therefore more dependent on certain sectors. It is not as diversified as the UK economy as a whole.

The second point is that because Wales is poorer people do not have the creditworthiness, access to savings or anything else to ride through periods of recession. The cyclical data show that Welsh dips and rises are more pronounced than they are for the UK as a whole. If we have a period of economic disturbance, it will hit Wales harder for that reason too. We can fairly say that Wales would be harder hit than the UK as a whole.

The Chairman: Sir Emyr, one point is prompted by those exchanges. Perhaps you would like to say something about the Government's position in relation to EFTA, for example, and whether that is a logical extension of their position on migration. Were they compelled to say that, and is there any way of squaring that particular circle? Could you also give us a flavour of your views on the impacts on Wales in the way Mr Holtham has already done?

Sir Emyr Jones Parry: Part of the problem is that people use language and phrases whose meaning they do not understand. There is a tendency in Wales—I include the First Minister—to speak of unfettered access to the single market. The problem with unfettered access to the single market is that the conditionality attached to it immediately hits the very things you do not want to accept—free movement, which is basic. Of course, it is not just the existing rules within the internal market; it is the future rules that will be put in place. If we have no say whatever in how they are to be formulated, the impact on our sovereignty—the argument about taking control of your own life and so on—is even worse. We tend to bandy around expressions. From the Welsh viewpoint, one of the problems about a very good paper they presented is that, if I were in Whitehall, I would immediately say, “Do you not understand the consequences of what you are asking for? It does not work”. People need to think through what they are asking for in a much clearer way.

On EFTA and the EEA, my difficulty is that there are five existing models for future British relations with the EU, and none of them works. It is a nightmare. You set out the advantages and disadvantages of each and say, “Let’s go on to the next one”. When you have finished, you do not have one. That is the problem. The nature of the negotiation will be to tease out what is possible. That is my problem with the Government’s approach. If I am negotiating with you, Chairman, it is a question of what I am prepared to pay for what you are offering, and whether you are prepared to sell me what I am prepared to pay for. If there is an accommodation, there is a negotiated outcome.

The Chairman: Can I come back to you on one point, given your diplomatic experience? It is perhaps of more general application than necessarily for today. It is the question of the timescale. We anticipate that next month the Prime Minister will make a formal application under Article 50, and, in the absence of agreement to extend the period, it means we go in two years’ time, which I think indicates a negotiation period in practice from about late spring this year until autumn next year, and then ratification. Can you take us through your own thoughts on how that might work in relation to the withdrawal agreement—the so-called divorce agreement—the framework for future relations and transitional agreements or whatever? Presumably, at some stage, consistent with what the First Minister has said, he would want to assure freedom of trade, in particular the movement of goods, and to do that will not be easy within that two-year time scale. Or is it?

Sir Emyr Jones Parry: A disadvantage, or lack of comprehension, in the Government’s approach is what the perceptions and needs of the other side are. The preoccupations in most of the other member states would be: how they could preserve the eurozone; the refugee crisis; terrorism, probably; the upcoming elections in three member states; and how to get rid of this irritation and look after their economic interests with the United Kingdom. In the next two years, we have to fit into all of those what I regard as six different processes. One is Article 50, which itself has myriad issues. The Article 50 arrangement, if there is one, should take

account of future relations. The Commission says there will be consecutive negotiations. It is against the spirit of that, but are they to be wholly concurrent, and do we know what we want? Can we do it in the time? I doubt it.

On future relations, what are we to do to fill the gaps? When the CAP no longer applies, there will need to be a new agricultural policy. That has to cover four nations with some coherence but four different competences. For "agriculture" read "other issues". If we are not in the customs union, we will have trade arrangements with 53 or so countries, plus the WTO and getting our registration with the WTO accepted and so on.

We come to the great repeal Bill, which is a misnomer if ever there was one. It may repeal an Act but it will probably at a stroke put more EU legislation on the statute book in the United Kingdom than has ever been done in a single Bill. I would like to know how that is to be done for competences that in normal circumstances, if they were directives, would be enacted in Westminster, Edinburgh, Belfast and Cardiff.

The Chairman: It might even mean legislating in Cardiff under the new arrangements.

