

Levelling up the UK



Those in Scotland, Wales & Northern Ireland need more robust reassurance of their devolved powers if the union is to endure, argues **Roger Smith**

This column argues, in constitutional shorthand, for a strengthening of the Sewel Convention. Let's make that less opaque. To save the United Kingdom, we must make various constitutional adaptations to greater devolved power of its constituent nations.

The Sewel Convention—in somewhat weasel words—states that the UK Parliament 'will not normally legislate with regard to devolved matters without the consent' of the Scottish Parliament, the Welsh Senedd and the Northern Ireland Assembly. Lord Sewel was a respected academic and former Labour politician. His words got the government of the day out of a controversy on the respective powers of devolved and central powers. Lord Sewel announced to the House of Lords in 1998 that 'we would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish parliament.' The wording of the Convention was introduced into devolution legislation in 2016 (Scotland) and 2017 (Wales).

For all the triumph of his draft, Lord Sewel himself came to a sticky end. In 2015, he resigned from the House of Lords after *The Sun* published pictures from a hidden camera of him appearing to snort cocaine in the company of two prostitutes. A close ally of Tony Blair, however, he kept his title and was not prosecuted.

Constitution: not fit for purpose?

The present issue is what should become of his convention. For subsequent UK governments, it has proved rather handy. The ambiguities

inherent in 'normally' and the vagueness of a 'convention' allowed the bypassing of consent from the devolved institutions over Brexit, something confirmed by the Supreme Court in the *Miller* case ([2017] UKSC 5, [2017] All ER (D) 70 (Jan)).

Brexit casts a long lingering shadow over the UK's political and constitutional scene. But, for better or worse, it has now happened. That sun has set. And constitutional debate needs to move on without continual backward reference to how things might have played out differently. We need a constitution which is fit for modern purpose in the modern world.

And, we must now recognise that the shenanigans of Boris Johnson's wayward administration, his English public schoolboy persona, the casual rebuffing of other national administrations, and the prioritisation of English interests are all in real danger of having gone too far. The argument for blank refusal of a further Scottish referendum on independence is deeply unattractive—particularly if made largely on the basis that it might be won by the pro-independence parties.

James Forsyth, the political editor of *The Spectator*, argued in *The Times* ('Sturgeon's forces can be killed with kindness', 12 August 2022) that English politicians—and it seemed he had Liz Truss much in mind—might deploy 'more politesse and more statecraft' in dealing with Nicola Sturgeon and the Scottish National Party (SNP). But actually it is going to take a bit more than civility, strategy and adult behaviour. Ms Sturgeon and the SNP will be very happy to exploit any differences that come to hand. Rudeness just plays into her hands in

building the narrative of uncaring English arrogance. But the grievance is independent of any populist rudeness.

Changing the conversation

For those who favour the union of whatever party, we surely need to change the terms of the discussion. The union is what is important, not its current exact form—aspects of which can lead to legitimate grievance. Unionists ought to offer a raft of constitutional reform which meets the legitimate aspirations of the Scots, Welsh and Northern Irish for more engagement in national affairs. One approach is to reform the House of Lords into a Conference of the Nations (as I argued in 'Preserving the union', *NLJ*, 5 August 2022, p7). This might, however, be seen as a little too radical for those sentimentally attached to the bloated and somewhat discredited upper parliamentary house.

A less dramatic approach would be simply to take the Sewel Convention and give it some teeth. Let there be no ways in which the UK government can interfere in devolved matters under the control of the devolved governments. After all, you either have the confidence to devolve or you don't.

There is a technical problem to overcome: the doctrine of the sovereignty of the UK Parliament. No UK Parliament can bind its successor. So, any constitutional settlement is beset by inherent uncertainty. This is a more general obstacle to any constitutional reform. It is a good argument perhaps for a formal written constitution acclaimed by public vote—as happened in Canada—and thereby given some authority beyond simply parliamentary resolution. More pragmatically, you could just legislate for consent in all matters of devolved and non-devolved authority; provide a mechanism for that consent through resolutions of the respective representative institutions; and hope for the best/leave it to the good sense of the courts.

Any constraint of parliamentary power will be politically controversial. Brexit showed that with *The Daily Mail* leading with its 'enemies of the people' shot at the Supreme Court. But, the question of who guards the constitution is a difficult one for all jurisdictions. The answer can range through the courts, to the army and, ultimately, the consent and resolution of the people.

The doctrine of UK parliamentary supremacy was handy in the time of Cromwell and the Glorious Revolution. But it needs some modification for the current centrifugal forces at work in our constitution. And a package of reform allows the promise of a creative and potentially successful response to the issue of national levelling up. **NLJ**

Roger Smith, *NLJ* columnist & former director of JUSTICE.