

Commission meeting with Ciaran Martin, Director, Constitution Group, Cabinet Office

11 July 2013

Commissioners Present:

Paul Silk
Nick Bourne
Jane Davidson
Eurfyl ap Gwilym
Trefor Jones
Helen Molyneux

Points made in discussion:

- Devolution in the United Kingdom was at the cusp of a third phase. The first, from the late 1990s, took place alongside other constitutional changes, such as reform of the House of Lords. The second, during the later period of the Labour Government and formation of the coalition government at Westminster, involved extensions and modifications to the settlements. This included the Government of Wales Act 2006 and 2011 referendum in Wales, and the Calman Commission and Scotland Act 2012, and was accompanied by some further attempts at constitutional changes, including further House of Lords reform and the Fixed Terms Parliament Act. Additionally, the UK Government were not entirely in control of the agenda, with the referendum in Scotland reflecting an existential threat to the UK.
- Acknowledging that there was a growth of interest in a Constitutional Convention, rather than the current consideration of single issues, [the witness](#) it was noted that the UK Government were not considering the matter at present, beyond the Political and Constitutional Reform Select Committee's recent inquiry. The remit and composition of any such convention would require considerable thought, with public expectations of engagement quite different now from [those that applied at the time of](#) the Kilbrandon Commission. The UK Government's response to the Lords Select Committee on the Constitution's 2011 report on the Process of Constitutional Change set out their approach to constitutional change.
- On existing inter-governmental relations, it was noted that much of it was day-to-day, with the relationship with Wales perhaps the most intense, with the Joint Ministerial Committee process working fairly well – particularly the Europe sub-committee and the plenary with the Prime Minister's engagement – and the British Irish Council representing an important aspect of the Northern Ireland process.
- On the reserved powers model, it was noted that it [might](#) be neater, although Wales also had a high level of cross-border activity, and issues of clarity would still arise. There would also be a need to re-examine or tidy-up the settlement in some detail (which would likely require political impetus for officials to undertake). [I, and](#) the Commission's objective analysis would be

helpful on this matter. [It was also noted](#) —~~noting~~ that the conferred powers list [also](#) required some tidying up [in any case](#).

- Asked to compare Wales's record with Scotland's of 199 Acts of the Scottish Parliament passed without referral by the UK Government to the Supreme Court, [the witness it was](#) suggested that there was a different relationship between the UK and Scottish Governments which aimed to ensure that the settlement worked (which had intensified recently – for example, there was cooperation between the Governments in the Imperial Tobacco Supreme Court hearing).
- As ~~talked about~~ Whitehall's policy-making processes in relation to Wales, it was suggested that the JMC process could include cross-border networks, which the Commission may wish to consider. The Economic and Domestic Affairs Secretariat (which coordinated policy across Whitehall) had the lead role in checking the application of non-devolved policies in relation to Wales, and it was accepted that some mistakes could be made by omission given the size of Whitehall, though efforts were made to increase understanding.
- Asked whether a statutory framework to resolve disputes may be helpful, [the witness it was](#) felt that the greater possibility of referrals to the court may lack democratic accountability, and a more developed framework may be helpful – for example, there were currently no disputes before the JMC (which provided the mechanism for dispute resolution between administrations), but it was unlikely that there were no disagreements at all between governments. The Commission's views on this matter would be welcome.
- Following the McKay Commission, it was noted that there may be a greater interest in clarifying a policy's territorial extent during its formulation (for example, as a standard check-box in a submission template).
- While it was not well embedded, some efforts were made to learn from alternative policy approaches taken by different governments within the UK – for example, UK Government officials had met Scottish counterparts to discuss minimum pricing for alcohol and urban regeneration – it would be expected that the presumed consent on organ donation legislated for by the National Assembly for Wales would also be looked at closely [in England](#). It was noted that this would be enabled further if there were a greater level of academic research and divergence in approaches.