Sir Emyr Jones Parry: I have seen no precision on that, but if Westminster is to legislate for all the provisions that have direct effect for the whole of the United Kingdom on many areas that are devolved competences, certainly in Scotland, I suspect it will not go down quietly in the devolved nations.

Then we come to the sixth process: interim transitional arrangements. All of those have to be accomplished, ideally, within two years. I think it would be very difficult to do Article 50 within two years, still less to have a clear vision on the others, but what we cannot have is going over the cliff, as some say. The hiatus cannot apply. Agriculture in Wales is precarious, but 92% of its exports go to the European Union. It is not just the cultural aspects; it is almost subsistence economy in the upland areas. That is what we have. As a general principle, the research councils and government in London and Cardiff need to understand that it is not an accident that we have a lot of sheep and cattle in Wales. It is because it is very wet; it is upland and the grass is very green. It is entirely different agriculture from East Anglia, where I live, which is flat, with marvellously fertile soil that is ideal for cereals. The accommodations within the CAP have meant that for certain areas, including upland farming, there is a better deal for Wales than across the border in England. That is how it has worked.

We need consistency in animal health rules, so that there is a single market for the movement of animals within the United Kingdom, but we will also have to take account of four different competences and how they work. This is a long answer, but it is an exceedingly complicated issue, which raises constitutional, economic and political questions and practical issues on whether it is all attainable.

To give a quick answer on the effect on Wales, single market access is crucial, as Gerry explained. In Wales, there is a dichotomy on free movement of people. I suspect that basically there is still the same concern about it as there is in England, but I do not believe it is a very informed concern. It is balanced by real concern that in social care, medicine and universities people want movement because, if we do not have it, we will have great difficulty in recruitment, and we have great difficulty as it is in Wales. The last point is the effect on the economy in Wales. That is vital.

Q64 Earl of Kinnoull: I want to step back with a very simple question and then move forward to a rather more complicated issue. There was a great snapshot of Welsh opinion on 23 June. Can you give some short reflections on where you think that opinion has moved in the intervening seven months?

Gerald Holtham: I am afraid I have no information on that. I do not run opinion polls or anything of the sort, so I do not think I can add anything. I have a sample of about two. People have talked to me and said, "I am very worried about all this Muslim immigration and as a devout Christian I am worried about sharia law". I explained that may or may not be a justified fear, but it has nothing to do with the EU as far as I can see. After discussing that for a while, the chap said, "If I had known all that, I might have voted the other way". That is a sample of one, so I would not draw any conclusions from it.

Sir Emyr Jones Parry: The only polling I am aware of is UK based. That seems to suggest that nothing very much has changed, and it is probably the same in Wales.

Earl of Kinnoull: Moving to the more complicated thing, I am going to read out a small piece of the Prime Minister's speech on 17 January where she talked about "working with the administrations in Scotland, Wales and Northern Ireland to deliver a Brexit that works for the whole of the United Kingdom". Given the differing positions of the various Administrations in a devolved sense, do you think it will be possible to respect those words?

Gerald Holtham: I know that people have tried to quote the precedent of Liechtenstein and Switzerland as being in a common economic area but having slightly different arrangements with the EU, but there is an iron logic. If you are to have the three freedoms of goods, people and capital within the UK, and any part of the UK has those three freedoms with the EU, for all practical purposes you have the three freedoms within the UK. I can imagine a situation where people are let into Scotland and have stamped in their passports right of abode in Scotland, but in practical terms I can see no way to enforce such an arrangement. If you had it, it would be a covert admission by the British Government that the whole thing was nonsense and this was just a way to stay in. As far as I can see, the answer is no.

Sir Emyr Jones Parry: It will be exceedingly difficult, but one has to try. Mr David Davis in the House last week went beyond that assurance to say that all parts of the United Kingdom should be as well off, and in response to a specific question on Wales he implied that the Government would do everything possible to make sure that Wales did not suffer. Doubtless you will ask about future financing, but up front that is of concern. I am not quite sure what "working with the administrations" means. This is probably for a subsequent question, but I do not believe the existing strategies are sufficient to get the Welsh voice heard. The preconditions for the voice are that there should be a message to deliver from here, that there should be people competent enough to deliver it, and that people on the other side should listen to it and try to take account of it. What we do not have is a Council of Ministers for the United Kingdom, as we have in the European Union, which has decision-making powers. All you have is the possibility to exercise some influence to make your point.

