
Kluwer Mediation Blog

Further Thoughts on Brexit and Caledonian Antisyzygy

John Sturrock (Core Solutions Group) · Friday, July 29th, 2016

This blog is a further reflection on the implications of Brexit, viewed from a Scottish perspective.

There are at least four possible outcomes for Scotland's constitutional future. One, Scotland as wholly independent, neither in the UK nor in the EU. Two, as an independent nation within the EU. Three, as a constituent part of a UK which has Brexited. Four, as a constituent part of the UK within the EU, as at present. The last of these is unlikely but we are living in radically uncertain times

If we add in the possibility of Scotland accepting a future federal or quasi-federal arrangement within a reformed UK, you can add a further dimension or two. Similarly, if the EU was to undertake significant reform (not wholly unimaginable), a further two possibilities would open up for Scotland, either within that reformed structure as an independent nation, or within a UK which accepted these reforms as meeting its needs. And of course, you could add in the last of these, integrated with a federal UK....

The point is this. As Bill Marsh has discussed recently, very few of our decisions are binary, a mere "yes" or "no" choice. There are choices within choices, many nuances to consider, assumptions made and judgments formed. And any one or more of these may subsequently turn out to be incorrect, or ill-founded in the first place. In forming a view, we are easily affected by relatively minor changes of emphasis. Those who play on our hopes or fears can exert disproportionate influence on our decisions. A bit like we see in everyday mediation work perhaps.....

Think about the Scottish independence referendum, where it can be argued that the question posed was effectively modified by the "pledges" made by unionist politicians immediately prior to the referendum itself. It changed from "remain as part of the existing Union, the status quo" to "remain, but in a devolution-augmented format" (as subsequently translated into the Smith Commission's findings and implemented in recent legislation). Arguably, those voters who wished for the status quo-only option were disenfranchised completely.

This leaves us with unanswerable questions (save for ex post facto polling, which is always periled upon the wisdom of hindsight). What would have happened without the "pledges"? Indeed, what would have happened if the timing of the Scottish

referendum and the EU referendum had been reversed? And would the Scottish mood have been as well disposed to a 62% pro-EU vote had the electorate not had the preceding independence campaign to stimulate political thought-processes - as perhaps has not occurred in the same way south of the border?

We can only speculate. These are all uncertainties, variables which influence outcomes. More recently, suppose the Leave EU campaigners had not made the (arguably ill-founded but not withdrawn) point about £350 million being saved by Brexit to be invested in the NHS? Or given a clear indication that immigration could be significantly reduced without affecting economic prosperity among those already not particularly well-off? What if public confidence in politicians generally had not been ebbing away after excessive expenses claims and other political scandals, suspension of Scottish MPs, the reversal by the Liberal Democrat Party on promises made about student loans, the banking crisis, de-regulation, Iraq..... Suppose...?

What if EU negotiators had played ball more supportively with Prime Minister David Cameron earlier this year? What if Britain had been seen to be a better EU-team player over the years? What if the Prime Minister had not demoted the minister turned Leave leader, Michael Gove? What if.....?

So many possibilities, many of them seemingly random. As we move forward, we really do need to grapple with the uncomfortable reality that most decision-making is not binary. There is rarely a right or wrong answer. There is a potentially vast range of options and alternative courses of action. Perfection is unachievable and there are pros and cons, inevitable trade-offs, in nearly all choices. It takes a certain maturity, or call it wisdom, to acknowledge this and, of course, to accept that we are not all-powerful. Again, we see this work itself out so often in mediations.

At the same time, the ability to hold apparently contradictory views in balance has sometimes been viewed as the mark of brilliance. As F Scott Fitzgerald put it, "the test of a first-rate intelligence is the ability to hold two opposed ideas in mind at the same time and still retain the ability to function." But you have to be aware of - and acknowledge - that this is what you are doing or others will be confused: cognitive dissonance as it is called in neuro-science.

Alastair McIntosh, in his brilliant new book, *Poacher's Pilgrimage*, describes a uniquely Scottish aspect of this. He borrows the expression "Caledonian antisyzygy", the grappling with dichotomies and paradoxes, contradictions and the holding in creative tension of two worldviews. As Scotland ponders its place in the UK and the EU, the reader is driven to ask: might such a tension be our lot at this time? Just as it nearly always is for mediators.

All of this may be particularly challenging within the political world and for politicians. To outside observers, it and they seem to operate in a child-like, immature, semi-insulated world a lot of the time. We know that most politicians are well-motivated as individuals but the partisan nature of party politics may inevitably prompt unwelcome behaviours, including the preservation of party above the national interest. But we need to ask: does such partisanship, with its possibly adverse consequences for rational thinking, give us decision-making which is fit for purpose? Or does it lead to

the treatment of difficult issues with a simplicity and crudity which, by ignoring obvious complexity and uncertainty, fails to do justice to any form of modern democracy?

(And, in passing, might the same be argued about the litigation system? Or, as my taxi driver commented the other day about strike action as a method to resolve disputes, “there must surely be better ways...”).

Perhaps the outbreak of what is now called “populism” suggests a reaction to all of this which represents a telling change in the sensibility of ordinary people, as expressed in referenda by the electorate? Is there any alternative to facing up to the importance of addressing – and working with – the electorate in a more sophisticated way if we are to survive with dignity in a rapidly changing world? Think again of the constitutional options which may face Scotland again soon. A mere “yes” or “no” is unlikely to settle things well, just as we may find as we try to work out the consequences of the Brexit referendum.

Hubris and hyperbole are dangerous at the best of times. Arguably, they are undermining the credibility of the political process now. More humility and honesty might just be what we need – and may be our collective salvation. Disciplined, authentic leadership at a time of uncertainty, asking the hard questions, exploring the underlying issues, grappling with diverse options, recognising the benefits of opening up different courses of action and the responsibility to work sensibly and thoughtfully through these is, I suggest, what we require.

And, above all, the courage to stand out from a crowd apparently seduced by the superficiality of easy-fixes, with a willingness to look for the optimal outcome for all concerned within the complexity and uncertainty which the real world presents. Just like a mediator in fact.....

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The image shows a screenshot of the Kluwer Arbitration Practice Plus web application. The interface is displayed on a blue background. At the top right, there is a checkmark icon and the text "Explore Practice Plus". Below this, a profile card for "Gary R. Egan" is visible, showing his name, a profile picture, and some statistics. To the left of the profile card, there is a section titled "Relationship Indicator" with a sub-section "By Relationship". Below the profile card, there are three circular charts or gauges, each with a different color (green, blue, and red). The bottom of the image features a dark blue banner with the text "Kluwer Arbitration" on the left and the "Wolters Kluwer" logo on the right.

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