

Research Space

Other

'Future governance of the UK' - evidence submitted to the House of Lords Constitution Committee

Anderson, P.

House of Lords Constitution Committee: Call for Evidence: Future Governance of the UK

Dr Paul Anderson, School of Law, Policing and Social Sciences, Canterbury Christ Church University

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1. I am a Lecturer in Politics at Canterbury Christ Church University. For several years, I have been working on issues of devolution, federalism and secession. I am co-lead of the UACES-JMCT research network '(Re)Imagining Territorial Politics in Times of Crisis'. Since 2018 I have been working as an advisor to the Hanns Seidel Foundation on federal reform in Myanmar. I am currently working on a forthcoming book on the management of autonomy and secession in Spain and the UK. I am making this submission in a personal capacity.

The Balance of Powers

2. It is clear given the sustained support for independence in Scotland, rising support for independence in Wales (or at least, independence-curious voters) and growing debate on a border poll in Northern Ireland, that there is appetite for change to the constitutional status quo.
3. Interest in federalism has gained traction in recent years among all pro-Union parties, and in the aftermath of the EU referendum was offered by some as a constitutional response to manage the territorial challenges precipitated, revealed and exacerbated by the vote.ⁱ There is, however, little evidence that there is much public support for federalisation.
4. As a scholar working on federalism, I consider it to be an ideal solution for the UK, and one which would address some if not most of the issues outlined below in section 2. Federalism would entrench an equal legal status among the central and devolved governments in the UK and address the neglected element in the UK's constitutional architecture: shared rule. Realistically, however, this is never going to happen – it would require a complete overhaul of the UK's constitutional and territorial architecture. Discussions on federalism falter on several fronts, specifically, what to do with England (with 85% of the population and as the biggest nation within the UK), the paucity of pro-federal public opinion, the entrenched notion of parliamentary sovereignty which is antithetical to the federal idea, and the traditional aversion towards federalism among British political elites, notwithstanding what Michael Burgess identified as 'the British Tradition of Federalism'.ⁱⁱ
5. Another territorial option that may merit further research would take the shape of a federacy or confederal arrangement. This would, contrary to the current dominant opinion among pro-Union political elites, create an even looser union. Interestingly, the SNP vision for independence advanced in the 2014 referendum campaign (with emphasis on maintaining shared unions with the rest of the UK) had hallmarks of a confederal approach.

Current Challenges

6. There are three broad challenges I would highlight that relate to institutional set-up as well as intangible elements vis-à-vis political culture and understandings of devolution and the Union.
7. One of the primary challenges regarding multilevel governance in the UK is the absence of **shared rule**. Shared rule, which refers to the capacity of subnational governments to participate in and influence decision-making processes at the centre,

is best understood as the glue that holds a federal political system together. It is, however, a neglected element in the UK's constitutional architecture. The emergence of shared competence in areas such as taxation and welfare as a result of the 2012 and 2016 Scotland Acts as well as increased shared policy areas because of EU withdrawal and the repatriation of powers from Brussels, necessitates mechanisms to facilitate cooperation and co-decision-making between the different governments, but no tangible reform has been forthcoming. The structures of intergovernmental relations (IGR) in the UK remain weak, not fit for purpose and require serious reform.

8. A second challenge in the current constitutional set-up relates to **political culture**. Despite the reality of political decentralisation for over two decades, very little has changed at the centre in both Westminster and Whitehall. A unitary attitude prevails. The recent passing of the Internal Market Act demonstrates this point. This Act entails significant implications for devolution but was not the result of intergovernmental agreement. Legislative consent was sought and refused by all three legislatures, but the bill proceeded. In recent years, little regard has been shown for the Sewel Convention, notwithstanding the (symbolic) importance attached to it in the Scotland and Wales Acts. Lamentably, there is growing evidence of a willingness to bypass important conventions and undermine fundamental tenets of the devolved settlements - 'seek and ignore' has become the dominant mentality vis-à-vis legislative consent. A political culture, predicated on important principles and values such as, mutual respect, partnership, recognition, and trust, is all but absent.
9. The final issue relates to **understandings of devolution and the Union**. One of the principal strengths of British unionism is that it means different things to different people. I welcome the increased attention paid to the Union in recent years by the UK Government, but would caution against the imposition/promotion of a particular understanding of the Union, including attempts to narrow it down to a particular thing or set of beliefs (a point I return to in section 5). Quite simply this runs contrary to the multifarious understanding of British unionism and risks being counterproductive in further loosening rather than bolstering the bonds of Union it is seeking to protect.
10. As for devolution, there is an apparent lack of knowledge about devolution, how the devolved systems work and the implications of this for central state machinery (the Covid pandemic was rather revealing in this regard) in Westminster and Whitehall. The consequence of this is a top-down, unitary vision of politics that translates into an approach that often denies the decentralising logic that has taken root in the UK over the last two decades.
11. On interparliamentary interaction, I would argue that increasing interparliamentary interaction and oversight would go a long way in improving the UK's constitutional architecture. Interparliamentary relations remain a somewhat neglected element in the UK, and unlike the Joint Ministerial Committee (JMC), which brings together the four governments, there is no permanent structure that does the same for the four UK legislatures. The Interparliamentary Forum on Brexit, as well as joint meetings between various committees in the different parliaments, demonstrate the benefits in providing an arena to forge a more constructive working partnership between the legislatures. This is certainly an area of reform that merits further consideration by the committee.
12. In my research on managing demands for autonomy in Scotland, the British-Irish Council was occasionally mooted by various parliamentarians, including pro-independence MSPs, as an effective forum to bring the different governments together. For these MSPs, the standing secretariat of the Council which has responsibility for the technical work required for these meetings, enhanced the quality of discussions as well as facilitated good working relationships between members. In

