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Wales and the United Kingdom: a territorial constitutional policy drive

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ABSTRACT

The Welsh Labour government has developed a distinctive brand of territorial constitutional policy in the UK context. The product of a strongly devolutionist government with a care for union, it reinforces the importance of autochthonous development in substate governance, reflects an adverse state of power relations in a famously uncodified constitution, and, framed by ongoing turbulence, provides an alternative vision of the UK territorial constitution at large. Building up Wales as a politically progressive polity, and promoting federal-type ideas of subsidiarity and shared governance in the union, are major threads. Grounded in the notion of popular sovereignties in a multipolar polity, and stressing the need for continued consent to and reform of the union, the approach represents a profound and difficult constitutional challenge. Wales as a substate polity remains a work in process, with largescale devolution of justice high on the policy agenda, while competing pressures of centralism and interest in independence inform an increasingly fluid territorial debate that sees the establishment of a new Constitutional Commission. A sustained exercise of constitutional voice, and, shown with Brexit and a muscular unionism of the Conservative government at Westminster, the struggle to be heard, characterizes the Welsh Government effort at the UK level.

KEYWORDS

Wales; UK constitution; devolution; justice; Brexit

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INTRODUCTION

Future historians of the UK will no doubt remark on the pervasive sense of territorial constitutional unsettlement in recent times. Successive redistribution of law-making and governmental powers under the familiar banner of devolution is juxtaposed today with both strong nationalist pressures for break-up and a Brexit-related assertiveness at central government level. Among the component parts much academic attention has naturally been focused on Scotland and Northern Ireland; England is also now a chief focus. But Wales, historically long dependent on and legally, economically and socially integrated with its larger English neighbour (Davies, 2007), presents special challenges for constitutional analysis and important insights into the UK which have not received the wider attention they deserve.

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Founded on a narrow referendum vote in favour, and characterized by multiple phases of executive and legislative devolution, Wales has had an extraordinary constitutional history since the dawn of democratic devolution under the UK New Labour government at the turn of the century. Framed by a complicated and shifting array of Westminster legislation¹ and subsequently elaborated by home-grown statutory provision, it has proved both an enervating and liberating experience. Doses of territorial autonomy have been used to ground substantial internal constitutional development, so helping to pave the way for further territorial empowerments in the face of ad hoc and piecemeal approaches to constitutional design at the UK level. A long way from the restricted forms of administrative devolution achieved in the previous century, this country of some 3 million people today possesses avowedly national representative institutions in the form of Senedd Cymru (Welsh Parliament) and Llywodraeth Cymru (Welsh Government), a reserved powers model of legislative devolution, and some limited tax and borrowing powers. Current Welsh First Minister Mark Drakeford rightly speaks, however, of powerful headwinds, associated in particular with Brexit (Drakeford, 2020).

The Welsh Labour government's pursuit of a distinctive constitutional policy is a striking feature. Advancing a broad and constructive view of Wales and the UK, it speaks both to the internal substate dimension and, framed by ongoing turbulence, to the condition of the UK territorial constitution at large. Whereas the original Welsh devolutionary design was characterized by tentativeness and compromise (Rawlings, 2003a), so producing the weak and unstable concoction of secondary legislative empowerment in a corporate representative body (the National Assembly for Wales), a strong dose of constitutional modelling informs the more recent, home-grown, policy conception (Welsh Government, 2019, 2021a).

The approach explicitly recalls federal-type ideas of guaranteeing diversity while enabling unity. Building up Wales as a politically progressive polity and promoting precepts of self-rule and subsidiarity, and shared governance and parity of esteem between the constituent parts of the UK, are major threads. The policy has taken on increasingly advanced forms in the last decade in the wake of a second referendum triggering legislative devolution for Wales. Renewed efforts at strengthening Welsh democracy and a further territorial review of constitutional arrangements in a more open fashion are major aspects of the current development. The key political fact that during this period Wales has had the only devolved administration fully committed to the UK underwrites the distinctive nature of the endeavour.

This article develops a series of related themes. The first is the profound and difficult nature of the Welsh Labour government's constitutional challenge in the face of deep-rooted practices and perceptions at UK – central government – level. A famously powerful doctrine of parliamentary sovereignty in an uncodified constitution and an Anglo-centric mindset of a unitary state are necessarily engaged. Largescale removal of the European Union (EU) legal and political wrap-around from the domestic polity and a centralizing UK internal market project in the light of Brexit compound matters. The second theme concerns the relationship of the Welsh Government's policy approach to turbulence in the UK territorial constitution. Further opportunities for constitution-building are pursued via territorial read-across and autochthonous processes inside the substate polity. This small polity being all too easily buffeted about, defensive strategies are adopted in the cause of territorial autonomy. Concern about the possible break-up of the domestic union is marked by creative advocacy of shared governance and political and structural reform.

The broad and constructive nature of the Welsh Government's constitutional policy is the third theme. In seeking to chart a future for Wales and the UK, the agenda encompasses much in the fundamentals and institutional workings of an evolving form of multinational and multipolar state. Initially promoted by the previous First Minister Carwyn Jones under the banner of 'new union' thinking, a determinedly coherent appeal to constitutional principle is badged today with vocabulary such as 'strong' or 'entrenched form' of devolution, 'four nations'

and ‘mutual respect’. The final theme concerns the place of a progressive form of politics in the substate constitutional policy. Grounded in the Labour Party’s long-term dominance of electoral politics in Wales, this bears directly on the design of the maturing territorial polity, infuses the official Welsh contribution to debates about the future governance of the UK, and closely informs territorial responses in the conditions of political cohabitation with the Conservatives at Westminster.

The rest of the paper is structured as follows. The next section expands on the factors driving and shaping a distinctive constitutional approach. The third section engages more closely with the constitutional modelling and key elements of reform and process. The fourth section considers the further expansion of devolved competence, focusing on the justice function, a chief area of stunted territorial powers. The fifth section discusses the pan-UK aspect of Welsh Government constitutional policy with reference to major issues of reregulation and governance in the light of Brexit.

GROWTH, TURBULENCE AND CENTRALIZATION

A determined articulation of territorial constitutional policy partly reflects the arduous nature of the Welsh devolutionary journey. But it also fits with the further maturation of the substate polity, marked today by the different title *Senedd Cymru* and more pushes for internal democratic reform and enhanced territorial autonomy and protection. An extraordinarily sustained progressive electoral alignment supplies key dynamics of continuity and change. Proceeding today via the soft nationalist brand ‘Welsh Labour/Llafur Cymru’, this also contrasts with recent Labour Party difficulties in both England and Scotland (Wyn Jones & Larnar, 2020). While in large measure the product of an elite form of policymaking, one in which independent commissions and panels feature prominently, the Welsh Government’s constitutional approach is naturally bound up with evolving debates in Welsh Labour and UK Labour around solidarity, locality and divergence (Drakeford, 2021). Constitution-building to ground radical elements of substate governance is a standard trope in contemporary Wales.

