

Stands Scotland where she did? Scotland's Journey back to statehood

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Noswaith dda.

Thank you for inviting me to give this lecture. My pleasure at being asked has been tempered slightly by not getting the added bonus of a visit to Cardiff and Wales. But I hope that's something that can be addressed when this pandemic is over or at least under control. And it's great to be speaking at the end of a week when finally, there is light at the end of the tunnel thanks to the vaccines.

My last trip to Wales was to give the fraternal address at the Plaid Cymru Spring 2018 conference in Llangollen. I greatly enjoyed the warmth and hospitality of my welcome. My only regret was that I was shamed by Liz Saville Roberts announcing to the whole conference that on the road trip up from London I and her other Scottish passenger had marred her usually healthy living habits by introducing her to the delights of Greggs pasties at one of the service station stops.

It's a great honour to be asked to give this speech. Since my election as an MP in 2015 I have benefited from the work of the centre and it's been my pleasure to share platforms and select committee evidence sessions with Professors Richard Wynn Jones, Laura McAllister and Jo Hunt and to renew my acquaintance with Professor Daniel Wincott whom I first a long time ago when we were teenagers and he dated my best friend.

Although Wales voted to leave and Scotland voted to remain a commonality of interest in defending our economies and our devolved settlements has brought us closer together since the Brexit referendum, but it has also accelerated the pressure for constitutional change in both our nations.

As the UK stands on the verge of leaving the Customs Union and the Single Market, we are still unclear about the future trading relationship with the EU. The Trump era has come to an end in America and Biden will be a very different President. What happens to the Northern Irish Protocol and the Good Friday Agreement could well determine whether or not Biden's administration will entertain a trade deal with the UK.

Many Democrats take the view that the UK Government is the last outpost of the Trump project.

Seen from Scotland it certainly feels that way. The post Brexit landscape has accentuated our sense of political alienation from the concerns and projects of Westminster.

And so, Scotland most certainly does not stand where she did. She is not so much at a crossroads as on a highway to independence. A couple of exits have been missed but the indicator is now on and I am confident that Scotland will take the next exit. The destination is not separatism or secession but a resumption of the statehood which was relinquished in 1707.

How things have changed

On 18 September 2014, 55% of those who voted in the independence referendum voted to remain part of the UK. During the last few days of the referendum the Better Together campaign suffered an almighty panic during which even Her Majesty the Queen was pressed into service to defend the union.

Ten days before the vote a sensational YouGov poll put support for independence at 52%. It was the first time independence had been in the lead. This caused consternation. Two days before the referendum the leaders of the three main UK wide parties, David Cameron, Ed Miliband and Nick Clegg personally pledged that a "No" vote would result in the swift delivery of "*Extensive new powers for the Scottish parliament*". Their pledge appeared as a Vow on front page of Scotland's best-selling daily tabloid. "*This is solemn,*" it said. "*You can trust us.*"

It's an amusing footnote to this episode that 4 years later the former editor who planned the famous front page announced his support for independence and is now the chief press officer for the SNP at Holyrood.

But back in 2014 he played an important role in ensuring a vote for the status quo on the understanding that there would be significantly more powers for Holyrood.

Now, just over 6 years later, the very foundation of the devolved settlement between London and Edinburgh is under threat from the Internal Market Bill (IMB) and 14 consecutive opinion polls have put support for independence at 52% or over.

One poll which showed support at 58%, highlighted majority support among both men and women, people in all social class groups and every age group under 65.

Even the staunchly unionist Times newspaper has recognised in a recent editorial that these successive polls having shown a majority of Scots in favour of an early referendum and that they cannot be ignored.

So Scotland most certainly does not stand where she did in 2014.

What accounts for the increase in support for independence?

Sir John Curtice, has concluded that the UK Government's pursuit of Brexit has undermined Scottish confidence in the Union and led to increased support for independence. His analysis shows that prior to the coronavirus the growth in support for independence occurred among those who were pro-EU.

He also found that voters in Scotland are now largely pessimistic about the consequences of Brexit but relatively optimistic about what independence would bring.