addition, unlike the hierarchical JMC, the British-Irish Council is considered a meeting of equals, notwithstanding the differing roles and responsibilities of each government.

English Devolution

13. I agree that there should be a greater distinction between the roles played by the UK Government as both the government of the UK and the government of England only. This was laid bare during the first phase of the Covid pandemic when UK Government communications repeatedly failed to acknowledge that its authority in certain matters extended to England only. Indeed, during a debate in the House of Commons in May 2020, the Prime Minister rejected the notion that his authority in certain matters extended to England alone, even though this is certainly the case.ⁱⁱⁱ This reinforces the point above about a lack of understanding regarding the consequences of devolution and reveals an inherent tension in the UK because of the absence of a devolved executive/legislature in England. Greater consideration should be given to differentiating the two roles, not least in relation to communications.
14. Another contentious aspect of English devolution that was further spotlighted during the pandemic was the need for improved relations between central and local governments, more specifically, leaders and mayors of combined authorities. There is no intergovernmental arena that brings together the UK Government and directly elected mayors, and while Sadiq Khan, as Mayor of London, was invited to COBR meetings at the height of the pandemic in 2020, the invitation was not extended to the rest of England's directly elected mayors. In fact, relations between the UK government and local government were characterised by hyper-centralism. Reform is required to create machinery to facilitate intergovernmental interaction. There should be specific English representation in wider IGR structures involving the devolved governments as well as a separate England-specific forum to bring together relevant ministers and the leaders and mayors of combined authorities.

The UK's Common Purpose

15. Differing opinions on the common purpose of the UK is expected given the plurinational nature of the state. This is not unique to the UK and is a general trend in multilevel states. Confusion may arise in multilevel states because of the blurring of boundaries between the competence jurisdictions of the different levels of government. In this vein, the public may not always be aware which government is responsible for specific policy areas.
16. Both during and in the aftermath of the 2014 Scottish independence referendum, increasing attention has been paid to the UK's common purpose. More recently, this has seen the creation of the 'Union Strategy Committee' chaired by the Prime Minister. This, as I noted earlier, is a welcome development in increasing awareness and knowledge about the Union at the heart of government. Whether this will have much success in promoting the UK's common purpose remains to be seen, although I am sceptical. The idea of a binding purpose is normally something that naturally develops because of lived experience and not something that is easily and artificially engineered.
17. Given the explicit challenges to the continuation of the Union, it is understandable that the UK Government will want to raise the profile of its activities in the devolved nations, and by extension emphasise the common purpose of the Union. Recent initiatives that have been discussed include the flying of the Union flag from government buildings,^{iv} UK government 'branding' on infrastructure projects in the devolved nations^v and new spending powers in devolved areas.^{vi} Lessons here should be drawn from other plurinational states such as Canada whereby these initiatives have been employed with varying degrees of success. For instance, the promotion of the Canadian flag as

a symbol of pride to decrease support for Quebec independence was generally interpreted as a waste of public resource, while the use of the federal spending power has proven to be a largely controversial aspect of Canadian federalism. This 'intrusion' has been strongly opposed by successive governments in Quebec which perceive it as an attempt by the federal government to unilaterally appropriate Quebec's policy jurisdictions.

18. It is not yet clear how the UK spending power will be used and to what extent devolved governments will be involved in decision-making processes on this. It is, of course, within the purview of the UK Government to spend money in the devolved territories, but it would make sense that this is done in collaboration with the devolved governments, and certainly not against their will. The new spending powers may represent a more assertive pro-Union position on the part of the UK Government, but in failing to work with the devolved governments this is likely to exacerbate extant tensions and create new ones. It is true that most voters are unlikely to question the source of funding for new projects/improved infrastructure, but in the context of competing political parties, a unilateral approach to spending by the UK Government is likely to be used by some parties as a point of grievance from which to make political capital. An adversarial and provocative strategy is likely to further erode trust between the governments and unlikely to highlight the benefits of union. If viewed through the prism of imposition and appropriation of competence in devolved policy jurisdictions, it may even bolster support for secession.
19. I am also cautious of the focus on flag waving. This is unlikely to reinforce the bonds of Union or reify the common purpose of the UK. In fact, there is a risk that the flying the flag strategy inadvertently becomes a symbol of exclusion rather than inclusion. Promotion of the common purpose of the UK is likely to be successful when employed in a more subtle rather than explicit manner.