The sixth Senedd Elections in May 2021 saw Welsh Labour win half of the 60 seats, so matching the party’s best-ever result at the devolved level.² This was a particularly pleasing result for Welsh ministers in view of Conservative advances, especially in the 2019 UK general election and polling evidence of greater interest in independence amongst Labour voters.³ Electoral analysis points up the salience of national identity, with the broad appeal of Welsh Labour particularly apparent amongst the many people who identify as both Welsh and British and also amongst Welsh identifiers (Larnar et al., 2021). A basic congruence in terms of the party’s constitutional policy positioning is indicated. Different but related, Welsh Labour ministers have seized on the twin facts of a divided opposition of Conservatives and Plaid Cymru (the nationalist Party of Wales), and the failure of an abolitionist party in the recent Senedd elections, to buttress the legitimacy of the constitutional policy development.

The fluidity of the wider constitutional debate in Wales should not be underestimated, however (Bradbury, 2021). While the basic Welsh Government policy of promoting a strong local polity in a revamped union state, or alternatively of rejecting both assertive centralism and the ‘exit’ option, is firmly articulated, more heavy electoral defeat at the UK level could be expected to generate further, anxious, constitutional debate in Welsh Labour circles. The current process of building up Wales might well take on greater historical significance should the UK fragment.

The latest in a series of cross-party deals in the devolved legislature, a new three-year Co-operation Agreement between the Welsh Labour government and Plaid Cymru signals a dose of political stability during the sixth Senedd. While not representing a formal coalition,⁴ the agreement includes a raft of progressive policy commitments packaged in terms of social solidarity, a sustainable planet and a vibrant democracy, with matters being facilitated by a more

generous budget settlement (Ifan & Siôn, 2021; Welsh Government & Plaid Cymru, 2021a). Playing up the constitutional dimension in both developmental and protective fashion, the Co-operation Agreement also speaks of ‘reforming the foundations of Wales’ and sending ‘a clear message to Westminster that the Senedd is here to stay and decisions about Wales are made in Wales’.

The advent of the National Assembly occasioned much advocacy of a new kind of governance in Wales: progressive, inclusive, transparent and characterized by overarching (legal) commitments on sustainable development, equality of opportunity, human rights and bilingualism (Rawlings, 1998). While the practical significance is a matter of continuing debate (e.g., Hoffman et al., 2021), much in the subsequent policy development is framed in terms of this determinedly value-laden approach; and the more so in the new Co-operation Agreement. Wrapped up in the comfortable notion of a progressive consensus (Drakeford, 2007), particular ‘made in Wales’ policies, ones which reflect a more egalitarian approach grounded in public provision than in England, have been much trumpeted. After a slow start under the first devolved administration of Alun Michael, this was a developing theme under his successor Rhodri Morgan (Morgan, 2002). Playing up the intimacy of small country governance, much is also heard of the opportunities for partnership working and joined-up approaches.⁵

World-leading legislation in the form of the Well-being of Future Generations (Wales) Act 2015 is a flagship for the progressive enterprise. Juxtaposed with reordered law and governance techniques such as devolved tribunals and independent commissioners (‘voices’) for particular interests, it stands for a new administrative law of Wales (Nason & Pritchard, 2020). Largely strategic and procedural in nature, the Well-being framework is at the forefront of Welsh Government thinking especially as regards climate change and recovery from the Covid pandemic (Welsh Government, 2021b). Problems of limited capacity and overdependence of civil society, and the legacy of central government austerity measures on a country ranked as one of the economically poorest UK regions, cannot be wished away, however (Rabey, 2015). The tendency of strong restraints on devolved competence to inhibit progressive policy initiatives is a significant element that also fuels territorial demands for an enhanced policymaking space.

The gravitational pull of England features prominently in the Welsh devolutionary experience. This is partly the remorseless logic of close economic and market integration with a country constituting some 85% of the UK population across a highly porous ‘border’. While the fact of national representative institutions at substate level confirms a distinct historical identity and trajectory, the competing historical paradigm of ‘England and Wales’ still finds powerful expression, most obviously in a conjoined legal system. The governance of England serves not only as the usual source of public comparison, but also as a twin driver of divergence, including for a time via the complex parliamentary process of ‘English votes for English laws’. The ability of Welsh representative institutions to avoid or rework controversial policy approaches in England, expansive forms of outsourcing, for example, constitutes one of the chief attributes of national devolution from a progressive perspective. The position of England also underwrites the scale of the challenge in successfully promoting Welsh Government constitutional policy at the pan-UK level. Attention is drawn to the seeming block on a formal, federal approach to UK governance and deep-rooted centralist notions of a unitary state that are familiarly associated with the (English) doctrine of parliamentary sovereignty (Kilbrandon Commission, 1973); and also in the fiscal constitution to the much criticized arrangements for redistribution based on public expenditure patterns in England (‘the Barnett formula’) (Holtham Commission, 2010; UK Government/Welsh Government, 2016). The unique double-hatted nature or largescale functional fusion of the UK Government and government for England in a classically non-federal system itself generates calls in Wales for a clear demarcation in Whitehall (Jones, 2018). The increasingly evident political force of ‘Englishness’ (Henderson & Wyn Jones, 2021) casts a long shadow here.

Scotland features in the Welsh Government's constitutional policymaking in various ways. Showing the ripple effects of constitutional unsettlement, it is in the context of the hard-fought Scottish independence referendum in 2014 that Carwyn Jones elaborated the so-called 'new union' approach, so pressing the argument that a looser but interconnected union state is the best hope for preserving it (Jones, 2014; Rawlings, 2015). The Welsh Government's preference for a reserved over a conferred powers model of devolution in the Wales Act 2017 factored in the position of Scotland (Rawlings, 2018). There would be greater symmetry in the territorial constitutional arrangements, with Wales piggy-backing too on the (symbolic) commitments in the Scotland Act 2016 as regards the permanence of national devolution and the (Sewel) Convention on territorial legislative consent to Westminster legislation affecting devolved competence.⁶ With an eye to impending intergovernmental power struggles in the wake of the Brexit referendum vote in 2016, more concerted action in the face of central – Conservative – government manoeuvrings was also envisaged, if only on an on/off basis with the Scottish National Party (SNP) government. Recovery after the Covid pandemic may come first, but the evident pressure in Scotland for another independence referendum lends the Welsh Government's constitutional policy continuing urgency. While the implications of a rump UK (or 'England and Wales' state) are generally unexplored (though, see UK Government, 2013), the exit of Scotland (and Northern Ireland⁷) may be considered game-changing in Wales.

A committed and creative role for Wales in the EU system of multilevel governance was a foundational precept of the devolutionary project, one then elaborated in the multiple guises of a networking, partnering, lobbying and, above all, implementing region (Rawlings, 2003b). Hitherto 'Remain' in a 'Leave' voting substate polity, the Welsh Labour government suddenly found itself awkwardly placed in the wake of the Brexit referendum.⁸ Urging easy access to the EU Single Market and hence close regulatory alignment, while respecting a democratic vote, proved a tricky and ultimately unsuccessful political positioning in view of the Boris Johnson government's approach to the future EU relationship (Welsh Government with Plaid Cymru, 2017). Claims of ownership over returning EU competences, and a redoubling of efforts to promote collaborative forms of intergovernmental working in general, and for domestic market governance in particular, would also inform the intergovernmental wrangling (Welsh Government, 2017).⁹

The devolved authorities must contend today with an emboldened Conservative government in Westminster. Characterized by in-filling of central authority and legal frameworks, and by corresponding limitations on substate autonomy through strong use of parliamentary sovereignty, much has been heard of so-called 'muscular' or 'hyper' unionism (Kenny & Sheldon, 2021). Wrapped up in union flag-waving and rhetorical appeals to 'Britishness' (Bowie, 2021), this has been part of a wider reassertion of executive power under Prime Minister Johnson. The Welsh Government speaks of an 'aggressive unilateralism' or tendency in Whitehall to act on behalf of the UK without reference to the status of the constituent nations and the democratic mandates of their government (Welsh Government, 2021a, foreword).