According to Prof Curtice as at 31 January, Brexit day, support for independence in Scotland had edged up to 50 per cent.

But, the further rise in support since then has been as strong among Leave supporters as Remain voters and has come about as a result of public confidence in the Scottish Government's handling of

the Coronavirus crisis. The polls have shown that the Scottish public think the Edinburgh government and Nicola Sturgeon in particular have handled the pandemic well.

They take the opposite view in relation to the UK government and Boris Johnson's handling of the pandemic.

Another very well-respected pollster, Mark Diffley, broadly agrees with Prof Curtice's analysis. He says that while Brexit provided the initial impetus for the growth in support for independence;

"The pandemic has given voters a daily reminder that the Scottish Government has the power to make decisions about the most important issues of the day, decisions that can diverge from those of the UK Government and that appears to have resonated with many voters both in their views of pandemic handling and, for some, their views on independence."

These are the views of the pollsters – here are my thoughts

In a major speech to the Middle Temple earlier this month Sir John Major said the core change in the new Britain currently being forged is Brexit, albeit for a time it has been hidden behind Covid. I agree.

The UK that voters in the Independence Referendum of 2014 voted to remain part of no longer exists.

The socialist federalist UK promised to Scots by the unionist left seems even further away than it did 6 years ago. Labour have been all but wiped out in Scotland as a meaningful political force.

At last years' General Election they suffered their worst UK wide defeat for decades.

It is hard to see how even a successful Starmer led Labour party can gain back the ground it lost in just one election.

After 10 years of hamstrung Tory governments we are now looking at 10 years of majority government from a Tory party which has espoused such an extreme position that it no longer has room for the likes of Ken Clarke and Dominic Grieve.

That Boris Johnson would be resident in number 10 seemed even more unlikely than Brexit during the 2014 independence referendum. And those of us who predicted these possibilities were scoffed at.

The victory of Johnson and his majority were made in England.

In Scotland the SNP rides high in the polls and keeps winning elections rather emphatically.

Whilst one should never take anything for granted in politics we look set to do so again next year on a clear mandate to hold a second independence referendum.

In Scotland there is significant unfinished business from the first independence referendum. The cross-party pledge to create a different form of devolution made in the last 3 days of the campaign has never been delivered.

For all the promises of federalism or devo max the advent of a UK Government committed to delivering either is far away.

The present UK Government are dedicated to undermining the devolved settlement rather than strengthening and improving it.

What Johnson said about devolution being a disaster and Tony Blair's biggest mistake was simply the verbal acknowledgement of the hostility shown towards the devolved governments and parliaments during the Brexit process culminating in the Internal Market Bill.

My colleagues in the Scottish Government have looked on with envy while the concerns of the Irish Government are placed centre stage in Brussels, but Scotland is ignored or derided at Westminster.

It is instructive to review the course of events since Scotland voted to stay in the UK in Sept 2014.

- In the May 2015 General Election Scotland elected 56 SNP MPs. Scotland only has 59. Yet when the Vow of more powers for the Scottish parliament came to be enacted in the Scotland Bill not one single amendment proposed by the SNP was accepted.
- Then came the Brexit vote in June 2016. While it was won by a small margin across the UK, Scotland voted by 62% to remain. Northern Ireland by 55%. Yet in drawing up her negotiating red lines Theresa May gave no consideration to the fact that 2 out of the four constituent parts of the UK had voted to remain. There was no coalition building. No reaching out.
- In December 2016 in the policy paper, *Scotland's Place in Europe*, the Scottish Government put forward the idea of a differentiated deal for Scotland or a compromise for the whole of the United Kingdom. It was completely ignored by the UK Government who went on to cut the Scottish Government out of the Brexit negotiations completely.
- To take just one example, the Scottish Government has been completely excluded from participation in negotiations regarding the future trade relationship despite massive implications for our expanding food and drink industry and for the fishing industry.
- The Scottish Parliament voted—with the cross-party support of everyone apart from the Tories and one Liberal Democrat—to withhold consent to the European Union (Withdrawal) Bill, but that, too, was ignored.
- The Sewell convention which provides that Westminster will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament has been repeatedly ignored throughout the Brexit process. And thanks to the decision of the UK Supreme Court in Miller 1 we now know that convention has no legal force to protect the devolved settlement despite its entrenchment in legislation.

