



Constitution Committee

Corrected oral evidence: Future governance of the UK

Tuesday 13 July 2021

2.15 pm

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Members present: Baroness Taylor of Bolton (The Chair); Baroness Corston; Baroness Doocey; Baroness Drake; Lord Dunlop; Lord Faulks; Baroness Fookes; Lord Hennessy of Nympsfield; Lord Hope of Craighead; Lord Howarth of Newport; Lord Howell of Guildford; Lord Sherbourne of Didsbury; Baroness Suttie.

Evidence Session No. 6

Virtual Proceeding

Questions 69 - 80

Witness

I: Rt Hon Angus Robertson MSP, Cabinet Secretary for the Constitution, External Affairs and Culture, Scottish Government.

USE OF THE TRANSCRIPT

This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witness

Angus Robertson.

Q69 **The Chair:** This is the Constitution Committee of the House of Lords. We are conducting an inquiry into the future governance of the United Kingdom, and our witness this afternoon is the right honourable Angus Robertson, who is Cabinet Secretary for the Constitution, External Affairs and Culture in the Scottish Government. Good afternoon to you, Angus Robertson.

Angus Robertson: Good afternoon. Thanks for inviting me.

The Chair: You are very welcome. Can we start our discussion with a general question? What is the current state of the union from your point of view, from your Government's point of view? Given all that is being said at the moment, this is a very topical question and very fundamental to the work that we are doing.

Angus Robertson: Of course. In a nutshell, I would probably say that the current state of the union is unfit for purpose. The United Kingdom Government are using Brexit, which Scots voted against, to undermine devolution, which Scots voted for. The context is important to understand in all of this, in that people in Scotland voted overwhelmingly to set up the Scottish Parliament after years of Westminster Governments ignoring people's wishes here in Scotland, and imposing what most people would view as unwelcome and damaging policy.

Devolution has improved people's lives in Scotland measurably and it has delivered Governments they have chosen. In certain policy areas, there have been very substantial improvements; for example, health and education. With our own Parliament, we have seen the introduction of free personal care, university tuition fees abolished, and nobody in Scotland now charged for prescriptions. All of those things, from both the democratic aspect and the policy aspect, are being put at risk because the mantra of "taking back control" that we have heard from the UK Government in recent years is not just related to the European Union; it is related to Scotland. It is, as we have seen, also a view shared by colleagues in Wales. Brexit has been used as an excuse to rewrite and undermine the devolution settlement. We will come on to that, no doubt, with your following questions.

The Chair: We undoubtedly will. You are suggesting that at the moment some of the changes that you have made—you mentioned tuition fees and care—are under threat.

Angus Robertson: The UK Government are deciding how money in Scotland should be spent, money that should be for the Scottish Parliament to make its own choices on its own priorities. Obviously, there will be a very big difference in the constitutional views between, for example, the Scottish National Party that I represent and the Labour Party, which the Welsh First Minister represents, but we take the same view on the approach that the UK Government have taken to the devolved nations. He said, for example, that the UK Government are

stealing powers and stealing money away from Wales. Those are his words.

We have to try to keep Scotland's governance safe, and protect the gains of devolution and our democratic rights. We are in favour of working with the UK Government on the basis of an equal partnership, but there is no evidence that Westminster wants an equal partnership; it wants to be in control. We fear that the powers that it has already taken are the thin edge of the wedge, and devolution is in real danger. Of course, we are talking about an Administration led by a Prime Minister who in his very own words called devolution "a disaster".

We are faced with a UK Government who are determined to centralise powers in Westminster, and there is very little that the Scottish Parliament can actually do to stop them. That is why we ran on a manifesto commitment that the people of Scotland should have the right to decide our own future in a referendum, and not leave it up to people we have not elected. Frankly, it should be for people who live in Scotland to determine our own future, and we are determined that they should have that democratic choice.

The Chair: Are there aspects of the union that you believe are working well, or were working well before Brexit?

Angus Robertson: There is a lot of evidence that can point to that for devolved government, as it has bedded down, certainly at the beginning of devolution. That would, in fairness, relate to a then Labour-Lib Dem Scottish Executive and a UK Labour Government, and then subsequently, after 2007, a Scottish National Party Government in Scotland and a Conservative Government at Westminster, including under the leadership of David Cameron. Even in very vexed and difficult areas, it was possible to have a respect agenda. We heard that term a lot.

I can give you a very concrete example of a respect agenda. In 2011, the people of Scotland elected an SNP Government with a manifesto commitment that there should be a referendum in Scotland on Scottish independence, and the UK Government—a Conservative Government—respected that vote, that decision, and worked with the Scottish Government on how such a thing should come about. That is an example of how things were working.

Things changed dramatically under the May Government, but I think the biggest single change that has come about is the impact of the Brexit vote, and how the UK Government have used that to bring power back from Brussels, but at the same time, effectively, drive a coach and horses through the devolution settlement, which agreed that powers were reserved or were devolved. The UK Government have used a number of different ways, one of which is the internal market Act, as a way to drive a coach and horses through that settlement so that the UK Government can involve themselves in devolved areas of responsibility.

It is not for me to second-guess the political motivations as to why they are doing it. It is just a plain statement of fact that that is what has happened. It is opposed across the political parties in the Scottish

Parliament. We saw legislation that failed to get legislative consent Motions passed in the Scottish Parliament. They were opposed by every single party in the Parliament, bar the Conservative Party. As I have mentioned already, and no doubt will say again, these concerns are not just concerns held in Scotland; they are held in Wales and Northern Ireland. Even some members of your committee have said things that would acknowledge that these are the realities of the constitutional arrangements at the present time, and they are totally unsatisfactory.

The Chair: We will come on to the detail shortly. Can I bring in Lord Hennessy?

Lord Hennessy of Nympsfield: Angus, which bit of the union would you most miss if you succeed in engineering it into the arms of the historians?

Angus Robertson: Which union are you talking about? There are of course a number of unions on these islands. The union that I certainly wish to see succeed, continue and strengthen is the social union that we share on these islands. I do not think it is necessary to live in an unbalanced unitary state where governance at the centre swings between using the rhetoric of being a family, of being respectful, and then acting in a completely different way and seeks to reassert authority over the different parts of what is a multinational state.

I acknowledge that it is profoundly difficult for those who wish to see a political union of the United Kingdom remain. There is a simple fact that makes reform extremely difficult, and I wish you luck in trying to square this circle: uniquely, the United Kingdom is a multinational state where 85% of the population live in one constituent part. That makes reform extraordinarily difficult if one does not want to reduce the decision-making powers of the devolved nations—to equalise the powers of English regions with the different nations of the United Kingdom. I know of no example in the world of a working multinational political union of that kind. I can think of only one in history, for what it is worth, which is Serbia and Montenegro, where one constituent part was so large and another part so small.

You know much more than I do about this, Lord Hennessy. It is your bread and butter. I cannot think of a single example of a multinational state where power is devolved to one extent or another in the way that it is in the UK, and for it to be stable and working, especially when the Government of the largest single part—the Anglo-British Government, if you will, in this respect—seek to overturn what we thought were the rules of engagement; in fact, the law in relation to devolution. No doubt, this is hugely disappointing to people in Scotland, perhaps elsewhere—perhaps you count yourself as part of this—who wish to see a reformed United Kingdom that is able to fulfil the aspirations of the biggest single number of people in the different parts of the United Kingdom. That is a wish that I completely respect, but you will forgive me when I say that I cannot believe that there is a workable model.

The issues we are discussing today show the degree to which there is bad faith, unfortunately, at the centre of decision-making power—I mean

politically—by the UK Government and by a Prime Minister who we know does not believe in devolution and is acting in a number of ways that profoundly undermine it and make it even more difficult for people who would wish to reform the United Kingdom to be believed elsewhere in the UK when what we see shows the complete opposite of that.