Lord Jay and I have experience of the Welsh Office of yesteryear, and perhaps subsequently, not playing a very active part in discussions in Whitehall on EU policy. At the end, the only intervention was, "Well, I reserve the position of my Secretary of State". Well, great, but how does that influence what was to be decided as the EU position? It is not clear at all. The challenge is: how does Wales insinuate itself into the process and influence it? That requires a means of doing it, and people with the ability and arguments to impress and say, "This is why it matters", and at the end for everyone to understand the substantial consequences to the United Kingdom if the devolved Administrations are not listened to.

It is not just devolved Administrations; it is a London-centric type of argument. Two days before the referendum I met somebody in the Cabinet Office who was pretty well responsible for the campaign and exuded confidence. I said, "Have you been in middle England recently?" Successive Governments in London have not listened to England as a whole. I was on the McKay commission on the West Lothian question. It was clear to me from the polling we saw then that the chief discontent within England as to how England was governed was part of what happened in the referendum subsequently: political parties and Governments have not responded to those interests.

If we can have a less divisive United Kingdom, it means a less divisive individual nation and more effort made to accommodate. It cannot be, "We are responsible for external affairs, and that is it". External affairs were intended to mean—I suspect this applies to both the Government of Wales Acts and the Scotland Acts—foreign affairs and defence, but EU policy is so much domestic policy, much of which is devolved in Wales and almost all of which is devolved in Scotland, that, if the Government continue not to take it into account, the consequences will come home to roost.

Gerald Holtham: Leanne Wood made the point that the allocation of resources in certain budgets in the EU is explicitly on needs-based

formulae, which is not the case in the UK. As we know, the Barnett formula answers with a shrug if you ask whether it is fair. It does not pretend to be fair; it is just a mechanism for handing out money with as few scraps as possible and there is no damn nonsense about fairness in it.

The Chairman: I think there is now a move to introduce a needs element, is there not?

Gerald Holtham: They have introduced a floor in Wales. Although they would not admit that it is based on need—it is based on meeting a political objective—it is indeed based roughly on need. Given that that is the tradition in the UK, Wales is in an intrinsically very weak position. We have very few Members of Parliament and few marginal seats to fight over. The brute political fact is that we just do not matter. Unless there is some element of protection in the constitution, or an element of federalism that says, "You have to take account of them because they can veto it", or something like that, there is no reason why anybody ever should. If the UK Government wanted to ask us how many divisions we have, we ain't got any divisions, so they can do what the hell they like. We do not have an oilfield and we do not have a successful national party threatening to secede. That is where we are. Without a tradition at the centre of handing out resources on the basis of objective criteria of need, or without some sort of constitutional protection, the Welsh interest will be overridden. That is the basic fact of life.

Lord Jay of Ewelme: Is that recognised by politicians here?

Gerald Holtham: It must be. They do not interpret it as in their interests to say so, but it must be—unless they were born yesterday.

Q65 **The Chairman:** To look at it from the point of view of sunny optimism, just as a hypothesis, would it be possible, given that the challenges are exceptionally intense and have the differential implications you have outlined, to say, "Needs must. Something will have to be done in effect to make the existing machinery work better, or it will just not be acceptable to people and then something else will happen within the UK"? Could it be a catalyst for a more constructive relationship? To give one example, the idea was floated a bit with us in Scotland—although it would hardly meet the needs of the man in the street—that, looking at shared competences, you could say that you needed some way of working together to get an outcome between the devolved nations' Administrations and Whitehall and Westminster.

Gerald Holtham: I am sure that is right. The change will trigger a search for means of co-ordination, or co-operation if you like, but I am looking through that to what the outcome will be. The outcome will be decided by political weight. We will be consulted to death, but it will not change the outcome. I am sorry if that sounds cynical, but I have learned that in a longish life. Unless you make a constitutional change that somehow entrenches the right of Wales to have its views protected in some way, I do not see why it would ever change. The Prince of Wales

notoriously said in Dowlais that something must be done. What was done was that everybody emigrated to Birmingham. Why would it be any different?