- When the Scottish Parliament tried to pass its own Legal Continuity Bill, dealing with the consequences of Brexit for devolved powers, it was challenged by the British Government in the UK Supreme Court, and while the hearing of the case was pending before the court, the Tories retrospectively changed the law in the House of Lords by amending the Withdrawal Bill to render large parts of the Continuity Bill ultra vires.
- When those amendments came back from the Lords to the Commons, Scottish MPs got 19 minutes to debate their implications and all of the time was taken up by the Government Minister. That's what prompted the SNP walkout of the Commons in June 2018.
- The withdrawal from the EU proceeded in January of this year despite Scotland electing 48 SNP MPs at the December 2019 General Election and the opposition of all but 6 of Scotland's 59 MPs.
- And now we face the undermining of the devolved settlement in the IMB.

UK Internal Market Bill

As well as breaking international law the powers which the UK Government seeks to give itself in the IMB constitute an unprecedented threat to powers of Scotland's parliament.

It runs a coach and horses through the devolution settlement which Scots voted for by an overwhelming majority in 1997.

In October we marked the 20th anniversary of the death of Donald Dewar. He was Scotland's first FM under Devolution and the architect of the scheme of devolution set out in the Scotland Act of 1998. If not specifically reserved, then a power is devolved.

But the IMB introduces a new principle into the devolution settlement by providing broad, cross cutting powers to allow UK ministers to enforce internal market provisions across devolved fields.

Clause 50 reserves state aid to Westminster after a dispute as to whether it was already reserved or devolved.

Clause 48 gives UK ministers wide powers to spend in devolved fields.

changing the previous assumption that they would spend only in reserved fields and that, with a few exceptions, financial transfers to the devolved administrations would go through the Block allocation governed by the Barnett Formula.

For this analysis I am indebted to Professor Michael Keating. Last week he told the Scottish Affairs Select Committee;

"When were in the EU, the Scottish Parliament was subject to the very general provision that it must legislate within European law. That was a broad transversal principle that applied to everything. The IMB attempts to introduce that principle into UK law but without all the safeguards that exist in the European arrangement. Yes, in the EU there is such a broad provision that cuts across all kinds of fields, but it is subject to proportionality, subsidiarity, a community method of making policy, qualified majority voting and the jurisdiction of the European Court of Justice. None of that is present here. This, to my mind, represents a major constitutional change. "

Mike Russell has described the IMB as a very subtle power grab. But power grab it is.

Holyrood is NOT getting any new powers, but Westminster is getting sole control over state aid and in order to enforce the Internal Market UK Ministers are getting an explicit power to cut across decision making by the Scottish parliament in a whole range of devolved areas from education to building regulations.

What we are seeing here is a rebalancing of the constitutional settlement in so far as devolution is concerned. The clear delineation of Donald Dewar's scheme will go.

This is a very significant change some would say an undermining of the devolved settlement which 75% voted for across party lines in 1997 referendum.

It certainly flies in the face of the promise of greater powers for the Scottish parliament which helped win indyref 2014 and on which Michael Gove and others doubled down during the Brexit referendum campaign.

It matters not that on 7 October all parties in the Scottish parliament apart from the Scottish Conservatives voted to reject the IMB. We know now that the Sewell convention is not worth the paper it was written on.

So the Brexit process has told Scottish voters a lot about the reality of devolution.

It has confirmed, if it were ever in doubt, that power devolved is power retained.

And that the United Kingdom is not the Union of equals that we were told about during the 2014 independence referendum but a unitary state where devolved power is taken back to Westminster by executive fiat when convenient.

We now know that Scotland does not lead the UK but rather must follow where England wishes to go, whether we like it or not.