Revisiting Structures

20. A pressing issue that requires formalisation in the UK's constitutional architecture is reform of IGR. As highlighted by the recently published Dunlop Review this is an area of reform that requires some serious, bold and imaginative thinking. To demonstrate a real commitment to IGR and thus the Union, there is a need for a fundamental shift at the centre. In light of Brexit and the lack of effective intergovernmental interaction that characterised that period, engagement with the devolved governments necessitates significant enhancement.
21. It is worth reiterating, however, that while institutional reforms are important, these will have limited effect if not undergirded by a fundamental change in attitude, culture and mindset. Prospects of fully-fledged federalism may remain low, but this does not preclude the opportunity to learn from and develop a more federal political culture, predicated on values and principles such as respect for autonomy, equality, partnership and recognition.
22. One of the biggest challenges for a union-state, particularly the UK which has several overlapping unions, is forging an overall vision for the state. It is understandable, therefore, that attention has turned to fixes such as a new Act/Charter of Union, although I foresee several challenges to this approach. The first issue is the fact that the beauty of unionism is that it can be interpreted and construed by different people in different ways. It would be impossible to capture this in a single act. The risk here is that emphasis on certain aspects may – however inadvertently – undermine others and thus alienate other understandings of the Union. Second, the shared vision of the Union that one would expect the act to detail will have limited effect unless it is understood and (more importantly) believed by citizens. Put simply, it runs the risk of

being just a statement rather than an actual vision shared by the different peoples of the UK. Finally, the values that are often discussed in relation to a new Act of Union (rule of law, equality, tolerance and respect etc.), as laid out in the Act of Union Bill presented in 2018 by Lord Lisvane, are not uniquely British values. Indeed, not only are these universal values, but they are the same values that are espoused by Irish, Scottish and Welsh nationalists. I am not convinced that a new Act/Charter of Union will necessarily bring coherence to the Union.

23. A challenge likely to be encountered in the creation of a new Act/Charter of Union is that on the one hand it may be too specific that it becomes a source of alienation, or, on the other hand, it is too abstract that it does not mean much. I believe it more worthwhile to focus attention on institutional reform and practices to engender a more plurinationally sensitive and federal political culture among political elites. In so doing, these reformed institutions and changed mindset can put the various values and principles into practice. This is likely to be more effective than a statement of intent in an Act/Charter of Union.
24. In comparison to other states - Canada and Spain are cases in point - the UK (more often than not) has managed to eschew the angst and acrimonious debates that have ensued because of proposals for constitutional change. Acknowledgement of the UK's plurinationality, coupled with recognition of nationhood, has helped avoid the pitfalls experienced by other plurinational states which have repeatedly struggled with definitions around nationhood. It may be the case that attempts to define such things in a new Act/Charter of Union will precipitate problems rather than solutions.
25. In discussions on the merits of a new Act/Charter of Union, it is important to bear in mind that there is a risk in entrenching specific constitutional understandings or arrangements. It is well-established in research on federal political systems that there is a need for in-built flexibility to allow federations to change and adapt as necessary. A new Act/Charter of Union, akin to a constitution, should be treated as more than a mere document. It should be construed as a living document that may often require renewal. A constitutional pact between nations/peoples should not be treated as enduring just because a document says so.
26. In terms of public knowledge and awareness on constitutional arrangements, I would agree that there should be more effort to increase knowledge about this. In recent years, the Houses of Parliament and devolved legislatures have devoted significant resource to enhance outreach in raising the profile of Parliaments, and the work they do. Online resources and public education play an important role here. Perhaps more collaboration between the outreach programmes of different legislatures would be useful.
27. Further, it would be useful to explore lessons learned from the use of technology and online initiatives in schools during the pandemic and whether this could be used as a mechanism to further improve knowledge about the UK's constitutional arrangements. I am not sure how this would help enhance public knowledge in general, but it would certainly prove a worthwhile resource in schools up and down the country. Indeed, it would remove the barrier of geography some students/schools may have in engaging with parliamentary education (i.e., travelling to London) and may prove a useful way to target young people to raise awareness about devolution, the Union and the various governments.

ⁱ The Liberal Democrats have a long-standing policy in favour of federalism, there have been some lone voices in favour of federalism among Conservative parliamentarians (Murdo Fraser MSP and

David Melding MS), and the UK-wide Labour party, as well as Scottish and Welsh Labour, now argue in favour of federalism.

ⁱⁱ Michael Burgess (1995). *The British Tradition of Federalism*. London: Leicester University Press.

ⁱⁱⁱ HC Deb, 11 May 2020. Vol 676, Col 33.

^{iv} Department for Digital, Culture, Media & Sport. 2021. *Union Flag flying guidance for UK Government Buildings*.

^v Lord Dunlop. 2021. *Review of UK Government Union Capability*.

^{vi} United Kingdom Internal Market Act 2020.