Economic unionism is given a hard practical edge in the wake of Brexit by an expansive UK internal market project grounded in powerful cross-cutting principles of market access (UK Government, 2020; United Kingdom Internal Market Act 2020). Pressed on the defensive, territorial actors must also grapple with a variation on a theme: a determinedly 'smarter' form of unionism characterized by targeted project funding from the centre packaged in terms of the added value of the UK. This type of approach expands on previous central government initiatives such as the UK-wide 'city deals' programme of funding and localized decision-making powers and the promotion of 'cross-border' economic partnerships. It presents a particular political and constitutional challenge for a pro-union and strongly devolutionist Welsh Government committed to careful and integrated forms of sustainable development (see also Andrews, 2021).

Meanwhile, the Covid pandemic has brought home the practical significance of devolved governance as never before. The key territorial responsibility for public health is seen impacting most directly on citizens' lives, whether by the making of Welsh law taken to new heights, policing and enforcement activity re-gearred towards substate policy requirements, or via a mass vaccination programme with supply orchestrated by central government and efficient delivery through the substate structures of National Health Service Wales. Although the scale of the divergence should not be exaggerated, especially in view of UK Treasury activity and influence, the sense of territorial identity in a multinational state is underwritten accordingly, a feature of particular significance in a little country for so long closely integrated with a large and powerful neighbour. Even in a highly Anglo-centric media, Wales as a constitutional and political entity has been more clearly delineated.

MODELLING, REFORM AND PROCESS

The chief Welsh Government policy document *Reforming our Union: Shared Governance in the UK* is a coherent and expansive exercise in constitutional modelling (Welsh Government, 2019, 2021a). It deals successively with general principles, the different branches of government, and the process of reform. Some 20 constitutional propositions are featured, representing a mix of achievements, goals and practical proposals. The accompanying commentary straddles the twin aspects of how Wales and the UK as a whole are and should be governed, with a particular emphasis on subsidiarity and interdependence. Heavily invested in the constructive power of argument, the approach reflects, and is one way of seeking to ameliorate, an evident lack of leverage for this historically weak, even unaccounted, player in the UK territorial constitution.

Published in 2019, the first edition of *Reforming our Union* (Welsh Government, 2019) played up the territorial stresses and strains associated with the elongated Brexit process and hence the urgency of reform, not least in the realm of intergovernmental relations (IGR). Reflecting the fast-moving character of events, the restatement issued in 2021 (Welsh Government, 2021a) doubles down on the need for an alternative and forward-looking constitutional narrative in the light of muscular unionism and the Conservatives' internal market project. The sense of distance between the two pro-union governments in the UK is underscored accordingly.

Reforming our Union taps into the long (and rejuvenated) tradition of federal-type thinking in the UK (Burgess, 2012; Schutze & Tierney, 2018). There are echoes of the old Liberal Party cause of home rule, familiarly associated in Wales with David Lloyd George, and also, referencing the stalemated Speaker's Conference on Devolution in 1919–20 (Evans, 2015), a nod to the historical difficulties. Local actors have been able to draw on a wealth of contemporary analysis, including much by way of parliamentary reports on the workings of the UK territorial constitution and some major unofficial projects for reform of the union state (e.g., Constitution Reform Group, 2021). The Welsh Government's constitutional modelling plays up the different facts on the ground after two decades of democratic devolution, in the face of entrenched Anglo-centric understandings. The union, the First Minister explains, has failed to keep pace with the practical implications of creating three devolved legislatures, in part because insufficient attention has been paid to how the constituent nations should talk and act together in matters of collective interest (Welsh Government, 2021a, foreword).¹⁰ *Reforming our Union* does not claim to provide all the answers. The need to address the question of England in any general review of the future governance of the union is well understood.¹¹ The basic problem of selling the particular vision of devolution in the dominant unit and, but of course differently, in Scotland, cannot be glossed over.

In the Welsh Government's visualization, devolution is not just a process, let alone an event, but also a solvent. According to this determinedly radical constitutional narrative, parliamentary sovereignty as traditionally understood no longer provides a sound foundation for an evolving form of multinational state. Based on the recognition of popular sovereignty in each constituent

part, the UK should now be viewed as a voluntary association, which through suitably democratic forms of self-determination – referendum – the members are entitled to leave. The border-poll arrangements for Northern Ireland (part of the Good Friday Agreement) and the fact of the Scottish independence referendum in 2014 are prayed in aid. Despite, or perhaps because of, the history of close integration with England, *Reforming our Union* emphasizes that the same principle applies to Wales (Welsh Government, 2021a, Proposition 1).

Taking the union seriously is a core message, with UK Government failure to articulate a clear and convincing vision a key starting point. The basic concept is unpacked along the familiar lines of economic, political and social attributes (Keating, 2021) and justified and promoted by the Welsh Labour government in teleological fashion. Familiar constitutional and political notions of diversity as a source of collective strength when recognized and treated with respect, and sharing and redistributing resources and risks for mutual benefit and to advance common interests, are linked together accordingly. The positive potentials of close and collaborative working in the multipolar polity, as glimpsed during the Covid pandemic (Sargeant, 2020), are insisted on (Welsh Government, 2021a, introduction).

A close blending of constitutional theory and preferred practice informs this exercise in policy development. Take the precept that ministers in each administration should be fully responsible and accountable inside the particular polity and not elsewhere. Specified powers of intervention in the devolution statutes, for example to uphold international obligations, are seen here as an overly conflictual option best avoided by central government in the interests of the union. There is too a piece of constitutional anathema for UK ministers concerned to (be seen to) make a difference. Signalling a major area of dispute in the wake of Brexit, in the Welsh Government's view central government should not without prior agreement intrude on devolved responsibility through public expenditure (Welsh Government, 2021a, Proposition 9).

Constitutionalizing Wales as a full and equal member of the union state is a chief part of the enterprise. Themes of subsidiarity, greater equivalence between devolved institutions, and comity and parity of esteem among the constituent parts of the UK, have special resonance here. In similar vein, the standard constitutional proposition that the territorial legislature be self-governing and autonomous recalls a particular history of statutory constraint concerning electoral arrangements and internal representative structures; subsequent empowerment in the Wales Act 2017; and, under the progressive banner of democratic renewal and public engagement, Welsh legislation lowering the minimum voting age for the Senedd (National Assembly Commission, 2019a; Senedd and Elections (Wales) Act 2020).¹²

The twin issues of Senedd size and electoral system will be the chief test of internal constitutional reform in the next period. An expert panel appointed by the Llywydd (Speaker) predictably concluded that a legislature of 60 members is too small in view of the expanded competence and associated problems of workload and executive/representative balance. Recommendations for 80–90 members, and for replacement of the existing additional member system (40 (first past the post) constituency members and 20 regional (list) members) with single transferable vote, were packaged in terms of diversity, participation and accountability. Illuminating the interactive character of Welsh constitutional development, an enlarged Senedd facilitating further devolutionary empowerment is part of the calculation (McAllister Panel, 2017). The demand for a more proportional electoral system, coupled with supermajority requirements in the Senedd for this type of constitutional change, presents, however, a particular challenge for Welsh Labour.