At a conference in London a couple of years ago I asked the former Taoiseach of the Republic of Ireland, John Bruton, what he thought of Scotland's treatment during the Brexit process. He said that Scotland's marginalisation within the United Kingdom would not happen in the European Union, and that if the European Union were taking a decision as drastic as Brexit and it had only four nations in it, all four nations would need to agree

In the UK, however, it does not matter what Scotland and Northern Ireland say. They can always be overridden by the English vote. That is not an anti-English comment; it is a comment on the constitution of the United Kingdom.

If Scotland were a member state of the EU, even though we are a country of only 5.5 million people, we would have the same veto as Ireland over a major decision such as Brexit, in the same way that the bigger countries have.

When looked at that way the EU seems rather a more attractive future for Scotland than the UK.

Why not federalism?

It is true, of course, that the cavalier attitude of the UK Government towards devolution during the Brexit process has been experienced also in Wales and Northern Ireland.

For a long time in Northern Ireland the voice of the pro-EU majority was without expression at Westminster or Stormont while the attitude of the British ruling party towards the Good Friday Agreement was one of ignorance or insouciance.

The Scottish and Welsh governments have worked closely together to try to defend the interests of their devolved parliament and assembly but without much success.

In the north of England, the intransigence of Westminster was experienced in the row over lockdown and furlough support. Andy Burnham, the mayor of Greater Manchester, said he was worried by the PM's comments on devolution and that we live in a very London-centric country which is why it's a divided country.

All this has prompted the usual suspects to start talking about federalism again.

I have nothing against federalism.

Federalism works well in Canada for example where the Provinces were in the room for the negotiations over the CETA trade agreement and the provinces run their own immigration programmes.

But although federalism is always discussed when support for Scottish independence is on the rise, I see little appetite for it across the UK.

Whereas Scottish independence is a matter for the Scots **by which I mean those living in Scotland**. Federalising the UK is a project which requires support across the 4 nations. Only the Liberal Democrats have any sort of meaningful commitment to it as a policy and they are far from power at present.

One of my predecessors as an MP, Malcolm Rifkind, the MP for Edinburgh Pentlands from 1974 to 1997, said in 1975 that devolution should be a step towards federalism. However, when in office as Scottish Secretary he did not progress the case for either one jot. In fact, quite the reverse. He was part of a Tory administration that turned its back resolutely on the desire in Scotland for devolution in the 80s and early 90s.

His recent rediscovery of the merits of an idea he flirted with 45 years ago lacks credibility. I did not think that Prof James Mitchell was harsh when he said that unless Sir Malcolm converts his party and provides a scheme and not a slogan his contribution should be treated with contempt.

In August 2014 at an event at the Edinburgh Book festival Gordon Brown said talks on extending devolution should begin the day after the referendum if the No side won and that within 2 years the

UK would be a federal state. During that giddy summer he also promised that Labour proposals would move the UK as close to federalism as could happen in a country where 85% of it is comprised of one nation.

None of this has come to pass. There is good reason for the cynicism on the nationalist left in Scotland because federalism has promised many times but not delivered.

It will not be delivered now because there is no one in government who wants it. The constitutional direction of travel is the other way.

Furthermore, as Ben Wray of Source Direct observed earlier this week, the increased desire for independence in Scotland is not just an expression of national identity but rather a desire to relocate power from London and to use that power differently.

Everyone wants to build back better after the pandemic but Scotland needs to do so to our own design.

Federalism would not allow Scotland to develop the sort of different economic direction that the independence movement wants.

Federalism would not allow Scotland to get rid of Trident.

Federalism would not allow Scotland to re-join the EU.

And in relation to re-joining the EU there is some urgency. The regulatory divergence which the UK Government seems determined to impose upon Scotland may make re-joining EU a more onerous process.

It has to be independence

That is why the focus of the debate in Scotland is about independence versus union and a second independence referendum.

Timing

The British Government are pressing ahead with their constitutional priorities regardless of the pandemic and its economic fallout.