Sir Emyr Jones Parry: Gerry may well be right, but there is also a sense of proportionality. It is difficult for little old Wales with 3.2 million to imagine that it can be the tail to wag the larger dog. In Canada, when there are constitutional issues the 10 provinces have the same status. Prince Edward Island has a population of about 100,000, yet it has the same vote, but Prince Edward Island never objects to anything in my experience.

There need to be some means that are sensible and proportionate, but it cannot be that we allow the present circumstances to go on, saying, "You have no weight. Don't worry about it". Wales will be less of a problem, but there will be greater problems in other parts of the kingdom, and, if you want to preserve the unity of the kingdom, due regard has to be given. An article in *The Times* a couple of weeks ago said that the kingdom was more united post Brexit. The author was a distinguished former member of the Cabinet. I thought, "What planet are you on?" It is fragile, and will be more fragile if due account is not taken.

Gerald Holtham: That is right. A Welsh historian said that the Welsh were the first Britons and they will probably be the last. This is not the place where the fissure will occur, but I am sure Sir Emyr is absolutely right. There are other places—Scotland and Northern Ireland—where it very well might.

The Chairman: We will reflect on that.

Q66 **Lord Jay of Ewelme:** Could I go back to an economic point Gerald Holtham made earlier? I think we were told by Neil Hamilton that 92% of Welsh lamb goes to the European Union. I do not know whether the figure is right, so I do not know whether it is true or not, but I guess quite a lot does.

Sir Emyr Jones Parry: It is £130 million a year.

Lord Jay of Ewelme: The hypothesis is that there is an 8% or 10% surcharge on that, or whatever, and at the same time there is a decision by the British Government, in the interests of the consumer, to allow New Zealand lamb to come in without tariffs. First, what effect would that have on Wales? Secondly, is the prospect of something pretty awful happening going to lead to people in London deciding that there has to be some kind of focus on need rather than the Barnett formula as described?

Sir Emyr Jones Parry: The British Government could go helter-skelter for a free trade agreement with New Zealand, but we know what New Zealand has done with its trade policy over the past 30 years. It has liberated it. Because of the comparative advantage of sheep production in New Zealand, and because wine came along, New Zealand agriculture has profited. They are not conditions that can apply in Wales. It is a wonderful time to be travelling through mid-Wales at the moment. The

lambs that have just been born are frisking about on the mountainside, but it is very precarious even at the moment. If there were a free trade agreement that brought in New Zealand lamb, the impact on Wales would be disastrous. Of that there is no question.

The principle behind that is that we need new arrangements on agriculture post Brexit. At least three things have to be done. First, what is the support system for farmers going to be? The National Farmers' Union in Wales has produced an impressive booklet with at least five options. Secondly, how much are we prepared to spend? Thirdly, what are the constraints on our exports to other markets and imports into British markets, and how will they impact? I submit that the trade negotiations externally—for "agriculture" read "automobile, aeronautics and steel"—cannot be done if the impact on Wales is disproportionate and there is no consultation and no account is taken of the consequence that those trade agreements are detrimental to the interests of Wales. It is fairly obvious what people should be doing; they should be sitting down together and working out what is the best policy overall for the kingdom. You will not be able to accommodate all the Welsh interests or all the English interests, but in the end, if you cannot accommodate an interest, what will you do to mitigate the disadvantage of something else?

The Chairman: Presumably there is a time signature in all that. If we are in the middle of negotiations, it is a bit late in the day to be trying to sort it out while we are dealing with an external factor.

Sir Emyr Jones Parry: Yes. The whole point about influence and effect on Whitehall is that Welsh officials are present, insinuate themselves in the process and are vociferous and capable in putting across views and explaining what is necessary, and that they have political support for that.

The Chairman: From your external intelligence now, is it your impression that the Welsh Government will be able to have people at the table, or close to the room, when the negotiations are taking place?

Sir Emyr Jones Parry: I do not think I am quite close enough, but my perception is that they are not close enough either.

Lord Jay of Ewelme: Does Gerald Holtham want to come in on the economic point?

Gerald Holtham: I cannot really add anything to what Sir Emyr said. Evidently, the consequences for Welsh agriculture would be catastrophic. One would have to think very hard about what new comparative advantage those areas might have and how it could be fostered. The problem is time. If it happens in a hurry, there will be depopulation.