Lord Hennessy of Nympsfield: You caught my view perfectly, if I may say so. Thank you. What bit of the Anglo-Scottish union would you miss? Anything?

Angus Robertson: I acknowledge and I look forward to there being a better relationship between the nations of these islands when it is based on the solid foundations of respect and equality that other nations have. We can look to our close northern European neighbours in the Scandinavian nations, which, as you know, as one of the foremost historians, are nations that, at different periods of history, have governed one another. They found a way in the 20th and now 21st century of being sovereign states that work together, pool and share sovereignty, have free movement of people, share institutions, share an airline, but are sovereign states. They work in ways that fulfil the democratic mandate of their electorates. Some are in the European Union; some are not. Some are in NATO; some are not. They manage to do that in a respectful way without one of them lording it over everybody else, which, unfortunately, is the current situation in the UK.

My answer to your question is that I think we can have something better if Scotland as a sovereign state is able to sit in equality with the rest of the UK, and we have the structures in place that I believe we need. Of course, we have the beginnings of that, I think, in the British-Irish Council. I think that is the best way forward, but I do not think that there is a willingness, or that the tipping point among decision-makers at Westminster and in Whitehall has been reached, to understand how big a challenge they are facing. I do not think there is political willingness to acknowledge that.

All that we are discussing this afternoon, and there are reams of evidence around it, shows that actually the opposite is the case. The UK Government are choosing to pass legislation and to work with devolved Administrations in ways that drive a coach and horses through the constitutional settlement that was agreed by voters. I stress again that it is not just the SNP in government in Scotland, but the Labour Party in government in Wales and different political parties in Northern Ireland. The Government are doing it in a way that is my way or the highway. The internal market Act is a way of subverting the devolution settlement.

The Chair: This is an appropriate time to move on to Lord Dunlop, given his experience in this area.

Q70 **Lord Dunlop:** Good afternoon. It is evident in your earlier answers that intergovernmental relations have been characterised by a lack of trust and confidence on all sides. What role do you see the Scottish Government having in improving relations? How do you think creating a better climate of co-operation can be achieved?

Angus Robertson: I should make the point that I am a relatively new Minister and a relatively new Member of the Scottish Parliament. I know many of you in this session, having been at Westminster for 16 years. I am just at the beginnings of the process of understanding, as a decision-maker in government in Scotland, how these things work.

On some levels, it is perfectly possible to work together, and I have been a part of that. Everything is online at the moment, and I have been a participant in online meetings with UK Government colleagues. Last week or the week before, I was part of an XO meeting discussing Brexit arrangements for things. Notwithstanding the fact that there is a fundamental difference, and that we want Scotland to be in the European Union as a sovereign state and my colleagues on the call had a totally different view of how they see Scotland's place in the union and Scotland's place in relation to Europe, it was perfectly possible, on the issues that we were discussing, to have a respectful relationship and to understand where the other was coming from and so on.

That does not take away from the realities, in general terms, that I was describing as we started this evidence session. There is a legion of background that I could provide about co-operation on Covid and co-operation on European Union-related matters where one has tried one's best. The First Minister takes part in regular conversations with UK Government interlocutors. Portfolio Ministers, on health especially, but others too, do likewise. At the same time, the experience of how this works sometimes is literally so amateur you can hardly believe it—being bounced into meetings, described as summits, when there has been no consultation about dates; documentation for key top-level meetings shared only the evening before they take place; being invited to attend meetings but then told that you are not allowed to speak. I could go on.

Again, I stress that that is not just the experience of the Scottish Government; it is the experience of the Welsh Government and it is the experience of colleagues in Northern Ireland as well. There is an obvious challenge in understanding this. What are the institutional problems that exist and what are the political difficulties that lie behind it all? We can tease out some more of that, no doubt.

Lord Dunlop: At the end of March, the UK Government published a proposed package of reforms to the machinery for managing intergovernmental relations. How did you assess that package, and how close are we to reaching an agreement? Could you give your view of the outstanding areas of disagreement that still need to be resolved?

Angus Robertson: Let me start, perhaps in a surprising sense for you, by saying where there are improvements. Let us start with that. Let us be glass half full. There are some aspects of the revised proposals that are an improvement. I can go through four in particular. The first is a fair dispute resolution process. That would include, for the first time, the principle that no Government can be both a party to and arbiter of a dispute, and that there is recourse to independent advice. Secondly, there would be an independent secretariat drawn from the four Governments that would oversee machinery and dispute resolution

processes. Thirdly, an emerging proposal from the Treasury would make four nations discussions more equitable, although we would remain concerned that the Treasury is not prepared to relinquish control of the oversight of financial disputes. Of course, that is where most disputes occur in the first place.

The fourth area where there is an improvement on current practices would be more transparent arrangements for formal intergovernmental meetings, with shared responsibility for agenda setting and the chairing of meetings. Those are some examples of things that I hope everybody would think are progress.

Having said that, there are also things to resolve on the treatment of other issues. We have seen recent—I stress—unilateral revisions by the Cabinet Office to matters such as the treatment of international issues. There is a view in Whitehall that anything that is international has absolutely zero relevance for devolved Administrations, whereas we know that such issues have profound impacts on devolved areas of responsibility.

In the basket of unresolved issues is clarity about the role of the Prime Minister. Until now the Prime Minister has not seemed to think that he as the Prime Minister of the United Kingdom should largely take part in these things. He prefers somebody else to deal with that. You might have a better insight than I do as to why he would not want to meet the First Ministers of Scotland or Northern Ireland or Wales as equals in trying to solve some of these issues, but he does not, largely. That would also be something that quite easily could be resolved.

I have given a number of examples of things where I think there is progress, and that is good. There are things where, with a bit of good will, we could see improvement. On major issues, Brexit being foremost among them, we see the UK Government using the issue to—I have used the phrase already—drive a coach and horses through intergovernmental relationships as they are supposed to work.

Lord Dunlop: Coming back on that, you have explained very well where the lack of trust and confidence comes from on the part of the Scottish Government and why you think that. Can you see it from the UK Government's point of view? Often, to make progress on these things, understanding where the other side is coming from is important. You talked earlier about devolution and the support for devolution. What we are concerned with is how you can make devolution work better. Is that something that the Scottish Government have an interest in? If so, how can you take that into the discussions about how we improve the machinery of intergovernmental relations? Can we make it a genuine forum for shared decision-making where powers overlap or intersect?

Angus Robertson: I do not see why not. I have given my personal experience in recent weeks when, as I said, I have been able to take part in meetings that I thought were perfectly adequate and satisfactory. I hope UK Government colleagues would say likewise. I can give you another example of an area where there has been good will and a wish to try to make an improvement in intergovernmental relationships, and

that is what is known as the framework process. It may seem particularly dry and administrative and uninteresting, but it is profoundly important in how things are supposed to be working. It is important to remember the timeline in all of this, which is when the framework process started, and to acknowledge that since the start of that process the UK Government have taken a different course of action, which is the internal market Act.

Let us go back to the framework process to understand that there has been good will and there has been a wish to see things work well. It was agreed in principle in October 2017, and the aim, for those who are not up to speed on it—I am sure everybody on the committee is—is to try to manage policy divergence on the basis of agreement and respect for devolution, and that we understand that there is a need to manage the practical, regulatory and market implications as a result of the UK leaving the EU. However, subsequent to the beginning of that process is that the internal market Act was passed by the UK Government by fiat, not with agreement, and has been forced on the devolved Administrations and Parliaments. Because of how it can work, it threatens continued collaboration and our ability to work together on frameworks on the basis of parity and respect for devolution.

There has been lack of progress on the frameworks because of the suspicion, now that the internal market Act has been passed and has been foisted on Scotland, Wales and Northern Ireland, that that takes primacy in UK Government thinking, and that the frameworks process is probably regretted to an extent. We have been involved in talks in good faith. I was having discussions with a Cabinet Office Minister opposite number last week about them. We are committed to trying to deliver the frameworks as set out, based on the assurances that were given, including in the House of Lords by one of your noble colleagues from the Front Bench, in relation to what they were supposed to do and what they were not supposed to do.