Whilst the First Minister and Scottish Government have rightly had their primary focus on the Covid crisis, Scotland cannot afford not to act to counter this agenda.

Recently Gordon Brown chose to echo the words of Theresa May by saying now is not the time.

The trouble is that for Scotland, British politicians telling us not now tends to mean not ever.

To those who parrot the words of our former and current FMs during the first independence referendum campaign that it was a once in a generation vote, I would say that that was then, and this is now.

Besides what constitutes a generation in political terms?

I'm a member of Generation X born between 1965 and 1980. The next generation is the Millennials born between 1981 and 1996. These are time spans of only 15 years.

With respect to devolution 18 years passed between the 1979 and 1997 referendums. So, rather longer than a generation. But we should remember that until Labour won the 1997 General Election Scotland's renewed desire for devolution was ignored by the Tories for more than a decade. Something to bear in mind for those who say we don't need a Plan B....

Furthermore, the political events of the past 6 years have been more tumultuous than we normally experience in a generation.

In the years since 2014 we have lived through a number of political generations. The days of Cameron and Clegg feel like ancient history. Theresa May is now in the political wilderness together with a host of well-respected Tories who find themselves politically homeless. The Liberal Democrats who were part of the government until 2015 are now reduced to a rump with their latest leader but one ousted at the last General Election. The Corbyn era has come and gone. Britain has left the EU.

On the issue of sovereignty and Irish unity the Northern Ireland Act 1998 provides that the NI Secretary shall not allow a second border poll any earlier than 7 years before the previous poll.

Even allowing for the very different context, if 7 years between referendums to leave the UK is acceptable for Northern Ireland why not for Scotland?

If the party or parties who have a clear commitment to a second indyref in their manifestos win the Scottish election next year then it would be a Trumpian denial of democracy for it not to happen.

Mechanism

However, if ever any UK leader was capable of Trumpian behaviour then it is Boris Johnson. So, it makes sense for my party to think about what we should do in the event that the PM refuses to agree the means by which a second indyref can be held as David Cameron did with Alex Salmond in the Edinburgh Agreement of 2012.

At that time, it was agreed that the power to hold a referendum would be transferred to the Scottish parliament under section 30 of the Scotland Act 1998.

A recent poll suggested that two thirds of voters want a fall-back strategy to secure a second independence vote if a section 30 order is refused this time round.

But there are some in my party who are very reluctant to contemplate the options in such a scenario.

They believe that to do so might detract from the pressure on the PM to do the right thing.

To them I say he's not renowned for doing the right thing particularly when comes to Scotland.

I understand the argument that his refusal to grant a section 30 order is unsustainable. Whether that is right remains to be seen.

What worries me is that if we are waiting on good will and largesse from Boris Johnson it could be a very long wait

No Conservative and unionist PM wants to be the one on whose watch Scotland was lost. But it would be even more ignominious for Johnson because he is the author of the catalyst for independence – Brexit.

For now, it's a comforting thought that his position is unsustainable but it's a hope at best and it is my belief that hope should not prevent us from looking at what leverage we have in the meantime

It should also be remembered that the capitulation of David Cameron and the signing of the Edinburgh Agreement came after protracted discussions. It was secured as the result of pressure that was irresistible not just because of the mandate the SNP won in 2011 but also because of the robust leadership and statecraft of the Salmond government.

Some of the present reluctance to discuss alternative strategies comes from the absolutely correct view that the means by which independence is secured must be both democratic and legitimate in order that the outcome is internationally recognised. I agree and would add that a democratic and legitimate process is also necessary to bring the British Government to the negotiating table after the vote is won.

A joint paper by the Scottish Centre for European Relations and the Konrad Adenauer Stiftung published earlier this week looked at EU Views of the UK post Brexit. The paper identifies a general expectation that the EU will be neutral in any future referendum in Scotland partly because of the state of EU-UK relations but also because the UK is now a third country and Scotland's pro-EU stance has been noted. The common view is that provided Scotland becomes independent in a legally and constitutionally valid way, with agreement between London and Edinburgh, Scotland could have a normal accession process to the EU, although there is a high alertness to Spanish sensitivities.