Lord Jay of Ewelme: On a more macro point, do either of you have any reaction to the recent Supreme Court judgment as it relates to the devolved Administrations? In a way, it follows on from that question.

Gerald Holtham: The point has already been partly covered. The Sewel convention is not evidently involved by triggering Article 50, but as soon as you get into subsequent legislation, such as the great repeal, I am a bit more hopeful. If the great repeal Bill says that nothing changes at all, at that point there is not a lot of scope for argument with the devolved authorities, but the minute you start changing things that have effects in areas where there is devolved responsibility, or you do things that either add to or subtract from the powers of the devolved authorities, the Sewel convention cuts in and it is supposed to be a matter of joint agreement. I think you would get away with Article 50, and maybe you would get away with the great repeal Bill if it literally does not try to do anything, but the minute you go beyond that the Sewel convention cuts in immediately.

Sir Emyr Jones Parry: Even if nothing changes, on a point of principle there ought to be consultation, and—with a question mark—tacit approval by the Assembly, the Parliament in Scotland and the Assembly in Northern Ireland. Something will have to change. You cannot just take all the direct effect stuff and say it is now part of British law, because within the myriad—2,000 or so, probably more—different instruments there are regulatory bodies that look after aviation and a whole series of technical issues, and they are EU bodies. Are we enshrining those and saying, “Although we are out, they will still have an effect and determine what pharmaceuticals are acceptable and so on”? It is simplistic to imagine that it will just be in.

When the Norwegians joined the European Economic Area, in a couple of days they had to enact thousands of pieces of EU legislation—just like that. I sound like Tommy Cooper, but the fact of the matter is that no Norwegian MP could question anything; they just put it through en bloc. If we do that, the irony about parliamentary control is that the only people who will have time and opportunity to go through all that stuff are officials, and it will probably be done through secondary legislation. It is inimical to the democratic objectives that the out characters all argued for.

Q67 **Lord Whitty:** Can I wrap two sorts of questions together? One is that the Welsh Government have set out their position. Do you have any comments on their paper, or is it now overtaken by events, following the Lancaster House speech and the White Paper? The other goes back to the issue of whether the competences post Brexit need to be altered, and the consequences of the finances for that. In other words, are there areas of current Brussels competence, or shared competence, that ought to come to the Welsh Assembly, or do we keep the devolution settlement pretty much as it is, in which case more power resides at Westminster? The financial implications of that, particularly in relation to CAP, as we have discussed, are that that is determined at UK level, and the particular requirements of Welsh agriculture, and possibly Welsh infrastructure and higher education, significant parts of which are financed by EU money at the moment, would, if they were retained at Westminster, give the Welsh Government somewhat less control than they think they have at the moment. If, however, all those powers were devolved, and the financial

responsibility was also devolved, could the Welsh Government cope with it?

Gerald Holtham: There are a number of questions in your question. On the first, the White Paper that the Welsh Government and Plaid Cymru have put forward is a reasonable and fair summary of the situation. I am not someone who is known for being effusive in praising the Welsh Government, but I have no substantial amendments to it. One can nit-pick about the odd sentence, but I would not waste your time by doing that. I think that substantially it is a fair summary.

On powers, it has already been said that the Welsh Government would be ill advised to take on responsibilities if they did not have the resources to discharge them adequately. There is a suspicion in Wales that, just as we have squeezed local authorities to make sure that they bear most of the odium for cutting public expenditure as part of the austerity agenda, a similar thing may be going on here: give the Welsh Government more of the responsibility and none of the money and they will carry the can. The Welsh Government would be very ill advised to fall for that. The point is that they should not take on responsibilities without some assurance that adequate resources will flow.

In other areas, if a lot of the regulation at EU level was ever thought to be appropriate to that level, and we are trying to preserve a single market within the UK, it would be quite odd to pass those regulatory powers to a subnational level. However, I come back to the point I made earlier. I hope there will be some sort of constitutional protection so that we do not have pure majoritarianism such that when those powers are repatriated to Westminster it can do what the hell it likes with them and influence Wales. There is a need for some constitutional development to say that some powers are not appropriate to be fully devolved, but, as they will intimately affect the devolved areas, the sorts of framework arrangements within which the devolved areas must operate should be a matter of joint determination, with some protection for minority interests. I know that is rather vague, but I have not got much further.