It will be a very interesting case study. No doubt, you will want to come back and see the progress that has been made, and whether the UK Government are actually prepared to live up to the assurances that they gave on these intergovernmental working arrangements. I can say to you with absolute sincerity that we are totally seized of trying to make these administrative arrangements work so that they are sustainable in the long term, but the proof of the pudding will be in the eating. Unfortunately, much of the evidence that we can see about intergovernmental relationships would probably make a lot of people sceptical as to whether we can finalise those arrangements to everybody's satisfaction.

The Chair: Let us move on to funding arrangements, which follow very clearly from what you have been saying.

Q71 Lord Howell of Guildford: Good afternoon, Mr Robertson. You had some incredibly harsh things to say in the last few minutes about the internal market Act—driving a coach and horses through the whole devolution process and so on. What thoughts do you have about future

funding? If you are thinking about separate sovereign states, as the Scandinavian states are, they do not usually help each other's budgets on a regular basis. What sort of funding, if any, are you proposing, or is it no funding? Is there some completely separate form of transfer of funds that you have in mind?

Angus Robertson: First off, in dealing with the remit of the committee's inquiry, which is reform of the UK's arrangements, I am absolutely delighted to talk about our proposals in relation to Scottish sovereignty and how that would work. Remaining within the scope of the committee's inquiry, what we are dealing with when we are looking at the likes of the UK replacement for EU funding—one of the big things that has been at issue in relation to this subject—is the widespread anticipation that, with Brexit going ahead, something we were not in favour of, the decisions previously made about finances at European Union level would be returned to the level of government that was in keeping with the devolution settlement, so areas in devolved policy would be dealt with by the Scottish Parliament and the Scottish Government. That is probably the biggest single current funding—financing—issue of controversy that we are dealing with in this area at the present time.

The UK Government have decided to take back control of that as well and not pass on control over the funding for areas that are devolved. In effect, the UK Government will make decisions about a whole series of things where, previously, the Scottish Government and colleagues in Wales and Northern Ireland would have had an established relationship with the European Commission over a seven-year spending horizon to make sure that projects that were being supported would be working in alignment with the decisions made in Edinburgh, Cardiff and Belfast. That will not happen now. Instead, the UK Government will take control of the resources, and will make their own decisions on their own priorities on matters for which they were not elected by the people of Scotland, Wales and Northern Ireland.

That will have a profound impact on the way government works together because it is not the way it is supposed to work and there is no evidence that the UK Government want to do any of this in a collaborative way at all. In the scope of this particular inquiry, the UK's funding model, and the wider levelling-up agenda that we hear talk about, is not being proceeded with in the spirit or the letter of the devolution settlement, so from our perspective it is wholly unsatisfactory.

Lord Howell of Guildford: I must confess that some of us on this committee were not too enthusiastic about aspects of the internal market Act, for various reasons, so we understand some of your feelings on that.

What about the shared prosperity fund? I do not think you had much enthusiasm for that either. Is that not a way we might begin to go forward from what you would describe as a totally unsatisfactory situation? Heaven knows, we have all been dealing with the European Union for many years. It had views about funding. London is bound to have some views about funding if some of the funding is coming from London. Is there not a constructive path out of this that will avoid the

very strong feelings that you have manifested?

Angus Robertson: The best way possible would be to revoke the internal market Act. That would be the best possible solution. The Scottish Government have managed European structural funds for many years and there was a reasonable expectation that one would be able to do the same with the replacement—the UK shared prosperity fund that you mentioned. We remain disappointed by the continued refusal of the UK Government to engage the Scottish Government in any meaningful way in the development of the UK shared prosperity fund and the other funds announced in the March UK Budget—the community renewal fund, the levelling-up fund and the community ownership fund.

At the level of engagement, the comparison stands in sharp contrast to the close working relationship the Scottish Government had with the Commission on developing structural fund programmes. They were negotiated predicated on Scottish national and regional priorities. They were subject to discussion between the Scottish Government and the European Commission on equal terms, and they were based on a seven-year commitment from both sides.

There is absolutely no evidence that there is any comparable commitment from the UK Government in respect of their replacement. The UK Government have failed to provide clarity regarding the operation of the UK SPF, or how involved the Scottish Government and other devolved Administrations will be in its development and its governance. From our perspective, we think that a share of the fund should be devolved to the Scottish Government to ensure that our distinct needs are met, and that communities and stakeholders who need support from funding are not impacted by policy development delays in Whitehall departments that do not understand their needs.

Devolution is there so that governance is as local as it can be and so that, at the appropriate level, decisions can be made that impact in the most positive way through informed public administration and governance. Now we are going to see the UK Government making decisions in policy areas that they do not have experience and understanding of in Scotland. How is one supposed to make something like that successful? I know I am making a pointed point, but how on earth should a UK government department know how best to deliver on areas that are devolved in any way that is satisfactory in operational, administrative, financial and democratic terms? I do not know how one can justify it.

The suspicion, of course, is that this is about the politics of being able to put union flags on road-building projects and other public procurement projects in Scotland to show that the UK Government are delivering in Scotland, and not the Scottish Government, not the “separatist SNP decision-makers at Holyrood”. The suspicion is, and I have not seen much evidence to the contrary, that it is an entirely politically driven agenda to try to undermine the growing support that we have seen in recent years for Scottish independence, and head off another referendum at the pass. That is not good governance.

The Chair: Lord Howarth, it might be appropriate to bring you in.

Lord Howarth of Newport: Hello, Mr Robertson. It is good to see you. On another aspect of funding arrangements, given the concern for mutual respect in fair dealing that you have expressed vigorously this afternoon, do you favour reform of the Barnett formula to enable a fair distribution of resources across the nations?

Angus Robertson: I am, of course, in favour of Scotland being in control of all its finances. That is something that the people of Scotland will be able to have their say over. Given that we live in a democracy, I expect us to have a democratic vote, as that is what the people have voted for, and that we make a decision that Scotland's Government and Parliament should be in charge of all its finances. That is my preferred outcome.

If you were to ask me, "Do we have a preferred way of reorganising internal UK Government finance?", the answer is yes. I remember debates that I led from the Front Bench. If you remember, after the 2014 referendum, there were changes to the devolution settlement—it is all there in *Hansard*—to maximise decision-making. We want maximum decision-making over finance. In the short term, within the ambit of the devolved settlement, one of the great omissions in Scotland's public finance is the inability to borrow. That is one particular area where there needs to be reform because, as you are aware, the Scottish Government have a fixed budget and manage their budget in a very constrained way. That is certainly an area where we want to see change happen. The simple answer to your question is I would like to see Scotland take care of its own—[*Inaudible.*]

Lord Howarth of Newport: Can I press you a bit more? In answer to my question, you have really been talking about your desire to see Scotland have full autonomous control of the finances that it has at its disposal. My question was prior to that, if you like. It was about the allocation of the overall resources that are available for the UK as a whole, and how the resources are divvied up between the different nations of the UK. I would be grateful if you would answer that, particularly in respect to the Barnett formula, which many, not least in Wales where I used to be a Member of Parliament, consider gives an unfair advantage to the Scots. Are you prepared, in the interest of fairness, to see a levelling up, or even a levelling down?

Angus Robertson: I will answer that on two levels. First, I am dealing with the world as we face it. The world that we are facing in relation to funding arrangements is very specific to the consequences of Brexit and how the different funding streams that the UK Government are proposing relate to the devolved Administrations, and, incidentally, Wales as well, which you represented previously in the House of Commons. Dealing with the world as we find it, that is the area where we should be shining a light and trying to understand how this is supposed to work, and how it is in any way respectful of the devolution settlement and the legislation that brought it about. That is the world as we find it. Let us deal with the big issues at the heart of the challenge that we face now.