Building on a cautiously framed manifesto commitment (Welsh Labour, 2021), a cross-party Special Purpose Committee on Senedd Reform is in train, with a view to matters being taken forward in a Welsh Government Bill in time for the seventh Senedd elections in 2026. Illuminating both the sense of priority and a certain lack of consensus, the new Co-operation Agreement speaks of a target range of 80–100 members, legislating for gender quotas and a voting

system which ‘is as proportional – or more – than the current one’ (Welsh Government & Plaid Cymru, 2021a). Competing arguments around the idea of voter engagement in a national politics, one in which party competition is apt to be less regionalized, the known unknowns in the shaping of voter behaviour by electoral reform, and the various design issues in single transferable vote (boundaries, etc.), are already well rehearsed (Senedd Committee on Senedd Electoral Reform, 2020). The development is flanked by the planned reduction of Welsh seats at Westminster as part of constituency boundary reform.¹³ A major rebalancing of political representation in favour of the devolved level is in prospect.

Reforming our Union includes a major agenda for constitutional renewal on a pan-UK basis. Some propositions deal with familiar federal-type elements: for example, a reconstituted Upper House at Westminster whose membership and responsibility are properly geared to a multinational state; and, in the light of long-standing Welsh complaints about ungenerous and opaque forms of financial redistribution, revamped UK-level calculations of devolved spending power by reference to agreed objective indicators of relative need (Welsh Government, 2021a, Propositions 7, 14–16). A substantial measure of shared governance, generously defined in terms of mutual interdependence, is prioritized, devolution being in this visualization a joint project in a multipolar polity. A premium is also put on intergovernmental agreements, protocols, etc., the working assumption being that rules-based systems of governance, whether or not formally legally grounded, are apt to provide better substate protection than ones based on high degrees of discretion. A constructive and collaborative set of relations between UK ministers and the devolved authorities is deemed not only essential but also often achievable and all too often lacking. Underpinning this is the oft-expressed concern about an imperious and inward-looking Whitehall mindset (e.g., Welsh Affairs Committee, 2021), associated in turn with a tardy organizational response in Whitehall to democratic devolution (Dunlop Review, 2019; Kenny et al., 2021).¹⁴

The need to establish and maintain effective, balanced and accountable machinery for domestic IGR is an article of faith in Welsh Government constitutional policy (Welsh Government, 2021a, Proposition 10). In so promoting a dedicated mix of multilateral arrangements to grease the wheels of governance and support shared interests, the policy development has tapped into a stream of criticism about the flimsy Joint Ministerial Committee system originally established under New Labour (McEwen et al., 2020). The mix of institutional vision and heightened concern about pan-UK arrangements in the light of Brexit is shown in a proposal for a UK Council of Ministers loosely modelled on the EU Council and tasked in particular with the negotiation and oversight of common rules and frameworks in the market regulatory sphere (Welsh Government, 2017).¹⁵ Ultimately premised on a ‘UK plus one devolved administration’ rule for affirmative decisions, it suggests one technique for navigating the political and economic dominance of England. The proposal further serves to illustrate the limitations of Welsh voice in the pan-UK context. High-profile and designedly path-breaking in terms of comity and parity of esteem, the Council of Ministers model was very challenging for Whitehall. As the standard-bearer for greater interdependence in a multipolar polity, it also had questionable appeal for a nationalist Scottish Government accustomed to high levels of autonomy and grounded in a more established and stronger political community. The proposal is best seen as an exercise in official agenda-setting. It finds echoes today in a long drawn-out intergovernmental review of IGR (UK Cabinet Office, 2022). Eventual agreement on the ‘Prime Minister and Heads of Devolved Governments Council’ in a three tiered political and administrative structure, and particular commitments including an Interministerial Standing Committee and a Finance Interministerial Standing Committee, a reformed dispute avoidance and resolution mechanism, and a jointly staffed standing secretariat, are redolent of Welsh Government input.

The well-known (Sewel) Convention that Westminster will not normally legislate in relation to devolved matters without territorial legislative consent is an important constitutional

touchstone, bearing as it does on issues of autonomy and mutual respect. The Supreme Court's ruling in the Brexit litigation that the Convention, though recognized in the devolution statutes, was not justiciable,¹⁶ underwrites the twin features of formally non-binding 'soft law' and central government discretion. The series of Brexit-related statutes where the centre has proceeded without territorial consent, the United Kingdom Internal Market Act 2020, for example, exemplifies in the Welsh lexicon 'aggressive unilateralism'. A case of manoeuvring within pre-existing constitutional parameters, *Reforming our Union* envisages specification of the criteria for central override in an intergovernmental memorandum of understanding and an enhanced process of scrutiny at Westminster when legislative consent is refused (Welsh Government, 2021a, Proposition 5).¹⁷ The suggested alternative, that Westminster should not be able to legislate on devolved matters, or modify devolved competence, without the relevant territorial consent, illustrates the profound difficulty for Welsh Government constitutional policy in the face of rigid dictates of parliamentary sovereignty. The epitome of self-rule, this is federalism in all but name in a new constitutional settlement.

The Welsh Government's policy development features some institutional technique useful for persuading multiple audiences. If in constitutional terms the problem of political leverage and dependency on the power of argument classically relates to the UK Government, sceptical forces in the UK Labour Party have long constituted a particular obstacle to devolutionary advance (for contemporary discussion, see Waters, 2021). A raft of independent commissions and panels has been used to help ground and legitimize further steps in the devolutionary process (for leading illustrations, see Richard Commission, 2004; and Silk Commission, 2012, 2014). Task and finish bodies, they have typically been geared to a specific constitutional subject matter or question and also to electoral cycles with a view to statutory implementation (Davies & Pritchard, 2021). In part reflecting the different demands for Westminster legislation and/or home-grown constitutional change, some of the commissions have been appointed by the Welsh Government and others by the UK Government in the light of operational difficulties and pressures from Wales.

The appeal to constitutional principle and/or good governance values, coupled with evidence-based analysis laced with public consultation, has been standard in this elite – expert – form of constitution-building. A strong civil service input has run in parallel. *Reforming our Union* is replete with official – insider – views of the difficulties and possible improvements for devolved government in the framework of UK governance. The particular territorial concern around piecemeal, unbalanced and unstable forms of IGR is an exemplar. Showing the creative role of Welsh Government lawyers, the input extends to the Government and Laws in Wales draft bill, a proposed codified constitution for the substate polity again constructed in logical and coherent fashion and produced in response to complex and arduous Whitehall proposals for devolutionary reform (Wales Governance Centre and Constitution Unit, 2016; Welsh Government, 2016). Promoting and refining the policy message by active dialogue with parliamentary committees and influential think tanks, etc. is part of a general pattern of high-level engagement.