The Chairman: Do you have any specific areas or sectors in mind?

Gerald Holtham: We have talked about agriculture. That is a perfectly obvious example. There will be a need to determine what farm support looks like and what the trading and commercial arrangements are, and you want those things to be at least coherent at UK level. Obviously, not all details have to be decided at UK level, but there must be an overarching framework, and it seems to me that it should be determined in some sort of collective way.

Lord Whitty: The devolution settlements are binary; they are either reserved or devolved. Europe has always had a shared competence option, although how you define it in a UK context is very difficult.

Gerald Holtham: That is the point. That binary model is not appropriate. Take environmental protection as an example. There are certain

environmental issues like pollution that are strictly local, but there are lots that are not. Pollution does not respect borders, so there are many things at European level that it would not be appropriate simply to devolve to the UK subnational level. On the other hand, I can well understand the fears of the constituent nations if those things are simply put into the centre without firm arrangements for sharing power, with some actual protection for the minority. I do not think it is enough to consult. We can consult for ever, but we will not get what we need.

The Chairman: On the environment, there is quite a lot of European machinery. The Commission is independent of member states and has a certain overarching duty and effective responsibility for prosecuting malefaction.

Sir Emyr Jones Parry: It is exercising only those powers the Council has given it.

The Chairman: Of course, but it is not directly accountable to national Governments. If you take the United Kingdom out of the arrangement, is there not a possibility that some of those issues may be either difficult to enforce across the United Kingdom, because there is no independent body other than the body of law—you would have to seek judicial review—or within the United Kingdom, where there is at least the potential that one of the four Administrations may take a softer line on something, be it air quality or whatever, and distort the overall arrangements? I just rehearse those as further difficulties. Am I right to do that?

Gerald Holtham: It seems to me that setting up independent quasi-judicial bodies that have a mandate to consider these things within a certain framework set by the Westminster Parliament is a possible way forward. Other countries, such as Australia, have a number of constituent states, and there are bodies such as the Loan Council and others that adjudicate on whether states can act in a certain way. We probably need some sort of constitutional innovation like that, to create bodies that are ultimately responsible to the Westminster Parliament and set a broad framework but can make adjudications according to criteria laid down. Those criteria should afford some protection to the minority interest.

Sir Emyr Jones Parry: There is an irony in that the recent exchanges get to the heart of why there is a European Union. Why do we co-operate on the environment? It is because air emissions do not respect national boundaries and so on. Outside the EU, we have no mechanism in the United Kingdom for ensuring coherence, or that people do what they should. Indeed, there has always been concern in Wales that the environmental standards put in place within Wales's competence have been slightly higher than those in England, and industry has said that is detrimental to its costs and to the possibility of attracting industry to Wales. You could argue that we should all have the same, but we have devolution, and devolution was set up with scant regard for any of those issues or for the unity of the United Kingdom. We are where we are.

It is not obvious to me where in leaving the EU the pressure comes for increased competences in Wales. In a sense, agriculture is already in Wales; in the issues that have been touched on, a prime example is animal health. If you have four different sets of animal health, you do not have a single market and freedom to move cattle without restriction across the United Kingdom. When the Welsh First Minister argued sensibly that there ought to be common rules on animal health, the Administration in Scotland said, "Nobody is reclaiming competences that have come to us. We are not giving that up". A sensible approach all round would be to say, "We need a system of identifying what needs to be coherent and the means by which we can make that coherent across the nations". It is obvious.

The pressure for changes in competences in Wales will come not from Brexit but from the fact that the most recent Government of Wales Act purports to say that it will introduce clarity into what is law in Wales and, moreover, will move towards a reserved powers model instead of conferred powers. I am not sure it does that, or at least not as clearly as the authors believe. There are so many problems associated with that Act—Minister of the Crown functions and other things—that there will have to be another Government of Wales Act. There is a simple answer at the end of the day. Since 1998, Scotland has had all powers except those specifically reserved, and that has to come to Wales at some stage. We are doing it bit by bit, but that is the pressure. That is where it will sensibly end up at some stage, because it is unacceptable for good law in Wales to be such that the ordinary person, or indeed a practitioner, cannot understand what is the law that applies in Wales. Good law demands transparency, and it is not transparent. That is the view in the Learned Society of Wales. In my role with the society, I convene a group of the experts in Wales and the highest bits of judiciary in the United Kingdom. They all came to the same conclusion: the Act as passed is deficient. Their Lordships improved it a little, but it is not sufficient and we are stuck with something that will need amendment.