But Scotland is not Catalonia. The UK is not Spain. There is nothing in the unwritten British constitution which prohibits Scotland from becoming independent.

Indeed, on the contrary. The British constitution has already shown it is flexible enough to permit an independence referendum for Scotland.

Prior to the advent of devolution, it was thought that a simple majority of pro-independence Scottish MPs would be sufficient to open negotiations on independence.

That is why some in my party have suggested using a Scottish election as a plebiscite if a section 30 order continues to be refused.

This raises the question of whether we should be so wedded to the idea of a referendum to deliver independence.

Earlier this year I attended an entertaining lecture at the LSE entitled

Unions and Their Break-ups: the UK's attempted secession from the EU, and its possible outcomes.

It was delivered by Brendan O'Leary, Lauder Professor of Political Science at the University of Pennsylvania.

His focus was on the domestic constitutional consequences of the UK's secession from the EU.

He defined secession as “formal withdrawal from a central authority”. and he noted that most secessionist movements that have been successful have done so without any central role for a referendum.

However, the reality in Scotland is that we had a referendum in 2014 in which the result was No to independence and we need to demonstrate there has been a change of opinion.

I asked the Professor what he thought we should do and he said he thought it would be very hard for the SNP to depart from its formal commitment to the idea that a referendum will be the mechanism, after we obtain a majority of MSPs, with or without allies, in the Scottish parliament as the trigger for that referendum.

However, I would wish to emphasise that we should not assume that a legitimate referendum can occur only if Boris Johnson agrees to grant a section 30 order.

In 2012, before the Edinburgh Agreement was reached, 7 legal academics including 3 distinguished professors published a paper challenging the view that only Westminster has the legal authority to sanction an independence referendum.

Again recently Professor Aileen McHarg and her senior colleague, Chris and McCorkindale have reaffirmed this view and pointed out that:

“Although it is frequently asserted that a referendum on independence falls outwith devolved competence (as part of the reservation to Westminster of “the Union of the Kingdoms of Scotland and England”, Scotland Act 1998, Schedule 5, Part 1, para 1(b)), that issue has [never been conclusively settled](#)”

Aidan O’Neill, the leading QC, who won the Article 50 revocation and prorogation cases, has produced a detailed opinion setting out the argument that Holyrood has the power to legislate to hold a referendum on the question of independence. He is advancing this argument in the case of Martin Keatings v Advocate General for Scotland which is currently proceeding before the Court of Session in Edinburgh.

On Brexit day, earlier this year, Scotland’s FM, Nicola Sturgeon, gave a speech in which she considered this issue; She said, and I quote:

“The issue of whether the specific constitutional reservation in the Scotland Act puts any form of independence referendum outside the powers of the Scottish Parliament – or instead leaves open scope for a non-binding consultative vote – has never been tested in court.

That means it cannot be said definitively that it would not be legal, but equally it cannot be described as being beyond legal doubt.

If a proposal for a referendum on that basis was brought forward it would be challenged in court.

If a court ruled that it was legal, it wouldn’t be a “wildcat referendum” as our opponents like to brand it – it would be within the power of the Scottish Parliament.

Should the UK Government continue to deny Scotland's right to choose, we may reach the point where this issue does have to be tested.

I am not ruling that out.

But I also have to be frank. The outcome would be uncertain. There would be no guarantees.

It could move us forward – but equally it could set us back.

So my judgment at this stage is that we should use our energies differently.”

She went on to announce a Constitutional convention and policy papers neither of which have come to pass because of the pandemic.

It is my view that if the pro-independence referendum parties obtain a majority at the Scottish election next year and the PM refuses to come to the table to negotiate a second Edinburgh Agreement, the avenue which the FM contemplated earlier this year should be pursued.

It would require a carefully crafted bill to be piloted through Holyrood.

Then, when the inevitable legal challenge came, it would be for the courts to decide whether the bill passed was within the competence of the Scottish parliament and, thus, whether the referendum so authorised could proceed. They would do so by a process of statutory interpretation. The case would undoubtedly end up in the UK Supreme Court.