Welsh Labour's renewed electoral mandate has given the process of constitutional policy development fresh impetus. The party's successful manifesto spoke of promoting a national, civic conversation in Wales about the constitutional future (Welsh Labour, 2021),¹⁸ coupled with the demand, founded on continued electoral success and government experience, for a leading role in a constitutional review recently put in train by the UK Labour Party.¹⁹ There is much talk in Welsh Labour circles of something called 'radical federalism': a slippery concept open to much interpretation, but one which is progressively framed here in terms of values and a principle-based approach to constitutional change, with a particular emphasis on inclusivity and locality (Antoniw et al., 2021).²⁰ A case, it might be said, of pre-existing Welsh Labour government policy writ large.

Appointed by the Welsh Government, an independent Constitutional Commission has now been established, tasked with two broad objectives.²¹ The first, ‘to consider and develop options for fundamental reform of the constitutional structures of the United Kingdom, in which Wales remains an integral part’, sits well with the broad policy thrust of *Reforming our Union*. The second, ‘to consider and develop all progressive principal options to strengthen Welsh democracy and deliver improvements for the people of Wales’, fits too in terms of a value-laden approach and practical emphasis, but also denotes consideration of a spectrum of constitutional models that includes independence. A pro-union government initiating such an open form of national conversation bears testimony to the important and ongoing role of autochthonous development and to the pervasive sense of territorial constitutional unsettlement in the UK.

Co-chaired by Professor of Governance Laura McAllister and former Archbishop of Canterbury Rowan Williams, the Constitutional Commission is intended to represent a broad range of political opinion and sections of Welsh society. ‘A programme of inclusive engagement with civic society and the Welsh public’ is part of the package, with a view to a full report with recommendations by the end of 2023. Expert advisers, offering perspectives on government, public policy and constitutional practice, are to lend support. Designedly harder for Westminster to ignore by reason of a mix of professional experience, moral suasion and citizen voice, the commission is described in terms of Wales taking greater constitutional ownership.²² It highlights the distance travelled from the original devolutionary design of a generation ago.

DEVOLUTION OF JUSTICE

Devolution of justice is a chief item on the Welsh Government’s constitutional agenda. Wales remains outside the comparative constitutional mainstream in possessing legislative and executive branches but no matching judicial architecture: a relic of long-standing incorporation in the English legal system (Watkin, 2012). With broad political responsibilities for civil and criminal justice also retained by central government under the banner of ‘England and Wales’, challenging issues arise about policy coherence, implementation and democratic accountability that are magnified amid the wider forms of legislative and administrative divergence between the two countries.

Appointed by the Welsh Government and chaired by Lord Thomas, former Lord Chief Justice of England and Wales, the recent Commission on Justice in Wales was the first major inquiry into the general subject matter in modern times.²³ Envisaging another major phase in the Welsh constitutional journey – largescale devolution of the justice function – the commission’s report *Justice in Wales for the People of Wales* proceeds on the basis that justice is at the heart of any system of democratic government of a nation (Thomas Commission, 2019).

The commission’s comprehensive evaluation shows the progressive quest for a more just, fair and prosperous country, linked in turn to good governance principles of subsidiarity, coherence and responsiveness. Far from a narrow exercise in formal constitution-building, the report is couched in terms of practical issues, better outcomes, and social and economic as well as strictly legal concerns. The commission’s working method placed the constitutional – jurisdictional – dimension as a second stage in the process of deliberation, the emphasis being on the specific and diverse needs of the people of Wales as users, subjects and frontline operatives of the justice system. Criminal justice and policing feature prominently in the report, fitting the argument for an enhanced policy space in which to pursue more coherent and progressive strategies attuned to social justice. A mound of critical evidence was accumulated around high rates of imprisonment, fragmented efforts at rehabilitation, and the treatment of black and minority ethnic (BAME) people and female offenders. Tied to the need to tackle the underlying causes of crime, and extending through an overall criminal justice strategy and integrated whole-system approach

to offender management and rehabilitation in Wales, a raft of recommendations followed (Thomas Commission, 2019, ch. 4).

The chief finding was stark, namely that the people of Wales are being let down by the justice system in its current state. Much was heard of the so-called ‘jagged edge’ associated with a patchy and overly complex constitutional arrangement: areas of devolved responsibility such as health and education intersecting and overlapping with reserved policy fields such as policing, prisons and probation in somewhat dizzying fashion (Jones & Wyn Jones, 2019). The commission was naturally of the view that the justice system is not an island. Why should the people of Wales not have the benefit that the peoples of England, Scotland and Northern Ireland enjoy of justice being an integral part of overall policymaking? The dedication shown by many local actors in the face of ill-fitting legal and administrative arrangements fuelled the prevailing sense in the commission of locked-up potentials; the more so, given the particular opportunities for inclusive and joined-up approaches in the conditions of small country governance. The positive case for justice being determined and delivered in Wales in a way that aligns with the distinct and developing territorial policies around well-being, etc. was stressed. The subsequent very public illustration of legal divergence between Wales and England, and the artificial division of political responsibilities for making and policing multiple public health requirements, during the course of the Covid pandemic, underscores the argument (Welsh Government, 2021a, Proposition 18).

The commission in promoting the role and importance of law and justice in the substate polity could look to some well-established professional and educational communities and networks. There is copious evidence with democratic devolution of organic institutional growth in this area, which also means a peculiarly cluttered England and Wales/Wales decision-making space. The potential of territorial initiative is well illustrated in administrative justice: a nascent Welsh tribunals system (Law Commission, 2021). Funding was naturally identified as a key issue. Not only had UK-level policies of austerity bitten deeply in the England and Wales legal system, but also the interests of Wales appeared low on the radar of the Ministry of Justice in London. With an eye to the rule of law and access to justice,²⁴ the Welsh Government had been driven to prop up the justice system inside the substate polity by substantial contributions from the Welsh budget and local taxation (Thomas Commission, 2019, chs 2–3). Reasserting basic constitutional ideas of responsibility and accountability, the commission was clear that devolution of justice must be accompanied by a full transfer of financial resources.

The commission’s recommendations for a sustainable legal system grounded in territory, polity and national identity encompass demands for reworking the constitutional balance between the three main branches of government within Wales, and also for greater symmetry with Scotland and Northern Ireland. Legally speaking, this would entail the removal of myriad statutory reservations and restrictions governing the Senedd’s power to legislate. A new Justice Department in the Welsh Government headed by a cabinet minister would take on relevant executive functions, with a matching Justice Committee in the Senedd for democratic oversight.²⁵ The commission was not shy in pointing to wider structural and cultural issues that needed to be addressed with a view to further major empowerment; not least leadership, capacity and capability in the local justice system, as well as safeguards for judicial and police independence in the closeness of small country governance. Welsh ministers, it was stressed, have a positive role to play in support of legal business and advice networks (Thomas Commission, 2019, chs 9–10).