Gerald Holtham: That is the case. Any pressure for new or clearer power to Wales comes from that source. I do not think there is any great upswell of public opinion that we need more powers as a result of Brexit, but I stick to my view that we will need to replace those supranational institutions to ensure that the frameworks we wish to maintain for the sake of coherence have some protected input from the various nations.

Q68 **Baroness Armstrong of Hill Top:** You have been moving around a little on the questions I wanted to raise about the current structures. Is the joint ministerial committee, which I think met here last week, a sufficient body to deal with the issues that are arising, and will it be sufficient to deal with all you are talking about for the future?

Sir Emyr Jones Parry: The answer is that it was conceived for a different purpose. It was conceived to have exchanges of view, to be a talking shop if you like, but was never intended to be a body that took decisions. As Gerry argues, in the absence of a body that a federal structure might provide, and because the body cannot take those

decisions by its nature, it depends on the arguments put and how much people are prepared to listen, but there is not necessarily a positive outcome that leads to action.

The second problem is that it is too late in the process. If the British Government have formulated what they are going to do and you come to one of those sessions, however convincing or strong the arguments, it is most unlikely that you will be able to turn the juggernaut around and say, "Now do something different". That is why one should put those views in at the beginning of the process and send it in the right direction. It is the trick that Michael perfected: if you can persuade the European Commission and the Council of a view, and the first draft to come out is one that suits your purpose better, you have a much better chance of succeeding at the end than if something totally unhelpful comes out and you have to amend it. It is the same argument.

Gerald Holtham: I cannot add to that. I agree.

Q69 **Lord Selkirk of Douglas:** Can you say anything more about the current mechanisms for direct engagement between the devolved Administrations and the EU and how they will be affected by Brexit?

Gerald Holtham: Are you referring to relations between the devolved Governments and the Westminster Government?

Lord Selkirk of Douglas: No; I said "and the EU".

Gerald Holtham: I am sure Sir Emyr is better informed on this than I am. My experience is restricted to dealing with the office that the Welsh Government maintain for obtaining funds from the EU and spending them in a way that is consistent with EU rules. I suppose that over time that office will become redundant and the people will be redeployed in some way, but I never got the impression that the Welsh Government, although they had an office in Brussels, were particularly influential, even in matters that affected Wales.

Sir Emyr Jones Parry: As regards the nations, and indeed local authorities—I remember Glasgow in particular was keen at the very beginning to have offices in Brussels—I suspect the impact was not great, but it evolved, in the case of Wales quite specifically for structural fund expenditure and things related to agriculture. It has almost reached the stage where, once the financial perspectives are agreed and the sums set aside, the primary negotiations between the Welsh Government and the Commission and London will not really be part of it, which is why the Welsh Government bear the responsibility and criticism or praise for what has been done with EU expenditure in Wales over the last 20 years. They have pretty well influenced that process. Looking forward, what is there to influence?

I suspect that a question is coming about whether parts of a member state can have a relationship with Brussels. If that were to come into being, I could see a role for the Welsh Government. Differentiated access by member states to the EU applies. Gibraltar, the Canaries and the

Faroe Islands have different regimes in part, but they are all within the EU. Outside the EU it is not so easy. The Scottish Government have said that they would like unfettered access—that is, access to the internal market—but if it was legally and technically possible and they got that, there would be no internal market in the United Kingdom left. Those are the direct consequences.

