

House of Lords Constitution Committee

Inquiry into the Future Governance of the UK

This is an appropriate time to review the governance of the United Kingdom, as the union of its different nations is under serious stress from the pressures of nationalism, and the present constitutional arrangements are not fit for the purpose of sustaining it. In the personal view of this author, to solve this problem we must realise:

1. The UK is not an end in itself, but serves economic and social purposes, which must be understood and reflected in its governance.
2. Nationalism is not just about Scotland, Wales or Northern Ireland. The UK's multiple, overlapping, identities mean the governance of England must be addressed too.
3. The issue has economic as well as constitutional dimensions.

A key underlying issue is that the concept of sovereignty has been misunderstood and misused. Our constitutional structures need to be clearer about where power and authority lie, and why.

What is the UK for?

The United Kingdom is not an end in itself. Like all constitutional structures, it and its internal arrangements serve political, economic and social aims. The best analysis of the nature and purpose of the UK as a Union remains that of the Calman Commission of 2010. The UK is a political union to provide security through common foreign relations and defence functions; an economic union, to provide prosperity through common fiscal, currency, trade and other arrangements; and a social union, to provide common standards of welfare across its territory, regardless of local economic circumstances. Not all unions, or states, are like this. The EU, for example, remains primarily an economic union; the US has a more limited commitment to common welfare standards. So other UK unions can be imagined. But common political, economic and social rights are embedded in the expectations of the UK population – the last most vividly expressed in the National Health Service, seen even in the devolved nations as substantially a British institution. They must be reflected in the allocation of powers and, and perhaps even made explicit in the UK's constitutional arrangements.

The problem of competing nationalisms

The United Kingdom is a multinational² state, under threat from different nationalisms. Discussion often focuses on Scotland, Wales, and Ireland. But the most powerful nationalism is English. It won a referendum, and by doing so revived Scottish nationalism, encouraged Welsh national sentiment, and destabilised the constitutional architecture of Northern Ireland. No stable constitutional framework for the UK can ignore England, as Englishness is the "force transforming the UK"³, but as England comprises 85% of the country and is itself heavily centralised, it cannot simply be treated as one of the devolved nations.

¹ Chair, Our Scottish Future; Hon Professor Universities of St Andrews and Glasgow

² Some, eg *Keating* say plurinational, to emphasise that there are not just several nations but competing nationhoods, eg Scottish *and* British nations, not just a Scottish nation within a British state.

³ Henderson and Wyn Jones

There are two English Questions. First, devolution gives institutional recognition to other national identities, but Westminster is England's as well as the UK Parliament, and Whitehall England's government, so what separate political recognition has England? Second, England is the most politically and economically centralised country in Europe. Local government has been systematically disempowered over decades, and regional decentralisation has yet to succeed. And while the devolved nations have substantial and economic and fiscal powers, the regions and great cities of England have few.

The second of these questions is more important than the first as, given its numerical dominance of the UK, England almost always gets the governments and laws it votes for. (By contrast Scotland and Wales sometimes don't, which is an argument for devolution.) Arrangements at Westminster ("English Votes") which ensure that, in the relatively unlikely event of a UK government which does not have an English majority, English MPs cannot have purely English legislation forced on them can address that. It is important (and should be possible) to do this in a way which does not undermine the formation of a stable UK government⁴.

The people of much of England nevertheless clearly do not sufficiently trust those they elect to look after their interests. Trust in UK government has declined to about 20% in the last decade. It is lower in Scotland, but trust in the Holyrood government is higher⁵. This is not because the SNP are in office: it was true before 2007 too, and Welsh data shows the same picture. Closer government is better trusted. Decentralisation in England is an appropriate answer to these combined challenges.

For decentralisation to work it needs three things: executive capacity, the powers to make a real difference to voters' lives; fiscal accountability, the power to make meaningful taxation and spending choices; and political legitimacy, best brought about by direct election. The obvious place to start is with city mayors – the most successful attempt at decentralisation so far – by widening their powers, and increasing their fiscal scope; but also – discussed below – to strengthen the internal bonds of the UK by giving them a role in its overall governance.

Decentralised power must however be matched by integrating institutions at the centre. Most obviously that is the UK Parliament and government themselves, but there need to be effective intergovernmental institutions. The Joint Ministerial Committees set up after devolution have struggled for two decades. They need to be comprehensively rebooted, and widened to include the regions of England whose interests, perspectives and demands are often similar to those of the devolved nations. Changes are also needed in Parliament itself to ensure that those perspectives are better reflected and listened to there. One major proposal is made below.

The Economic Dimension

The appeal to identity has been seen in many developed countries in recent years, and no one explanation will cover them all. But voters in the most difficult economic circumstances are most open to it, as seen in the US and Europe. In both the Scottish independence and Brexit referendums the poorest in society were most likely to want to overturn the status quo. (Two thirds of voters in the most deprived areas of Scotland supported independence; about 60% of those with household income under £20,000 supported Brexit.) Nationalists and Brexiters were quick to claim that the change they advocated would address all the concerns and resentments of the less well off or "left behind".