If they found the bill to be within competence, then we would have a lawful referendum. And one which would be hard for unionists to boycott.

If we lost, then I do not believe we would be any further back than the stalemate that will ensue if Boris Johnson digs his heels in.

I would expect the UK Supreme Court and indeed Scotland's Supreme Courts, to look to the wider constitutional context and to have some comments to make about a Government which does not allow a 2nd indyref when there is a clear electoral mandate in favour of one.

I think it is unfortunate that the debate about the legitimacy of any Scottish vote for self-determination has become so focused on whether or not the UK government will grant a section 30 order.

What this has meant is that we are discussing Scotland's right to self-determination purely through the prism of a devolved settlement which is barely 20 years old. I believe that this sends out the wrong message at home and abroad.

The legislation governing the devolved settlement should not be the last word on whether Scotland can legitimately vote to secede from a union which is over 300 years old.

The nature of the UK is not always well understood internationally. I have found that when I explain to international audiences that the foundation of the UK is a Treaty of Union between two ancient sovereign states a penny drops. They realise that the SNP is not a movement for regional secession but for the resumption of a statehood which dates back to the Declaration of Arbroath in 1320.

Article 1 of the Treaty of Union states "*That the Two Kingdoms of Scotland and England, shall upon the 1st May next ensuing the date hereof, and forever after, be United into One Kingdom by the Name of Great Britain.*"

However, the Acts of the Parliament of Great Britain and Ireland effecting their union in 1800 also included a provision that Great Britain and Ireland would on 1 January 1801 "*and for ever after, be united into one kingdom*". Notwithstanding that provision, the union of Great Britain and Ireland came to an end on 6 December 1921 by a constitutional process.

It is therefore clear as a matter of UK constitutional law, that a union of the United Kingdom's constituent nations from time to time may be brought to an end by a constitutional process. This argument is being pursued by Aidan O'Neill QC in the Keatings' case in relation to the central issue of whether the Scottish Parliament has the power to legislate for an independence referendum.

In my opinion it is a pity that this case has proceeded in the absence of the sort of carefully crafted bill from the Scottish Parliament that I would like to see. However full legal argument in the case is to be heard in January 2021 and its outcome could yet have repercussions for this debate and the strategy that I favour.

Conclusion

In a lecture to a Centre for Governance it is only right that I should focus on process. But before I conclude I want to be very clear that my party is not and should not be complacent about the polls which predict victory for us in next year's election and in a second independence referendum.

It is policy and planning for the transition to independence and membership of the EU that will win the prize of independence. Once the independence campaign proper begins a searing focus will be turned upon our plans for the economy, trade relations with the rest of the UK and the process of re-joining the EU.

It is time to expedite publication of the "New Scotland" policy papers promised by the FM on 31 January. These will provide the information and answers people want on how Scotland can make the transition from a Yes vote to becoming an independent country.

I absolutely understand why work on these matters by the Scottish Government was paused to allow focus on the Covid crisis but if we are to have an independence referendum soon, this work must recommence.

The Tories haven't halted their plans to leave the Customs Union and the Single Market or to undermine devolution so likewise the SNP should not halt its plans for independence.

A huge amount of thinking about these matters has been done within our academic institutions and by think tanks and organisations such as SCER, the Common Weal, Business for Scotland and the Scottish Independence Convention. It needs to be pulled together and packaged for consumption by the voters.

And finally, what will be the repercussions of Scotland's journey back to statehood for the rest of the UK?

I believe that Scottish Independence could be the catalyst for the sort of constitutional reform in England which is talked about by the chattering classes but for which governments seem to have no appetite. I say England because there is a very real question as to what rUK will consist of after Scotland resumes the status of an independent state.

Once more, I find myself in agreement with John Major who told the Middle Temple that Scotland will go first then Northern Ireland will follow and reunify with the rest of Ireland. But what of Wales? For this I defer to others....and maybe next year's lecture!