COMPENDIUM #68

# WESTMINSTER'S PRETENCE OF EQUALITY

*Trevor Swistchew — Compendium #68*

> *Why Westminster's claim of an equal partnership in a voluntary Union collapses under examination: an inquiry into power, consent, and constitutional permission.*

Westminster insists that Scotland is an equal partner in a voluntary Union. It is a claim repeated by governments, ministers and defenders of the constitutional status quo. Yet the moment Scotland raises the question of independence, the language of equality suddenly gives way to the language of permission.

The contradiction is obvious.

If Scotland is truly an equal nation, why must Scotland seek Westminster's consent before asking its own people whether they wish to remain within the Union? No amount of constitutional jargon can make that question disappear.

An equal country does not require another parliament's approval to determine its constitutional future. Equality is not measured by fine words, ceremonial gestures or speeches about partnership. Equality is measured by power. It is measured by authority. It is measured by who ultimately decides.

By that standard, many critics argue that Westminster's claim of equality collapses under examination. For decades Scotland has been described as a valued partner in a family of nations. Yet whenever the constitutional future of the Union is discussed, Westminster asserts that ultimate legal authority rests not with Scotland but with Westminster itself. Scotland can elect governments. Scotland can debate its future. Scotland can express dissatisfaction. But when the question concerns the existence of the Union Westminster maintains the power to determine the legal framework within which that debate may occur.

That is not what many people understand equality to mean.

It is, they argue, the pretence of equality.

The legal foundation for Westminster's position is found in the Scotland Act 1998. Schedule 5 reserves constitutional matters to Westminster, including "the Union of the Kingdoms of Scotland and England" and "the Parliament of the United Kingdom." Under the current constitutional settlement questions concerning the Union are therefore reserved matters rather than devolved matters.

Westminster's legal argument became even stronger following the 2022 judgment of the UK Supreme Court. The Court unanimously concluded that a Scottish independence referendum bill would relate to reserved matters because it concerned both the Union and the UK Parliament. As a result, the Court held that Holyrood did not possess the legislative competence to hold such a referendum under the existing devolution settlement. The Court emphasised that it was addressing a legal question rather than expressing a view on whether Scotland should become independent .

Yet for many Scots, this legal position merely exposes the deeper political contradiction. The central question is not whether Westminster possesses legal authority under the present constitutional rules. The

central question is whether those rules reflect the equal partnership Westminster claims exists. Critics argue that Westminster wants Scotland to believe two incompatible things simultaneously. First, that Scotland is an equal nation within a voluntary Union. Second, that Westminster possesses ultimate authority over Scotland's constitutional future.

Both propositions may be legally compatible within the British constitutional framework, but politically and philosophically they sit in direct tension with one another.

The contradiction becomes even more apparent when Westminster speaks about democracy and self-determination on the international stage. British governments frequently celebrate the principle that peoples should determine their own future through democratic means. Yet many Scots look at their own constitutional position and conclude that such principles appear conditional when Scotland seeks to apply them to itself.

The perception that one standard is applied abroad and another at home is a major source of growing frustration.

Supporters of Scottish constitutional self-determination often point to the Claim of Right for Scotland, signed in 1989 and later endorsed by the Scottish Parliament. The document asserted “the sovereign right of the Scottish people to determine the form of Government best suited to their needs.” The House of Commons Library notes that the Claim of Right embodies a political assertion of popular sovereignty resting with the people of Scotland .

Here lies the heart of the constitutional conflict.

Westminster rests upon parliamentary sovereignty. The Claim of Right rests upon popular sovereignty. One tradition holds that ultimate authority belongs to the UK Parliament. The other holds that ultimate authority belongs to the Scottish people.

The struggle exists because neither principle can accommodate the other.

This tension was bridged through the Edinburgh Agreement of 2012, under which the UK Government and Scottish Government agreed to use a Section 30 Order to facilitate the 2014 independence referendum. The Agreement stated that both governments would work together to ensure that a referendum could take place and that the Scottish Parliament would be enabled to legislate for that referendum.

For many Scots, the significance of that agreement was obvious. If a referendum required Westminster's permission in 2014, then Westminster possessed the authority to grant or withhold such permission. Critics argue that this fact alone undermines claims that Scotland occupies a position of constitutional equality within the Union.

An equal partner, they argue, does not require permission.

An equal partner does not have its constitutional future determined by another legislature.

An equal partner does not possess rights that ultimately depend upon another parliament's approval.

Whether one supports independence or supports continued membership of the United Kingdom, these questions remain politically difficult to answer.

Westminster continues to defend its position through parliamentary sovereignty and existing law. Its critics continue to challenge that position through the principle of popular sovereignty and Scotland's claim to national self-determination.

The result is a debate that shows no sign of disappearing.

At its heart lies a simple challenge.

If Scotland is truly an equal nation within a voluntary Union, many Scots ask where that equality is visible when fundamental constitutional questions arise. If the Union rests upon consent, why should another parliament possess the authority over whether that consent can be tested anew? If Scotland is a partner rather than a subordinate, why does the final constitutional power not rest in Scotland itself?

Until Westminster provides answers that satisfy these criticisms, accusations of hypocrisy will continue. For a state that repeatedly describes itself as a Union of equals, its greatest weakness may be the growing number of people who no longer believe that equality exists in practice.

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