In relation to your wider question on whether there is willingness to change the finance across the nations and regions of the UK in a reformed United Kingdom, I have no doubt that, if one wants to reform and be very ambitious about reforming the structures of the United Kingdom, I would like to see maximum control—full fiscal autonomy and full fiscal responsibility—within the United Kingdom. How that works in relation to the regions of England and how the UK Government deal with those, and how it works with the different nations of the United Kingdom would, in those circumstances, be the subject of negotiations, I would imagine. I think that is 10 steps beyond the remit of this particular session, and no doubt the Convenor would wish me to row back from discussing things that are not part of the ambit of your inquiry.

I do not think there is political willingness at Westminster even remotely to get close to the territory that you are suggesting should be looked at. The opposite is happening. Power is being clawed back, as opposed to power being divested from the centre. Although I would wish for far greater decision-making over finances within a UK settlement, I do not see that happening in a meaningful way. We can opine about how it might work better or not, but let us deal with the world as we find it. There is no political willingness to get anywhere near what you are suggesting.

Please do not misunderstand. I understand that you are introducing what is viewed as a hot potato in how funding works in the UK. I understand that. Whenever money comes into the equation there is, of course, a controversy. I would equally say to you, in relation to the point I was making about the extent to which one can reform a multinational state when 85% of the population lives in one part, that this is one part of the conundrum that I think cannot be resolved to the full satisfaction of the different nations and regions of the UK, let alone there being political willingness even to attempt to do it.

The Chair: Lord Dunlop, would you like to come in?

Lord Dunlop: On the financial side of things, perhaps I could ask about the fiscal framework and how well you think that has worked. At the time it was agreed, the First Minister said she thought it was a very fair deal. It is coming up for review. I think you mentioned borrowing powers earlier. Of course, the fiscal framework agreement increased the borrowing powers, and I think not all have been used up. We have not hit the ceiling of the limits that were agreed. How do you think it has worked in practice? I would like to think the fact that we have not heard very much about it suggests that it has actually worked quite well.

Angus Robertson: I must confess that it is not an area of my primary responsibility. What I would say is that, as a consequence of Brexit and the pandemic, Scotland's fiscal framework has been subjected to unprecedented stress-testing. Obviously, what is true for Scotland in a UK context is true for the rest of the UK. All countries are going through unprecedented stresses and strains. I do not think the scale of the upheaval could have been anticipated when the framework was

introduced. That was in early 2016, I think. It is clear that that aspect of the current arrangements has been found wanting.

The original agreement outlined plans for a review starting early in 2022, and that a preceding joint independent report should take place this year. No doubt, detailed arrangements for scope and delivery need to be agreed between the Scottish and UK Governments. The Scottish Government have said that they want the process to be broad, and that the review and the preceding independent report should look at the framework in the round, but that it should also look at the balance of fiscal levers and whether further powers are required to grow Scotland's tax base and fund its ongoing economic recovery. That goes back to the point I was making about borrowing powers in particular.

We could have a process that would draw very widely on the experience of the Scottish Parliament, academia and civic society—people like you, Lord Dunlop. You have had plenty to think about and report on in these sorts of arrangements. If you are asking me about the arrangements as they currently stand, as opposed to looking at iterative processes of improvement, unlike other countries across the world, we cannot respond quickly to emerging needs by borrowing, which is what put Scotland in a different category from the rest of the world in dealing with the stresses and strains I was talking about. That leaves us overly dependent on policy decisions made by the UK Government. That means that we are reliant on consequential, with little clarity and certainty over their scale and timing, which makes response and recovery planning extremely difficult. That was true in the early months of the pandemic, and it remains an issue as we move towards recovery. Even leaving aside the significant impacts of Covid, the reserve and resource borrowing powers of the fiscal framework are insufficient to deal with the volatility inherent in its operation. Clearly, these issues need to be considered as part of the fiscal framework review.

Should I feel optimistic that interlocutors in Westminster will look favourably on this? I do not know, Lord Dunlop. I have been round the houses a lot on these issues, as you have. I do not see there being a huge appetite for grasping the thistle on issues such as that. Maybe I should not be sceptical. Maybe I should look at the review process and be very optimistic about the ambition to ensure that the Scottish Parliament and the Scottish Government have the necessary powers to deal with the challenges, including those financial challenges, but I do not see any of that. I make the point again that everything we are seeing is actually the reverse. There is very little from our perspective—I am sure you will hear this from colleagues in Wales and Northern Ireland as well—for us to believe that we are dealing with a good-faith partner who wants to improve governance across the UK on a basis of respect and equality with Scotland, Wales and Northern Ireland.

The Chair: Lord Hope, let us move on to you now.

Q72 Lord Hope of Craighead: Good afternoon. A change of topic, if I may. This is about the legislative consent process, the Sewel convention. I would like to ask a few questions about that. Do you think that the

process as it exists at present needs to be strengthened or reformed? I will come back to other questions afterwards, once you have dealt with that, please.

Angus Robertson: The Scottish Government are committed to acting in the best interests of Scotland, and that includes working constructively with the UK Government and with Westminster in order to benefit people here. I am starting on basic principles, Lord Hope. Forgive me.

We recognise that there may well be occasions when it is helpful, sensible and practical to use Westminster legislation to change law on devolved matters or to alter the competences of the Scottish Government and those of Scottish Ministers. The Scottish Government have supported, and will support, necessary consent for UK Government Bills where we find common ground, but only after close consideration of the policy intent. When the Scottish Government consider that a legislative consent Motion—the acronym that is always used is LCM—is in the national interest, they will seek the consent of the Scottish Parliament.

Beyond the basic principles, there has to be intergovernmental engagement as early as possible on all UK legislation affecting devolved matters. This should be consistent with the UK Government's own guidance to their officials. Another acronym, DGN 10, as it is known, is supposed to guide that. Scottish Ministers are responsible for devolved matters and have a direct governance role in that regard. It is not acceptable for them, for us, to be treated as an external stakeholder, as a consultee in dealing with these matters. We have obligations under Scottish Parliament Standing Orders. We have to lodge legislative consent memorandums on Bills requiring consent, normally within two weeks of the introduction of such a Bill. What I am trying to say is, in principle, absolutely; where it makes sense and is expeditious, and the process involves Governments answerable to Parliaments, we will work together. Forgive me, I do not know what your follow-up is, Lord Hope, but I can go on to illustrate how that has not been working in recent times, because respect for the Sewel convention from Session 5 of the Scottish Parliament is not very encouraging.

Lord Hope of Craighead: I would like to explore a bit more how it actually works. We do not know, sitting where we are, exactly what happens when the process is put into place. If one is thinking about how the thing might be strengthened or improved, it may be that, as you were hinting earlier, you get early notice, as early notice as possible, of the proposal, which certainly did not happen in the case of the internal market Bill. That is perhaps the worst example of all, but there are other cases where it works. What is the process, and does it need to be improved?

Angus Robertson: Thank you. For the process to work, for it to have credibility, first off, it has to be a convention that is respected. We can have all the processes in the world, but not if there is no political willingness to respect the fact that, if a legislative consent Motion is not passed, measures will not go forward. What has happened in relation to

this was largely for the first time. We can go through the history of devolution and see how it worked exceptionally well. Legislative consent Motions were sought, they were passed and, internally, the processes of co-operation between Governments in the UK ironed out any legislative issues of concern, and the UK Government did not proceed against the consent of devolved legislatures in the UK.

Lord Hope of Craighead: Can I stop you there? The idea of respect is pretty elusive really, is it not? I am looking for a little more machinery. Is there something you can suggest to make it work? Sitting where we are, we ask for consent to be obtained. I know the reaction as well as you do to that sort of request. Can we improve the machinery somehow?

Angus Robertson: Yes. First off, when legislative consent is not granted, do not foist legislation on to other parts of the United Kingdom against their democratically elected Parliaments of government. It is a basic constitutional principle. If devolution is to work, important conventions like the Sewel convention need to be respected.