The commission’s approach to the issues of governance, law and judiciary is in comparative terms a standard piece of constitutional engineering. It also shows how the familiar concept of a ‘separate jurisdiction’ can be unpacked, so opening up a richer field of choice in terms of territorial differentiation and allocation of functions (Thomas Commission, 2019, ch. 12). Major design issues were addressed flexibly in terms of ‘mix and match’, a form of legal and administrative analysis the significance of which should not be underestimated in the light of deep-rooted (professional) attachments to the England and Wales model. The commission recommended that

the Senedd be empowered to establish a Welsh High Court and Court of Appeal, with further appeal to, and a newly dedicated Welsh seat on, the UK Supreme Court. With a view to maintaining local capacity, reputation and expertise, and to facilitate commercial work on an international basis, the present system whereby legal practitioners can practise in England and Wales and are regulated accordingly would be continued. Historic indeed, the law applicable in Wales would be formally identified as the law of Wales, distinct from the law of England.

In view of a long-standing and self-interested adherence to the conjoined England and Wales model, Whitehall's immediate rejection of the commission's chief proposals was eminently predictable. The paucity of the response in terms of basic governance principles of responsiveness, coherence and clarity, and stability and accountability, is notable, however. Familiar objections, such as disproportionate cost, professional freedom and reputation of the conjoined legal system overseas, which the Thomas Commission unanimously concluded are outweighed or navigable, were recycled.²⁶ The new Constitutional Commission will no doubt be urged to reassert the case for largescale devolution of justice under the broad rubric of delivering improvements for the people of Wales.

The Welsh Government is not about to give up on dialogue with the UK Ministry of Justice around particular items and policy blueprints in the reserved policy portfolio, youth justice for example. Though slowed by the exigencies of the Covid pandemic, territorial actors have also set about implementing Thomas Commission recommendations for action within pre-existing devolved competence.²⁷ This further home-grown development includes a Welsh Cabinet sub-committee on justice, a reoriented Legislation, Justice and Constitution Committee in the Senedd, and, with former UK Supreme Court Justice Lord Lloyd-Jones as inaugural President, a separate Law Council of Wales to support the economic development and sustainability of the legal sector in Wales and promote legal education and training and awareness in Welsh law. The process illustrates a quiet, small-steps, form of constitution-building.

The demand for largescale devolution of the justice function will not go away. The twin motors of divergence between Wales and England will further buttress it over time, notwithstanding the elements of centralization conjured in the light of Brexit. Denoting continued political efforts, in particular to influence UK Labour policy, Welsh Government constitutional modelling requires that this major expansion of competence be a chief 'ask'. A progressive politics without the justice function is seriously deficient.

BREXIT, REREGULATION AND GOVERNANCE

The distinctive Welsh Government blend of constitutional policy and substantive, practical elements is demonstrated in the wider context of Brexit in several ways. Territorial concerns around future domestic arrangements range successively through redistribution of repatriated powers, internal market design and replacement of EU funding, as well as IGR. Reflecting precepts of subsidiarity, mutual respect and shared governance, the policy approach involves a mix of collaborative and protective approaches in the face of centralizing tendencies. Emblematic of a system of divided competence under stress, entwined forms of political, legislative, executive and court-based strategies all feature in an ongoing constitutional struggle. Particular economic facts – very high proportions of territorial exports to the EU and Wales as a net recipient of EU funding hitherto – and particular market concerns – the prospect of baked-in forms of Anglo-centric commercial dominance underscored by the exceptionally integrated nature of a 'cross-border' economy – are salient features.

Territorial actors have correctly stressed the constitutional dimension of Brexit-related reregulation (in the general sense of regulating again or anew; Rawlings, 2017). Informed by comparative experience in federal systems, and of course by the multiple and shifting forms of ordering in the EU Single Market, they have sought to insist on the wide range of possible

political and administrative as well as legal techniques of governance in the UK internal market (Welsh Government, 2017). Giving the territorial approach a distinctive ideological flavour, substantive concerns around the standard Conservative fare of the benefits of open markets, and the evident interplay of internal ('frictionless' market) and external (trade deal) considerations in the UK-level policy development, reflect the entrenched Welsh Labour government brand of progressive politics. The sea of political and legal uncertainty surrounding the extended Brexit process, and later the hardening of UK Government policy lines under Prime Minister Johnson, have proved particularly difficult for this junior partner of the union to navigate.

The European Union (Withdrawal) Act 2018 (EUWA) and the United Kingdom Internal Market Act 2020 (UKIMA) amply demonstrate the key role here of law and legal technique. In grappling with classic issues of legal continuity and change spawned by Brexit, EUWA also foreshadows a host of other Brexit-related legislation, ranging through withdrawal arrangements and future relations with the EU to the determinedly policy-laden statutory reorderings which today UKIMA epitomizes. Yet more challenging for devolved government, a common element in these UK statutes is their strong framework character or provision of wide executive law-making powers for UK ministers.

Welsh (and Scottish) ministers naturally favoured the flow of returning EU competences under a reserved powers model, and hence devolved empowerment in key policy domains such as agriculture and fisheries, environmental protection, and economic development. Some major twists and turns in the making of EUWA show the sustained exercise and limitations of Welsh Government constitutional voice (Rawlings, 2019). First, a prime example of issue-based territorial alliance in the political/legislative arena, the Welsh and Scottish governments protest against a proposed model of 'hold and release': statutory diversion of returning EU competences in devolved areas to London, with onward transfer of powers as and when re-regulatory frameworks were agreed. This model not only smacked in the Welsh constitutional experience of reversion to conferred powers, but also denoted extra political and administrative leverage for the double-hatted Whitehall as part of an intergovernmental bargaining process. Second, some union-friendly deal-making with the Government of Prime Minister Theresa May, Welsh ministers accept a softer model of 'devolve and freeze': order-making powers whereby UK ministers might pre-empt substate legislative activity in repatriated matters of devolved competence prior to the making of re-regulatory frameworks. Third and relatedly, a move away from formal constitutional conflict, Welsh ministers discontinue alternative legislative and court-based strategies: home-grown legal continuity provisions and their high-level defence against anticipated central government challenge (an approach pursued with only limited success by the independence-minded Scottish Government²⁸).

Behind this manoeuvring lay a freshly minted multilateral agreement on reregulation via collaborative-style common frameworks. An example of the 'soft law' arrangements common in IGR, this is also redolent of Welsh Government input. Incorporating matched elements such as respect for the devolution settlements and enabling of the UK internal market, structuring principles framed it (Joint Ministerial Committee (EU Negotiations), 2017). Elaborated via another intergovernmental agreement, the Welsh Government's deal-making also saw the new freezing powers hedged around with various legal and political commitments related to process, transparency and equivalence: parliamentary explanation and report, a sunset clause, application to England, etc. (UK Government/Welsh Government, 2018). Such instruments, however, are themselves vulnerable to side-stepping or trumping by the dominant legal and political player: an issue of trust and confidence clearly magnified in the UK constitutional context. Territorial actors could not control the ongoing Brexit-related legislative feast at Westminster, as the increasingly sad appearance of the Sewel Convention would highlight.

A detailed intergovernmental process for the design of common reregulatory frameworks fitted the Welsh Government's basic constitutional modelling: shared governance in action.

