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Christine Bell: Thoughts of an 'Ordinary Mum' on Devo Max Versus Independence

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It’s the morning. I’ve got the kids out the door, a cup of tea in my hand. Aahh, I’ve time to think. In fact, I also work full time as Professor of Constitutional Law, so sometimes thinking is part of my job. But this is personal. I have a vote to cast and my kids, and a lot of other people I care about, appear to lies on it. And the tea helps more than the constitutional law – we have been off all constitutional charts for some time now.

Should I reconsider how to vote now that a no vote is a vote for devo-max? It’s a funny one old one this. Devo-max seems a nice half-way house between independence and the status quo of remaining within the UK. The latest UK ‘better together’ offer has been made on that basis. There is of course a deep irony that the ‘third option’ which was not permitted to be on the ballot paper, now has eclipsed a straight ‘no’ that we understood was on the ballot paper. I hated the binary choice. I hate referendums. So does this persuade me away from the ‘yes’ I had slowly come to?

Let’s leave aside questions of good faith for a minute, and let’s also leave aside discrepancies in what the different parties are offering. There are several more profound difficulties with devo-max which make me hesitate.

What more power to devolve is difficult to resolve in any coherent work-able way. The lack of clarity from the three UK political parties on either their own or a combined devo-max package does not reflect a commitment of will, it reflects the fact that further splitting of power is actually quite difficult to do coherently. The 2012 Act does devolve more power, and leaves little room for further ‘playing around the edges’ with regard to power-splitting. With more power-splitting the whole devolution-UK settlement becomes a bit chaotic – this part of this tax, by this much percentage to go up not down, this piece of welfare maybe, if we can work the computer system out (and in Northern Ireland where welfare is devolved, evidently the computers say ‘no’ to doing anything differently from the UK). It looks difficult to work, and difficult to assess what will result. Sounds pretty complex for businesses who tell us that any complexity leads to price rises, and for governments who assure us they all are committed to social justice but seem unsure what the social justice implications of this jumbled tapestry of powers are.

The closer devo-max comes to independence, the more it raises all the same objections to independence. Question. The momentum for yes is not, in my view, based on a negative desire for ‘divorce’ or ‘amputation’ from the UK body-corporate – could have definitely gone for at an earlier stage, if credibly presented and debated. But at this point is feels like the answer to the wrong question. The momentum for yes is not, in my view, based on a negative desire for ‘divorce’ or ‘amputation’ from the UK body-corporate – ‘better together’ metaphors. Neither is it now just a movement for the ‘economic levers of power’, the SNP metaphor. It is a movement for democratic renewal. People have woken up to the fact that this vote matters and that each individual can make a difference. David Cameron held that together by a common tax base, a common commitment to common welfare pot, human rights protections to create a common platform of human decency across all regions, a common foreign and defence policy, and membership of international organisations and the legal framework of the EU, the UN and the European Convention on Human Rights which enshrine and reflect our values. This is the written constitutional foundation of the Union. Are these values untouchable – no of course not – we could change them. But surely in a devolved context we should only do so as a United Kingdom. At present – ironically – nearly all the parts of this Union ‘glue’ are under unprecedented attack by the current government. And the political consequences when they do are terrible. Let’s look around for a minute: forcing the
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Devo-max on offer for one week only, now negates rather than delivers democratic renewal. Instead of deliberating and talking about the values at the heart of the Union that might justify its continued existence, we are finding rid of the edges – or rather a group of Westminster parliamentarians is. A rather undefined devo-max is now presented as fait accompli hand-out, when what it comprises should be a matter of public deliberation in Scotland, and arguably across the UK as a whole (this was the very reason that the UK government opposed putting the paper on its position proposals on the table), and the manner of these last-minute offers to the public anti-division. Do it for me. It feels more likely to create a big mess which will make where power lies less clear rather than more, and will mean that both politicians on both sides are disingenuous. So what are we voting on after all? Freedom? Euphoria? And what happens if we are not allowed, does it have to be treated as ‘once you reject togetherness on our terms, we will spurn you forever and make sure you have to leave Europe. Apart from Brown’s proposed ‘guarantee’ a few days ago which began to edge in this direction, no-one is talking about, let alone planning to pay, the 1980s ‘guarantee’ of the UK to the EEC by all its devolved bits. There are fairly easy ways to ensure this, short of some sort of lengthy constitutional overhaul, which I will turn to on the 19th should there be a ‘no’ vote.