To your nuts and bolts issue, let us start with a good example of how things can work—non-Brexit related. The Covert Human Intelligence Sources (Criminal Conduct) Bill is a really good example, and no doubt there will be some PhD student watching this evidence session who will be rushing off to try to have a look at it. The two Governments sought to reach an agreeable position on an amendment, but it was not successful. As a result, the UK Government took the necessary steps to remove the relevant provisions from the Bill following the decision of the Scottish Parliament not to give its consent.

That is a nuts and bolts example. The UK Government decide they want to legislate in this direction. They begin to have conversations with colleagues in Edinburgh, who say, "This doesn't work for us administratively, legally, politically or for whatever reason". The UK Government say, "Understood. This impacts on areas that are devolved. We will take out the thing that we were proposing". That is a really good example of a UK Government listening to the Scottish Parliament and the Scottish Government saying, "We're not giving consent in its current form. Please go away and think again", and they did.

Lord Hope of Craighead: That is an example of the existing machinery working well, but it does not always work well. I wonder whether there are improvements. It has been suggested by the Institute for Government, for example, that there should be an agreed minimum period in which the UK Government should share legislation with you. Alternatively, if there is disagreement and the UK Government want to insist on their powers at Westminster, they should issue a statement explaining precisely why they are doing so. It is a method of making them think more carefully and more fully before they take that ultimate decision. Do you go along with those sorts of suggestions, and do you have any others?

Angus Robertson: That suggestion has a lot of merit. Anything that encourages Administrations and Governments, and parliamentarians for that matter, to engage seriously with one another is a good thing. On the

UK Government having to make a statement as to why they are overriding the democratically elected Parliament of a part of the United Kingdom, you would have thought that, *de minimis*, there would be explanation of why they are acting in the way that they have been. I would prefer that they did not do it in the first place. I would prefer that they did not pass an internal market Act that did not have consent from Scotland or from Northern Ireland or Wales.

You could say the same for the European Union (Withdrawal) Act, the European Union (Future Relationship) Act or the European Union (Withdrawal Agreement) Act. Those are all examples of where, effectively, the UK Government said, without a statement, Lord Hope, or without a statement in the way that you are suggesting: "We the UK Government don't care what you think about this thing, which is in your competence. We're going to go ahead and do it anyway".

Respect might be an intangible, but we all know when something is not respectful of a democratic election result, and of people who have actually been elected by the public. I do not want to get too party political, but we are talking in the context of the governing party not having won a single national election in Scotland since 1995 telling us that we should just do what they say on devolved matters. That is the top line.

On the nuts and bolts, going back to your earlier point, to give you a sense of the scale, are we talking about something that is so big that it is exceptionally difficult to manage one's way through it? The answer is, "Absolutely not". At the present time, there are currently eight relevant Bills before the Scottish Parliament, only one of which has a legislative consent memorandum—the Animal Welfare (Kept Animals) Bill. The Scottish Government have included a draft Motion of consent in the memorandum for the relevant provisions, recommending consent to the provisions that are within the legislative competence of the Scottish Parliament and so on. This would ensure that changes can be brought into force at the same time throughout the UK that are of mutual benefit to all Administrations. It is a great example of how it was supposed to work.

Actually, the machinery is there to do those things. Of course, we can think great thoughts about reforms and say that this should be introduced and that should be introduced, but the most basic thing of all is to observe the convention. It is there for a purpose. It can and does work, but it is a political choice as to whether one will respect it or not. Increasingly, but only within recent years, because it worked well before, more political decisions are being made to disapply, to ignore, the Sewel convention, and that is hugely problematic. It is the central point that I have been making: taking back control relates not just to Brexit, but to governance in the UK.

Lord Hope of Craighead: Thank you very much indeed. We had better leave it there, because there are other questions to be asked.

The Chair: There are indeed. Baroness Fookes, I think the points you want to raise follow on from there. Do you want to come in now?

Q73 **Baroness Fookes:** Yes, indeed. I think you have called for the devolution of further powers to the Scottish Parliament. Can you give any indication of what they might be, and is there any end point in the present set-up?

Angus Robertson: That is a very good question. Thank you for that. I will not go on at length about the fact that I think there is a better solution to Scotland's governance conundrum, which is being an independent country within the European Union.

As long as Scotland is part of the UK, the devolution settlement should be respected, and as many powers as possible to advance the interests of good governance and democracy in Scotland should be pursued. That is the point I was making to Lord Hope a moment ago. To give you some concrete examples, the SNP was given a mandate by the people, in the most recent election, with commitments to use the planned review of the fiscal framework, which I talked about earlier, to seek further devolution of financial powers. That would include the removal of caps on capital borrowing to be replaced by a prudential borrowing scheme.

Secondly, there was a commitment to remove the restriction on borrowing to fund day-to-day costs. There would be an increase in the borrowing cap for forecast errors to £600 million, and an increase in the Scotland reserve drawdown power to £700 million. That is a very concrete financial element. Then there was secure devolution of powers, including VAT and full powers over income tax and national insurance contributions, tribunals, employment law and migration policy. The SNP went to the people in an election, and won convincingly with those suggestions on reform within the UK. There was an electoral mandate for that to happen.

There is an interesting aspect to policy-making in Scotland now. Forgive me, I am not aware of whether this is already happening in the rest of the UK. If it is not, I suggest it would be a good idea. It is to include citizens' assemblies to try to find out what the public would like to see in relation to this, not just political parties but the general public view. It is quite helpful to understand that, when that took place on the question of further devolution, the assembly recommendations on further devolution included changes to tax powers, a reduction of the working week, the ability for Scotland to develop trade agreements, and for Scotland to gain powers over immigration. That gives you an idea of where the public mood is on general potential changes to the devolution settlement.

I have given you some examples of what was in the SNP manifesto, some of which cover one another. The issue is not going away. I suppose what I am saying is that there are other proposals for further devolution of powers, and they are not just issues for the political village; they are things that the public sees as advantageous to better government and governance.

I go back to what I said before; there would obviously need to be interest in, and support for, improving the devolution settlement to make that happen, and I do not see evidence of that. We will continue to

press, within the current context, without being hugely optimistic that suddenly decision-makers in Whitehall will go, "Oh goodness, the Scottish Government who were actually elected by the people of Scotland have been elected to try to make these changes. Let's be as helpful and co-operative as we can be". Sadly, I think that is unlikely as a scenario.

Baroness Fookes: Have there been any formal or informal discussions at Civil Service level or government level with the UK Government?

Angus Robertson: One of the important aspects of the recent Scottish Parliament election campaign was that Covid and combatting the pandemic is such a front and centre priority for the Scottish Government, as I know it is for Governments elsewhere, that we said that we would not be pursuing the constitutional changes that we are in favour of until we are emerging from the current situation.

I am the Constitution Minister, so it is all in my area of responsibility. I can say to you that we are not involved in discussions of that sort at either a thinking level or an administrative level. Obviously, we were elected with a mandate that there should be a referendum in Scotland on our constitutional future. We will be pursuing that to make sure that what the people voted for is what the people get, but we are not at that stage yet because of Covid. I am sure the time will come when there will be discussions at Civil Service level and, no doubt, at political level.

I should not be so cynical, some people might say, about the outcome of that process. After all, we saw UK Governments in the past respond after 1997 to the demand for devolution in the first place. In 2011, a UK Government of a different political persuasion respected the fact that the Scottish Parliament had a majority for a referendum then. What the people wanted in 1997 on devolution and what they wanted in 2011 on having a vote about their future is what they got. Maybe, hopefully, when those discussions take place, it will be on the basis of a recognition that people have voted for something to happen, and it happens.

Baroness Fookes: Understood.

The Chair: You want a referendum on independence, but pending that, while you are still in the union, what powers do you think it reasonable for the UK Government to continue to have?