⁴ See Kenny and Gower, Henderson and Wyn Jones

⁵ See British Social Attitudes, Scottish Social Attitudes.

It is too easy to dismiss these claims on the basis that nationalism butters no parsnips, and will likely worsen the economic and social position of those persuaded to vote for it. Indeed it will, but the expression of common identity meets quite deep human needs for belonging and political structures must address understandable desires for representation and voice. It is not enough to reject them by saying they will make things economically worse.

Moreover, the concrete problems of spatial inequality in the UK argue strongly for economic as well as political decentralisation. Constitutional policies alone will not be enough to address this issue, and in the UK, which has wider geographical inequalities than other European nations, more effective spatial economic development policies are essential. There is however international evidence to suggest that spatial economic inequality is better addressed alongside political decentralisation, though one clearly does not guarantee the other.

The problem of sovereignty

The current constitutional challenges faced by the UK have some roots in the periphery – demands for autonomy from the devolved nations or the regions or cities of England. But they are equally or more rooted in an incapacity or perhaps unwillingness at the centre to manage a multinational state. This incapacity in its turn relates to a misunderstanding, and misuse, of the concept of sovereignty.

That the UK is a sovereign state in international terms is undoubted, more evidently now we have left the EU. But the idea of sovereignty – etymologically a sort of "super-power" – as an internal guiding principle of governance is positively dangerous. Vernon Bogdanor has noted that parliamentary sovereignty has in practice been replaced by the rule of law as the governing principle of the British constitution. But the real problem is that a half-understood version of it suffuses the thinking of many UK politicians, so that ministers unthinkingly consider themselves as a "sovereign government". (They are not: they are a government of a sovereign state.) This tends to a centralisation of power, and a disregard of constitutional constraints on its exercise. Sovereigns can do whatever they like.

More than one government has been guilty of this. But it has been very evident in the behaviour of a government which thinks it has regained sovereignty not just for the UK but for itself. Three immediately relevant examples suffice:

1. the failure over decades to sustain effective intergovernmental relations inside the UK;
2. governments legislating contrary to the Sewel Convention in relation to devolved powers;
3. the present government's purported prorogation of Parliament.

No remedy was available for the first two of these, despite the Supreme Court having an opportunity to address the second. But the third was (rightly, but somewhat surprisingly in the view of this author) overturned by that Court. What the UK constitution lacks is clarity about the allocation of power to its different institutions (notably, but not only, the devolved administrations) and proper oversight mechanisms for that allocation. Codified constitutions provide for these – typically to the courts and the second chambers of legislatures – but complete codification is not essential to allocate powers in the UK to provide effective oversight.

The elements of a solution

These problems are linked, and so the elements of a solution might be as follows:

1. Radical economic and administrative decentralisation in England, based around the existing city mayors, with additional public service, economic development and taxation powers. There is no reason in principle why these should not be of similar width to those of the devolved administrations. The fact that decentralisation cannot be comprehensive or symmetric across the whole territory of England should not prevent it starting with some cities or city regions.
2. This would be balanced by a fuller, explicit statement of the political, social and economic rights which are guaranteed across the territory of the UK, despite decentralisation. These would guide resource allocation, but might also be legally enforceable by individuals. Indeed it is worth considering whether the UK should consider the German approach of making the aim equality of living conditions in the different Lander an explicit constitutional provision.
3. Political decentralisation for the devolved nations would be entrenched in the UK constitution, by a statutory version of the Sewel convention which the courts would be able to adjudicate on or enforce. There are several ways of achieving that in drafting terms: the key point is making it something the courts would acknowledge (as they already should have) as a justiciable principle, not merely a political convention.
4. Active cooperation between the different governments of the UK would be constitutionally mandated, perhaps even by a provision like that of the EU treaty on 'sincere cooperation'. Effective cooperation also requires legally mandated, formal, effective intergovernmental fora, with independent secretariat support, and involving the leadership of the cities and regions of England as well as the UK and devolved governments. The British-Irish Council might offer a template or even the scope for some joint working.
5. The purpose, composition and name of the second chamber of Parliament should change.
 - a. Its primary purpose should no longer be a merely a revising chamber for legislation, but to oversee both legislation and executive action to confirm that they are consistent with the constitutional allocation of powers, and if necessary make reference to the courts when they are not.
 - b. It should be composed, in part or whole, of persons representing the different nations and regions in the UK, whether directly or indirectly elected, and certainly to include the political leadership of the nations, cities and regions.

This might indeed be termed a Senate of the Nations and Regions: but the key change is to its *purpose*, not its title or composition.

These changes could not be achieved overnight, but paradoxically one of the advantages of the uncodified British constitution is that they could be implemented step-by-step and gradually, some even without legislative change – for example, leaders of the devolved administrations or Metro Mayors could be allowed to sit and vote in the Lords today. Of themselves, they are a necessary but not a sufficient answer to the constitutional challenges posed by multiple nationalisms. That requires additionally a deep commitment to the UK and the political skill and statecraft to secure its future. Such has been shown in the past, and there is no reason for it not to be in future.

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