Geared to specific policy areas of hitherto intersecting EU and devolved competence, it suggested a flexible and targeted approach to territorial decision-making space and domestic regulatory alignment. Pursued through a combination of political and administrative as well as legal means, this type of format carries the potential for a ‘four nations’ approach premised on mutually respectful negotiation and cooperation (Common Frameworks Scrutiny Committee, 2021). Successive UK Government reports would testify to close and constructive engagement in the process, whereby the EUWA freezing powers were left to lie (UK Cabinet Office, 2021). A parallel stream of official work on pan-UK market access principles, apt to cut across matters within devolved competence, was troubling, however, for territorial actors. Eventually emerging centre stage in UKIMA under the twin rubrics of mutual recognition and non-discrimination, this approach suggested a more centralist and hierarchical form of legal construction, whereby in certain circumstances the exercise of devolved legislative competence would be rendered ineffective. The prospect of doubling-down on the commercial and regulatory dominance of England, and/or blunting progressive policy approaches under the banner of economic liberalism, is conjured accordingly.

The different constitutional narratives of the two pro-union governments are well-illustrated in the policy documentation surrounding UKIMA. Whitehall speaks of a unitary state with powerful devolved legislatures and plays up the risk of intra-state regulatory divergence (UK Government, 2020).²⁹ UKIMA is duly afforded protected statute status against modification by the devolved legislature(s). The Welsh Government re-emphasizes the multinational character of the UK and territorial diversity as part of the logic of devolution (Welsh Government, 2020a). The cross-cutting market access principles are expansively deployed in the statute, with only limited exceptions and no overarching EU-type principle of subsidiarity in play (Armstrong, 2021). ‘Henry VIII’ powers to change primary legislation are designed to afford UK ministers significant discretion over the precise scope and content of the reregulation. In defensive mode, Welsh ministers have reverted to court-based strategy, so requesting some reading down of UKIMA to avoid implied or indirect restrictions on devolved legislative competence, and narrow interpretation of the Henry VIII powers, in view of the high status of the devolution statute(s) as constitutional legislation. Running into preliminary UK Government objections of prematurity,³⁰ the argument is an uphill battle in the face of parliamentary sovereignty.³¹

The non-appearance of common frameworks in the original version of the internal market Bill was particularly galling for Welsh Government actors in view of the considerable official effort expended. Some intense territorial lobbying at Westminster, typically buttressed by committee work in the Senedd and focused on the House of Lords where the pro-union messaging of cooperation and mutual respect could be expected to appeal,³² was called for. Pitching high, the Welsh Government package of model amendments presented common frameworks as the appropriate constitutional default position, whereby the twin market access principles would be limited to circumstances where intergovernmental agreement on a common framework had not proved possible (Welsh Government, 2020b). A limited but significant UK Government concession sees common framework agreements included in UKIMA under the rubric of possible exclusions from the cross-cutting principles. The official work on common frameworks has continued accordingly on a range of important topics such as food standards, hazardous substances and public health protection. Robust scrutiny by a special House of Lords committee offers some useful leverage for Welsh ministers.³³

UKIMA makes grim reading for Welsh ministers in another respect. Financial assistance powers for UK ministers to promote economic development, etc. in any area of the UK bear directly on the constitutional issue of control of the territorial decision-making space. A ready vehicle for the UK Government’s Shared Prosperity Fund, successor to the EU Structural Funds, they also have special resonance in Wales in view of the very high levels of EU support hitherto and in turn much by way of partnership working and delivery of projects on a regional

basis (Welsh Affairs Committee, 2020). Presented by Whitehall as a way of ‘levelling up’ and of ‘gluing’ the union together, this assertive centralist format is in the Welsh Government’s constitutional canon a major intrusion, especially in view of a Whitehall policy development characterized by scarce engagement with the devolved authorities and stress on targeted alliances with local authorities and business (Institute for Government, 2021; UK Government, 2021). It is to Welsh ministers an ‘unsmart’ recipe for duplication of efforts, divisions and uncertainties, and blurred lines of accountability (Welsh Government, 2021a, Proposition 14). More wrangling between the two pro-union governments beckons.

CONCLUSIONS

The Welsh Labour government has developed a distinctive brand of territorial constitutional policy in the UK context. The product of a strongly devolutionist Government with a care for union, it reinforces the importance of autochthonous development in substate governance, reflects an adverse state of power relations in a famously uncodified constitution, constitutes a standing rebuke to central government ministers, and promotes an alternative constitutional vision of the UK. Grounded in the notion of popular sovereignties in a multinational and multipolar polity, and framed in terms of building up Wales as a substate polity and the need for continued consent to and reform of the union, the approach represents a profound and difficult constitutional challenge.

The constitutional modelling is determinedly principles-based and forward-looking in the face of Anglo-centric assumptions around parliamentary sovereignty and a domineering Whitehall culture. The expansive canvass of federal-type ideas is a convenient resource, first, for bridging across the internal substate dimension and the workings of the UK territorial constitution at large; and second, in the continuing quest to navigate competing pressures of centralism and interest in independence. At the same time the establishment of a new Constitutional Commission underwrites the fluid nature of the constitutional debate in Wales.

The broad and enterprising nature of Welsh Government constitutional policy contrasts with the historically stunted territorial development. A creative and evolving form of constitutional analysis in terms of preferred practice helps to structure a range of substate strategies and processes: internal-territorial and pan-UK; cooperative, assertive and defensive; intergovernmental and formal legal; more or less autonomous and institutionalized and dependent on the power of argument. In pursuing the cause of reform amid ongoing turbulence in the UK territorial constitution local actors could hardly be accused of lack of effort.

Wales as a substate polity remains a work in progress. Much has been achieved in a very short historical timeframe, an aspect underlined amid the Covid pandemic. Further home-grown development, most obviously an expanded Senedd and reformed electoral system, is on the agenda. Wales may be better equipped accordingly for an uncertain constitutional future. Largescale devolution of the justice system is a missing piece in the constitutional jigsaw, one which highlights the continued dependency of Wales and need to influence UK-level actors, as well as micro-processes of tooling up. Founded on the continued electoral dominance of Welsh Labour, progressive policy interests inform much in the internal substate dynamics, feed wider constitutional endeavours, and are indicative of tensions in the UK-wide conditions of political cohabitation.

A sustained exercise of constitutional voice, and in the face of different and powerful narratives elsewhere in the union the struggle to be heard, characterizes Welsh ministers’ efforts at the pan-UK level. Familiar themes of shared governance and mutual respect are shown in territorial prescriptions for the reform of IGR and the legislative consent Convention. The devolved authorities are today confronted with a raft of centralizing re-regulatory elements associated with Brexit and the UK internal market project, some with particular relevance in Wales. Limiting the impact of and substituting for a muscular unionism in the cause of progressive policy forms is part and parcel of the official territorial constitutional canon.

Time will tell the extent to which, together with the historically significant maturation of the substate polity, a distinctive territorial perspective contributes to the UK development at large; or, as could well prove the case, comes to epitomize the twilight of the union. Welsh Labour government constitutional policy is constructive and ambitious, but faces an enduring struggle for influence and consequence.