Angus Robertson: If the UK is to be formed sustainably, de minimis, it needs to take on a confederal or federal form of government. I have looked at Governments and governance in other parts of the world, countries that are seen as having good government. One might look at Canada, where the different provinces have powers over immigration. You might look at international affairs where in Germany the Bundesländer, through their participation in the Bundesrat in the upper chamber, co-determine Germany's foreign policy. You might look at trade agreements. The Belgian regions of Flanders and Wallonia have powers over trade agreements.

If one is serious about the UK being a multinational state based on mutual trust and the equality of the nations in it, there is literally no area

of policy-making where one could not have a form of shared sovereignty. I know that this is something that the Welsh First Minister has been talking about recently. There are models of government elsewhere in the world that show workable governance. There is a unique challenge in the UK in the asymmetry that exists in population terms. The difference between Germany's 15 Bundesländer is in no way comparable, and the difference in size between Canada's provinces is not as imbalanced in population terms. You might say the same for the Australian states, which—I go back to powers—have powers in relation to immigration, I believe. There are workable models elsewhere.

Is there somebody out there who believes that this can be imported to reform the United Kingdom? Of course, the former UK Prime Minister, Gordon Brown, said that he expected, if people voted no in 2014, that we would find ourselves—I think I am quoting him correctly—as near as possible to a federal system of government within two years. We have heard a lot of promises that things would come about and come along, and they have not.

Is it a good thing that people are thinking about ways in which government and governance in the UK can be reformed? Absolutely. I would welcome that, and we will play our part in making suggestions. I would be making the case, as would the Scottish Government, that we wished to see maximum powers within the UK. We think there is a better solution, which is being able to exercise all those powers, and not subcontract them to a Parliament that is largely not elected by people from this country and, without wishing to be disrespectful to all the good work that I know is done by many Members of the House of Lords, with a second Chamber that is not elected by the people.

Are people reform-minded? Yes, I am sure they are, including your committee, Convenor. I am sure you all have views about how you wish to reform the UK. We would play a part in making suggestions, and I have outlined areas. These are things that we have just been re-elected to government to pursue in a UK context, and we will do that, but at the same time we will seek to fulfil the mandate of the people who voted for there to be a majority in the Scottish Parliament for us to be able to decide on our future to become a sovereign state, again.

The Chair: But there are no specific powers that at this stage you would recognise should be UK Government powers.

Angus Robertson: No, if the UK were to become a true federation, Scotland and Scotland's representatives would play a full part in being able to determine all policy that it currently does not have; I gave you the example of foreign affairs and how things work in Germany. Why would the Scottish Government not be involved in immigration policy? That is what happens in other states such as Canada. On trade relationships, there are workable models in other parts of the world. I do not see why that could not be the case in the UK, apart from the fact that there is no willingness to do it. We can opine as much as we like about all this, but I do not see the political willingness to bring any of it about.

The Chair: Lord Sherbourne, that is a signal for you to come in.

Q74 **Lord Sherbourne of Didsbury:** Thank you. Good afternoon. You spoke earlier this afternoon in a very powerful way about your frustration that decisions are taken so often in Westminster about areas of Scotland that decision-makers know very little about. In the context of the British Government's decision, now being implemented, to abolish English votes for English laws, when there are votes in the UK Parliament on matters of education and health, which are at present devolved to Scotland and you decide those matters in Scotland, will SNP members be voting on such matters in the Westminster Parliament?

Angus Robertson: I know a bit about this, having been an SNP MP for 16 years and the SNP leader in Westminster for 10 of those. Before EVEL, English votes for English laws, issues very often came along where we would look at legislation and try to work out whether it was legislation that was, effectively, devolved to England. I can say to you that we really tried to work as hard as possible to ensure that where issues were only relevant to England we had a self-denying ordinance. Even TheyWorkForYou, the online website for MP participation in votes, notes that SNP MP participation is lower in general than that of other party representatives at Westminster, because we absent ourselves from a great many decisions.

There has always been a particular challenge in dealing with that in the impact that UK legislation for England has in relation to UK spending. For example, if a UK Government decided that they wanted to reform an element of English education, we would say, "Good luck, English colleagues. Go on. Make the right decisions for the kids of England". Then you would think, "Hold on a second. Does this policy proposal have an impact for UK tax spending?"—contributed to by Scottish taxpayers as well—and on the basis of that work out whether we should take part in a vote on things.

That sometimes proved to be quite difficult, and for similar although slightly different reasons has proven fatal for the proposals that were brought in for English votes for English laws. That was the UK Government's reaction to the 2014 referendum in Scotland. You will remember that David Cameron came on to the steps of Downing Street and said, "The Scots have had their say. We will hear less from them"—I paraphrase—"Let's try to deal with the perceived iniquity of how Westminster works towards England on things".

Sorry, I am trying to answer your question. Yes, we have tried very hard, because I think the people of England would be great at governing England, and I wish England great success in the form of governance that we find as we emerge from the unsatisfactory situation that we find ourselves in. The UK Government's attempts to bring in that enforced way of telling Scottish MPs, "You can't take part in debates on this legislation"—because on the face of the Bill it relates only to England, but it actually relates to Scotland when it comes to the finances of the UK as a whole—is not a sustainable way of doing things.

I wish you success in trying to work out how one reforms what in many respects is an Anglo-British Parliament. It views itself as making decisions on both levels, both for England and for the United Kingdom, at the same time, but has not found a way of being able to do that. That goes back to my asymmetry point. This is the point when Lord Hennessy can ride to the rescue and again explain the way in which Parliament and government have developed in the UK.

What is that great phrase? I would not start from here to try to sort things out. Do I acknowledge that there is an issue in relation to English legislation going through a British Parliament? Absolutely. Will we ever see a UK Prime Minister from Scotland making decisions for the rest of the UK that do not apply to their own constituents? I think not.

Lord Sherbourne of Didsbury: Going back to the point you made about what happened before EVEL, I understand the heavily nuanced way in which you explain the self-denying ordinance. I understand the argument you are putting. Within that context, are you confirming that the self-denying ordinance will continue after EVEL has been abolished?

Angus Robertson: I have no reason to think that we will be departing from our long-established custom and practice at Westminster. I put a marker down on the fact that, so often, things are presented as if they only impact on England, but because of the way finance arrangements in particular—that is not the only thing—are made you are not simply voting on something that relates to England. I am sure that my colleague, Ian Blackford, would be delighted to come and give evidence to the committee about how things will work after we see the back of EVEL. Seeing the back of it will be a good thing.

Lord Sherbourne of Didsbury: I understand that. To be clear, where you think it is appropriate there will be a self-denying ordinance.

Angus Robertson: That is the way it has always been up until now.

Lord Sherbourne of Didsbury: Is that how it will be in the future?

Angus Robertson: I see no reason why we would depart from that. I am really focused on trying to fundamentally improve Scotland's governance in the medium to long term as we emerge from Covid. I do not want to steal anybody's thunder, but I am hopeful that we will be in a position where Scotland is not having to send Members of Parliament to Westminster, full stop; or indeed Members of the House of Lords. I look forward to the representatives of England and anywhere else who wished to continue to be governed from Westminster making decisions there. My answer to your question is that I would far rather that we did not have to have MPs at Westminster at all. Hopefully, that will change sooner rather than later.

Q75 **Lord Howarth of Newport:** I would like to ask you to develop your thoughts on the idea of shared sovereignty, which you invoked just now. In the past, you have criticised the UK doctrine of parliamentary sovereignty as outmoded. The Government of Scotland are committed to a written commission for an independent Scotland based on popular

sovereignty. Meanwhile, Scotland remains part of the United Kingdom. Within the existing constitutional context, what is the alternative to parliamentary sovereignty, and can you describe how it would work in practice?