The question of the future relationship between Wales, Scotland, Northern Ireland and England and the EU needs to be looked at. The simplistic legal reaction is that Articles 217 and 218 talk about third country states. Can we test that? My view is that the prospect of losing free movement of students and academic staff in universities in Wales is hugely detrimental—14% come from the EU. I could conceive of a way that Wales had a relationship with the research programmes of the EU—the framework programmes and so on—that did not apply to the rest of the United Kingdom. It would not be to the detriment of the rest of the UK, other than that it would lose that opportunity, but Wales could gain. Is that technically possible? Switzerland has it, but I am not aware that any canton has it. Can we do that? The EU would say that free movement is a condition, so where is Wales on that? It could be bits of Wales or the bits of free movement Wales needs. Can I sell free movement of medical and social in return for getting access to the programme? I do not see quite the same legal and treaty problem with that. It is an area we should be looking at.

Q70 The Chairman: Thank you for that. We are beginning to run out of time. It gives me a nice prompt to declare a past interest as a former deputy chair of governors of one of the Welsh universities. They are good, and we understand the concern of academics in the sector and the implications. Could you wrap up with some closing thoughts? I do not want to lead you shamelessly, but it would be helpful if both of you could say a word or two about the tone under which all this should be conducted. I am thinking of two elements. One is the tone between the devolved Governments and Westminster and the way in which they should approach the dialogue to make sure the points you have explained with some eloquence are understood. There is also the tone in which what might be termed the wider United Kingdom interest is represented in Brussels. Do we go in banging the table, or do we listen very carefully to what others say and try to avoid that? If we did, would it mean that our voice was not as clear as it should be? That gives you a handle for some final thoughts.

Gerald Holtham: I am not the diplomat present, so I do not have great expertise in how one should conduct the negotiation, but in general it usually does not serve to go in and antagonise people at the beginning; it is much better to try to persuade them that you are not there to work to their detriment, and that you believe there are common interests to be served and you are eager to do so. As a matter of tone, we should try to keep this as friendly as we possibly can.

We are facing the requirement Sir Emyr has just pointed out. Even the most fervent Brexiteers would, I think, wish to preserve certain elements

of co-operation. The research and academic element is certainly a strong one, and there are others. Doing that while not being part of the EU will require some give on the part of the EU. The EU will wish to resist anything it regards as cherry picking, but if the cherries are very small and isolated we may or may not get away with it. I do not know.

We ought to be trying to present as constructive a face as possible, and the same goes for the internal relations. I cannot see any advantage in doing otherwise. There are serious fissiparous possibilities in Scotland and Northern Ireland if this thing is very badly handled. It is harder to see here, but you never know if you push hard enough. It is very important that this is approached in a constructive spirit.

Sir Emyr Jones Parry: The gist of what we are arguing is that there should be far better and franker exchanges between London and the devolved Administrations, and attempts to try to get a United Kingdom position, which are very difficult to do, that reflects as much of the interests of everyone as possible. The reality is that if you are to have a good relationship with London, and some degree of equality in the relationship each of the devolved Administrations has, you run into practical problems. The No. 1 problem is Scotland. A previous Prime Minister conspicuously would not involve Wales in certain activities because he was absolutely certain that he would not give that same status to Scotland. We are all aware of that circumstance. Wales's relationship with London is prejudiced by the inability to have the same relationship between London and some of the other nations for obvious reasons, so that is a problem.

As for the negotiations with the European Union, the first rule of negotiation is to try to understand the position and the objectives of the person with whom you are negotiating. The second thing is to understand that at the end each side needs to have gained something. There should not be a blind assumption that good old UK will lead the world on everything and that we are going to dictate to 27 other countries, some of whom will be delighted to have a go at us. Of course, we have not mentioned the fact that any future agreement will probably be a mixed one requiring confirmation by 27 national parliaments, and some regional parliaments in some countries. Do not assume that some of those ex-colonies are out there wanting to be very helpful. I have my doubts. Understand the position they are coming from and the nature of the negotiation.

Gerry spoke about the relationships. I do not claim for a moment that the negotiator and his or her relationship determines; it does not, but it affects at the margin the willingness of people to come together—maybe 5% of the negotiation. If you have given that away, and the traditional British posture has been not to be that helpful and not to be wanted, such that the Prime Minister of X does not want to stand next to the British Prime Minister for a photograph—you see where we are coming from—it is not the most conducive to a successful negotiation.

The Chairman: On that note of authority and experience, we thank you

both very much. You have been most helpful. We are grateful for your time, and we are always in the market for any further thoughts you may have on a subsequent occasion. Thank you indeed.