So, the choice now is between independence and a fairly loose political pledge to ‘further powers’ for Scotland, and that the people of Scotland will be engaged directly as each party works to improve the way the UK is governed (pledge as printed in Daily Record). What on earth does that mean? That there will be more referenda? That these on-going improvements are all in hand and will be on-going anyway – ie business as usual? It’s hardly a fast commitment to a constitutional overhaul.

Devo-max, in effect, is a perfect storm of institutions if you like, or, as English politicians offer a new clarity to where legislative and executive power lies with an independence vote, no muddling around with bits of this power and bobs of that. But beyond that, the two campaigns have a lot of similar ideas of what they want to do together. Would it not be possible to find a way to move beyond state-nationalism as some sort of black box concept to figure out when to be independent and when to be together in this new world? In fact, in our globalised world states are being re-packaged into ‘policy areas’: inter-state relations can pretty much be crafted whatever way one wants. If we can reconcile the European cooperation of the EU with state soverignty as we all and in in fact have (yes Nigel, we have) for around 30 years, as better-together proponents will no doubt argue in 2017, then why can we not reconcile Scottish and UK sovereignty with some novel form of inter-state collaboration? Would it be so terribly ‘wee of England’ to agree to the Union it can get? If we are better together, then why is it so hard to bring about within the islands of the UK – is that a currency union would impede policy? If it’s a better-together, would every step not be taken to minimise cross-border impact – we have certainly been able to do that along the UK-Ireland border, with the border now completely invisible despite a much worse starting point of the most militarised border in Europe. Could we not cooperate on a common tourism policy, on maintaining one common research area and funding pot for Universities, to affirming and supporting each other’s national symbols, to dual citizenship? Scottish people that I talk to who consider voting yes are not seeking divorce or to be amputated. They are seeking a re-alignment of legislative and executive power with the politicians they elect and feel they can hold ‘justly’ – together on this planet. I never can move myself to much excitement on where national borders lie, or get turned on by concepts of nation-statehood and - unlike the guardian - I see nationalism on both sides and not just one.

These are my articles of faith: I want to see a more interconnected world not one full of amputated limbs failed states and punishment. I want to work with my fellow humans wherever they are, Scotland, UK or far beyond, so that we can all live decently and fairly – or as I would put it ‘justly’ – together on this planet. I never can move myself to much excitement on where national borders lie, or get turned on by concepts of nation-statehood and - unlike the guardian - I see nationalism on both sides and not just one.

I don’t like being forced into binary decision-making when there are ways for us all to get more of what we want by exploring the non-binary options that are too hastily pushed off the table. I still think referenda are bad ways to resolve questions in which there are always more than two questions. There were always other ways of doing this.

Three years of living in Scotland, and engaging in the independence debate and nothing has really changed on any of those scores – and perhaps in this I remain true to my outsider status – I just hope that the two campaigns come together to argue in 2017, in the UK, that any change to the UK’s fundamental principles of union should require to be agreed by all its devolved bits. There are fairly easy ways to ensure this, short of some sort of lengthy constitutional overhaul, which I will turn to on the 19th should there be a ‘no’ vote.

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Against this, I must weigh Independence and the possibility of a new politics with democratic accountability and social justice at its heart. I don’t feel we cut loose from the island-wide or even the global social justice project by claiming it for Scotland: I feel we re-invent it for everyone. (Would Labour be talking social justice in these terms this close to a general election if not for this referendum, it seems a public language of the last two weeks?) If independence comes about that is our responsibility and our challenge.

I definitely feel more scared than I did: project fear has not been without effect. Independence could really happen: do we consign ourselves to investable doom destruction and devastation by taking this chance? But I have resisted accepting inevitable doom and destruction all my life in much worse circumstances. Anything good I have seen politically came from people believing that things could be different and working to make them so. On my own political journey taught by those in the most desperate of circumstances in war-torn countries, I have learnt that it is pessimism and not optimism that is falsely naïve: it tell us that things will never change for the better and that we are beaten before we begin. Pessimism retains its hold even when what it offers is unattractive because it claims to offer certainties where optimism is clear it can only offer chances. Taking chances is scary.

So, the kids are out at school, I’ve finished my tea, the Westminster train has come and gone. I’ve made up my mind.

I’ll take my chances with this because it feels like the chance of a lifetime.

So, it’s still a yes from me then.

Christine Bell is Professor of Constitutional Law at the University of Edinburgh and Director of the Global Justice Academy

Actions: Comments (2)

Comments

Anonymous
11 October 2014 17:02

Anonymous
14 October 2014 17:54
http://www.news4security.co.uk/posts/2014/10/a-reflection-on-scotland-sovereignty-federalism/