Angus Robertson: Lord Hope is much better placed than I am to explain to the committee the nuanced difference between untrammelled parliamentary sovereignty as pertains in English law and the principle of popular sovereignty that, as we know, has pertained in Scotland. There is a difference of view on all this, whether one is a purist or takes a traditional view of legislative supremacy, which is, frankly, anathema to the spirit and practice of devolution as it should be working.

You ask me how things should work. Is it too much to ask that the things we have in place at the present time work? That would be a good start. We had two decades without any deliberate override of the Sewel convention, and we had zero challenges—none—of legislative competence by the UK Government to Scottish legislation, but we have seen three of each in recent years, including two Scottish Bills currently referred by the UK Government to the UK Supreme Court.

Why is the machinery that currently exists, the legislative framework, the agreed principles of governance across the UK, not being respected? It is not just about not working; it is not being respected. This is not a nuanced point. It is so obvious. It is the elephant in the middle of the room, and we are all standing and looking at it. It is as it is.

The first thing is that we need UK Governments to observe, in the spirit and the letter of legislation and good custom and practice, the workings of the United Kingdom as it is supposed to work in the devolution age. Beyond that, could one strengthen things like the Sewel convention to make it an absolutely watertight mechanism? There is no doubt that you probably could. That would be another thing. We can always tinker with the mechanism of government and governance, but, as we all know, it depends on people and how they use it. Unfortunately, certainly since the beginning of the Brexit process, we have seen a departure from what was an agreed way of doing things.

Of course, different parties have different views—we would like more of this or less of that—but there was what Donald Dewar described as the settled will of the people. We are departing from what was the settled will of what people voted for and how it was supposed to work. Do people realise that? Are people realising that in SW1? I suspect most of you do. This is not happening largely by omission; it is now largely happening by commission. There are decisions being made to legislate for the express purposes of getting round the devolution settlement. Government decisions are being deliberately made about how Governments work with one another that are totally suboptimal. All this could change if there was political willingness to do it, but there is not.

Lord Howarth of Newport: I understand, of course, your objection to what you consider the high-handed and authoritarian approach of the UK Government on a number of matters that we have talked about this afternoon. The question I want to probe you on is none the less the

question of where authority lies. You were not purist in answers to a question from Lord Hope a little earlier, when you acknowledged that it may be appropriate for legislation in the United Kingdom Parliament to alter the scope of devolution. Whatever your views on the inappropriateness of unlimited sovereignty of the Parliament at Westminster, do you accept that as things now are it does exist?

Angus Robertson: Clearly, parliamentary sovereignty is a statement of reality. Even in the legislation that was passed on devolution, the UK Parliament reserved the right to be able to make decisions about whatever it wants to do. That is just a statement of fact and a statement of the obvious.

Do I believe that that is the appropriate state of affairs? No, I do not. Is it a tremendously radical notion to believe that the people should be sovereign, and the people should be able to decide how they are governed and who is in and is not in government, and that if they decide to change how they wish to be governed, they can make that happen? I believe in all these things. Does that stand in contrast, and in some respects in conflict, with the notion of the parliamentary sovereignty of Westminster? Absolutely.

More important than that, there comes a point when, although no doubt constitutional theory is always interesting, things need to be carried by popular consent. If we live in a democracy, people need to be able to trust that government works for them, and that the people they elect are in a position to make the decisions that we as a society have sent us to our legislatures and Governments to do. If we are not able to do that, and if government is not delivering for people, if the constitutional settlement that underpins it is not what we thought it was, and if we find ourselves in a circumstance, as some people moot it to be, that a UK Government will say to the people who made a conscious choice that they should be able to determine their own future, "No, you can't do it", you move from being a liberal democratic state based on consent to one based on law and fiat, without democratic consent. For all of us, regardless of our differences, regardless of the different perspectives we see things from, that really worries me.

People across these islands all want to live in circumstances where we elect our Parliaments and our Governments, and things are based on consent and respect. Unfortunately, there are things on which I have given evidence to you today, and in how the UK Government approach Scotland more generally at the present time, that make me really fearful about that. Incidentally, that is being observed not only in the United Kingdom but internationally, and I think that should give all of us good cause to think about it. I hope that we would all want to be a force for good in the world in democracy, good governance and values and so on. The subverting of any of that should be of concern to all of us.

Lord Howarth of Newport: Although you rail against the unlimited authority of the Parliament of the United Kingdom, you accept that as a matter of constitutional fact it does exist.

Angus Robertson: Yes.

Q76 **Baroness Doocey:** Mr Robertson, you have described the UK as a voluntary association of nations. What in your view are the values that all the people of these islands share, and how do we enhance them?

Angus Robertson: Goodness. I think I explored some of those in the answer to the last question about liberal democratic values. I have looked at the reaction that we saw in the last few days to the horrific abuse that some of the England football players received because of the colour of their skin. The reaction across the entire United Kingdom has been hugely encouraging. That is me answering your question about values as a society by saying that we all live in essentially tolerant societies. We have to recognise, unfortunately, that there is a minority that is not.

Are there shared values about democracy, liberal values, tolerance and so on? Yes, I believe that to be the case. Incidentally, they are values that we share with our friends across the European Union, which is one of the reasons why it grieves the majority of people in Scotland that we have been taken out of the European Union against our democratic will, when an overwhelming majority of people voted to remain within what we thought of as a family of nations with shared values and working in common purpose.

Baroness Doocey: How do we enhance them?

Angus Robertson: How do we enhance values? There is what we can do as individuals. That is not the purpose of this inquiry. What can government do? What can governance do? They can legislate and they can act in line with those principles.

Do Governments and Parliaments enact laws that respect democracy and tolerance, and understand that in the 21st century we govern in ways that may seem complicated at times but are based on consent and years, decades, sometimes centuries of reform? We are getting to a point where some of these things, certainly in governance in the UK should concern us. Some of the recent debate about immigration at UK level, and some of the issues of tolerance towards minority communities, I think should concern us. It is very current. I am saying it, because it is at the forefront of my mind. I am a glass half full kind of person. I have looked at the reaction of people, primarily in England, to what happened after the abuse that the footballers received, and that gives me great hope.

Baroness Doocey: Do you believe that the UK's constitutional arrangements should recognise an explicit right of secession for Scotland?

Angus Robertson: First, it is not for anybody else to tell another country whether it can or cannot make a decision about its own future, especially in what is a voluntary union, which is the United Kingdom. Scotland helped to establish the United Kingdom. If Scotland decides that it no longer wants to be part of the current settlement, of course it should be up to the people of Scotland to decide.

We agree with the analysis of the Welsh Government. I am sure you have seen the recent paper by the Welsh Government, which says, “it must be open to any of its parts democratically to choose to withdraw from the Union. If this were not so, a nation could conceivably be bound into the UK against its will, a situation both undemocratic and inconsistent with the idea of a Union based on shared values and interests”. That is not the position of the SNP Government in Scotland alone. It is actually the expressed opinion of the Labour-led Welsh Government, and we share their view. In a democracy, it should be for the people to be able to determine their future.

I am not reacting to the premise of your question, in the sense of whether there should be a right of people to be able to determine their own future as if that is something that is granted. It is something that should be automatically respected.

Q77 Lord Hope of Craighead: You know very well that the Scotland Act is not designed in the way that you would like it to be, and there are legal constraints that make it very difficult for you to make progress. The question is really asking whether the Scotland Act should be amended to get over the problem about the reserved matters relating to the union and so on, to give Scotland a right to secede. If you make that kind of arrangement, would you favour adopting the model of Article 50 of the Treaty on European Union as a model to be used? You have to look beyond the vote to come out of the UK to how you actually do it. Is Article 50 a way forward?

Angus Robertson: Until now, there has, of course, been a mechanism for a referendum to be held in Scotland in relation to independence—the so-called Section 30 route—in which the UK Government of the time recognised the democratic wishes of the people that they should be able to hold a referendum. It has happened before. There is no reason why it should not happen again.

You might ask why one requires something expressly in the form of legislation. I am not ruling it out. I am just saying that we have a precedent for something that actually worked quite well. Are there other ways of being able to do such a thing? Yes, entirely so. This is something that I have read and heard spoken about at some length by Ciaran Martin, whom I think you know and who has given evidence to your committee. He was very thoughtful on the subject of having a mechanism to be able to deal with that.

Of course, we have a mechanism in relation to Northern Ireland and a border poll. There is no formal mechanism in relation to Scotland. Is it something that can be thought about and should be thought about? I see no reason why people should not think about it. I am just pointing out that we already have a precedent, and a respected and agreed route to deal with something like that. Where there is less agreement is on whether people are going to respect the democratic result in an election when the majority of Scotland’s Parliament is actually elected for such a thing to happen. Either that will be respected or not.

I have been pointing out that, sadly, even where we have arrangements in place, even where we have legislation that governs the interrelationship of the nations and regions of the UK, even where we have structures, they do not work. You ask whether there are ways in which we can have more structures that make things work well. I am sure we can but, unfortunately, even where we have that, it is plainly and obviously not working as it should.

Can we find additional new ways without, of course, gerrymandering the democratic process or constraining people's ability to make decisions? I am sure there are ways in which one can do that, but I am just pointing out that there are ways that we can do it already, and they have been agreed and respected, so why would you not just do the same thing again?

Q78 **Baroness Corston:** What is your view of the Constitutional Reform Group's proposed act of union?

Angus Robertson: I must confess that I have not read it. Am I allowed to say such a thing?

The Chair: Indeed.

Angus Robertson: I suspect I probably should, and that will be my takeaway reading from this meeting. There are all kinds of proposals out there. I am aware of some of them—proposals about whether there should be a reformed upper House and whether there should be a new Act of union. There is a panoply of things that people are prepared to think about.

I am not going to stand in people's way and say that they should not think big thoughts and imagine how things can work better. I suppose the thought I am trying to leave the committee with is that, regardless of the different constitutional perspectives that we represent or hold, it seems to me de minimis that the structures that we have introduced, legislated for and agreed, should be respected and allowed to do their job. We are not even doing that, so forgive my cynicism as to whether I believe the UK is reformable in the way that I think you are suggesting it might be, with additional changes in relation to an elected or more representative upper House, an Act of union, or articles of confederation or federation.

Those are all things that could and should be thought about, no doubt. I am just very pessimistic that they will bring about the improvement that we wish to see, unfortunately, just because there is a lack of political willingness to agree to that. For a great many of us in Scotland, and a growing number in Wales and in Northern Ireland, we have reached a point where we do not see this coming about. Why should we wait for others to decide that they should reform their form of governance while we are having ours restrained and trammelled across? It is not sustainable.

Q79 **Lord Hennessy of Nympsfield:** A golden thread has run through your answers this afternoon that I find very encouraging, which is the

respectful family model. You have used it many times.

Can I offer you a thought about the respectful family model? It is a gilt-edged aspiration. It is a shining model. Let us say there is a second referendum in the mid-2020s and you lose it narrowly, as you did in 2014. Would the best thing to do, certainly with Scotland taking the lead, the SNP Government taking the lead, not be to take Mark Drakeford's proposals, of which you have spoken very warmly, and say, "This is the basis to refresh the union. This is how we avoid sterility and recrimination on the back of another referendum"?

You were being cynical and a bit pessimistic a moment ago. I have given you a reason to be cheerful. Can you undertake to do something like that? It would be very helpful if you could. It would cheer us up, too.

Angus Robertson: Every suggestion made in good faith about reform is one that I am prepared to consider, Lord Hennessy. I am a pragmatic politician who does not believe that others cannot come up with good suggestions. I will look at all people's suggestions with an open mind.

Going back to the golden thread and your family comparison, though, I do not know of a workable family model where one member of the family effectively dictates what the family does as a whole and thinks that that is a normal family. It is not. If a family is based on respect, when really big things come along, such as your relationship with the rest of Europe, and two of the four say, "We don't want this to happen", it is not a normal reaction to say, "I'm the biggest, so it's going to happen anyway".

That is where the family comparison ends, Lord Hennessy, because it is not a real family. I am sorry to rain on the hope that it is, but it is not. That goes back, in dry terms, to my 85% point. On very real, tangible, understandable realities, we went into a discussion about our relationship with Europe—a defining question, a massive issue for us all, and half the nations of the United Kingdom voted to remain in the European Union. We are now out because the other two voted a different way. That is not a family relationship. That is not one that is based on consent. It is based on something quite different. I do not think that that accords with good governance and democracy in the 21st century.

On a positive note to finish off with, I am a total subscriber to supporting the social union and interrelationship on these islands, and I believe that by being a sovereign state, a Scotland working with friends and neighbours across the rest of these islands, including colleagues in Westminster, we can have a better relationship. That is my genuine and sincere hope, and I believe that it is coming about. Anything that can help colleagues in Westminster and Whitehall to prepare their mindset for that will be useful. Others have shown how it is possible, and I hope that we will follow their lead.

Q80 Lord Howell of Guildford: This question is very much on the way that our witness has ended. You are Minister for External Affairs. I agree that it is on the basis of consent that the union will survive. In trying to restore the consent, do you think that changes in Scotland's place in the

world and how it is handled jointly between Westminster and Edinburgh would help to restore that consent and give the feeling that Scotland, which is a proud nation, has its place in the comity of nations internationally?

Angus Robertson: I have a litmus test for that. The majority of people in Scotland do not want to be a repository for nuclear weapons. If a UK Government, in defence and foreign policy terms, want to be respectful of people's views here, no doubt they would move them. But they will not and they have not.

I am trying to paint the picture that at some stage the best intentions hit on policy challenges and the realities of things. Scotland does not want to have nuclear weapons, and Scotland did not want to be part of the Iraq war, but it does not mean that UK Governments will respect the views of the people who are elected in this country. I am sorry to be the pessimist, as you might see it, in this respect, but unfortunately there is no a willingness to view Scotland as an equal within the United Kingdom, and I see no reason to believe that that will change.

Lord Howell of Guildford: If the union was to be respected for some things, such as foreign policy and defence, there would have to be willingness for the local mandate to take second place in any part of the United Kingdom to the overall view of the United Kingdom in international affairs. I do not understand how you can begin to square the circle.

The Chair: Post the Iraq war people in Scotland still voted no when it came to independence.

Angus Robertson: Indeed, that was the case in 2014, when we were promised that we would be remaining within a United Kingdom that was part of the European Union. We now know that not to be true, and we have been taken out against our will.

Circumstances are as they are, and I would not choose the circumstances that we find ourselves in, having been taken out of the European Union against our will. We have to deal with the realities as they are, not in the abstract of hopes of a UK that may to one extent or another be reformable. Forgive me, I do not have great hopes that it is.

In the meantime, I will work to try to deliver the mandate that the Scottish Government were elected on, which was to give people a choice about that. I trust the people to be able to make the decision. If that is what they decide at the end, that is what they should have. If it is not what they want, they should not have it. I am a democrat. I believe that it is the people who should be able to make these big choices. I believe that the people will have their choice. I think that they will vote for a great many reasons—Brexit is a significant one—for Scotland to become a sovereign state with a constitution and with rules of governance that are observed in the letter as well as in the spirit, which unfortunately is not the case in the United Kingdom at the present time.

Lord Howell of Guildford: But democrats have to compromise.

Angus Robertson: Indeed, they do.

The Chair: Indeed, they do, and so do we as a committee because our time is absolutely running out. There are lots of issues that we could have explored further and perhaps put our own points of view, but this is not the place or the time. Thank you for your time and thank you to your laptop for sustaining its battery for so long.

Angus Robertson: I am really glad that we made it to the end. Thank you so much for inviting me to take part. Thank you for all the thought-provoking questions. Let us do what we can in our different ways to improve the way that we are governed. Thank you very much.

The Chair: Thank you. The committee will meet again tomorrow.