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NOTES

1. Government of Wales Act 1998; Government of Wales Act 2006; Wales Act 2014; and Wales Act 2017.
2. Welsh Labour 30 (+1); Conservatives 16 (+5); Plaid Cymru 13 (+1); and Liberal Democrats 1. The UK Independence Party (UKIP) previously held seven seats.
3. For this constitutional option, see Plaid Cymru Independence Commission (2020).
4. For the agreed machinery, see Welsh Government and Plaid Cymru (2021b); and for the implications as regards scrutiny, etc., see Llywydd (2021).
5. For the approach at local level, see Local Government and Elections (Wales) Act 2021.
6. Wales Act 2017, ss. 1–2.
7. Mark Drakeford is hardly alone in considering Northern Ireland's place in the UK increasingly precarious (Drakeford, 2021).
8. The full result in Wales was Leave 52.5% and Remain 47.5%; turnout was 71.7%.
9. See the fifth section below.
10. In Welsh Government parlance, 'the union' covers the state of unions of the four constituent parts.
11. See latterly, House of Lords Constitution Committee (2022b, ch. 7).
12. Turnout for Senedd elections has hovered in the range 38–47%.
13. From 40 to 32 seats (Boundary Commission for Wales, 2021).
14. The UK Department for Levelling Up, Housing and Communities has now taken on responsibilities with respect to intergovernmental relations, etc.
15. Welsh ministers also take issue with the stunted means of substate input into UK-level international engagement (Welsh Government, 2021a, Proposition 11).
16. In the *Miller* case [2017] UKSC 5.
17. For the related efforts at procedural reform in the UK Parliament, see House of Lords Constitution Committee (2022a, ch. 4).
18. For earlier experimentation (with echoes of processes in Scotland), see National Assembly Commission (2019b).
19. The Commission on the United Kingdom's Future is led by former Labour Prime Minister Gordon Brown.
20. Illuminating the role of the wider labour movement, the Wales TUC recently established a Future of Devolution and Work Commission.

21. Minister for the Constitution Mick Antoniw, Oral Statement: The Constitutional Commission, Senedd Record of Proceedings 19 October 2021.
22. Mark Drakeford, Senedd Record of Proceedings 19 October 2021.
23. The author was a member of the Commission.
24. The Legislation (Wales) Act 2019 grounds an attempt to improve the accessibility of Welsh law via codification. For the Welsh language dimension, see Thomas Commission (2019, ch. 11) and Lloyd-Jones (2019).
25. So echoing arrangements in Scotland and Northern Ireland (Thomas Commission, 2019, ch. 12).
26. House of Commons Debates, vol. 670, cols 138WH-160WH (22 January 2020); (Lord Chancellor) (Buckland, 2020).
27. See Antoniw (2021).
28. Scottish *Continuity Bill* case [2018] UKSC 64.
29. Wincott et al. (2021) set this in historical perspective.
30. *R(Counsel General for Wales) v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWCA Civ 118.
31. And the evolving UK Supreme Court jurisprudence: see latterly, the *Scottish UNCRC* case [2021] UKSC 42.
32. House of Lords debates, vol. 807, cols 1431–72 (18 November 2020).
33. Common Frameworks Scrutiny Committee, *Post-Brexit Common Frameworks Inquiry* (ongoing).

REFERENCES

- Andrews, L. (2021). The forward march of devolution halted. *The Political Quarterly*, 92(3), 512–521. <https://doi.org/10.1111/1467-923X.13044>
- Antoniw, M. (2021, September 30). *Written statement: Update on the development of the justice system and the legal sector in Wales*. <https://gov.wales/written-statement-update-development-justice-system-and-legal-sector-wales>
- Antoniw, M., Burge, A., Essex, S., Hughes, O., Hume, D., & Simpson, A. (2021). *We, the people*. Radicalfederalism.com.
- Armstrong, K. (2021). The governance of economic unionism after the United Kingdom Internal Market Act. *Modern Law Review*, 84. <https://doi.org/10.1111/1468-2230.12706>
- Boundary Commission for Wales. (2021). *2023 parliamentary review – Initial proposals*.
- Bowie, A. (Ed.). (2021). *Strength in union*. Centre for Policy Studies.
- Bradbury, J. (2021). Welsh devolution and the union: Reform debates after Brexit. *The Political Quarterly*, 92(1), 125–131. <https://doi.org/10.1111/1467-923X.12944>
- Buckland, R. (2020, October 9). *Speech at legal Wales conference*.
- Burgess, M. (2012). *Search of the federal spirit*. OUP.
- Common Frameworks Scrutiny Committee. (2021). *Common frameworks: Building a cooperative Union*. HL 259 (2019–21).
- Constitution Reform Group. (2021). *Act of union bill*.
- Davies, G., & Pritchard, H. (2021). *Constitution-building in Wales*. Wales Governance Centre.
- Davies, J. (2007). *A history of Wales*. Penguin.
- Drakeford, M. (2007). Social justice in a devolved Wales. *Journal of Public Finance and Public Choice*, 15, 171–178.
- Drakeford, M. (2020, February 27). *Wales and the union*. Speech.
- Drakeford, M. (2021, October 25). *Aneurin Bevan memorial lecture*.
- Dunlop Review. (2019). *UK government union capability*.
- Evans, A. (2015). Back to the future? Warnings from history for a future UK constitutional convention. *The Political Quarterly*, 86(1), 24–32. <https://doi.org/10.1111/1467-923X.12135>
- Henderson, A., & Wyn Jones, R. (2021). *Englishness*. OUP.
- Hoffman, S., Nason, S., Beacock, R., & Hicks, E. (2021). *Strengthening and advancing equality and human rights in Wales* (Welsh Government Research Report).
- Holtham Commission. (2010). *Report on funding and finance for Wales*.

- House of Lords Constitution Committee. (2022a). Sewel convention. In *Respect and co-operation: Building a stronger union for the 21st century* (pp. 33–49). HL 142 (2021–22). <https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/142/142.pdf>
- House of Lords Constitution Committee. (2022b). The governance of England. In *Respect and co-operation: Building a stronger union for the 21st century* (pp. 67–78). HL 142 (2021–22). <https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/142/142.pdf>
- Ifan, G., & Siôn, C. (2021). *Welsh budget outlook 2021*. Wales Governance Centre.
- Institute for Government. (2021). *The UK shared prosperity fund*.
- Joint Ministerial Committee (EU Negotiations). (2017, October 16). Communiqué.
- Jones, C. (2014, October 15). *Our future union*. Speech.
- Jones, C. (2018, October 11). *Towards a better union*. Speech.
- Jones, R., & Wyn Jones, R. (2019). *Justice at the jagged edge in Wales*. Wales Governance Centre.
- Keating, M. (2021). *State and nation in the United Kingdom*. OUP.
- Kenny, M., Rycroft, P., & Sheldon, J. (2021). *Union at the crossroads*.
- Kenny, M., & Sheldon, J. (2021). When planets collide: The British Conservative Party and the discordant goals of delivering Brexit and preserving the domestic Union, 2016–2019. *Political Studies*, 69(4), 965–984. <https://doi.org/10.1177/0032321720930986>
- Kilbrandon Commission on the Constitution. (1973). Cmnd. 5460.
- Larner, J., SurrIDGE, P., & Wyn Jones, R. (2021). *The Welsh elections study 2021: Some initial findings*. Wales Governance Centre.
- Law Commission of England and Wales. (2021). *Devolved tribunals in Wales report* (Law Com. No. 403).
- Lloyd-Jones, D. (2019). Wales: Law in a small nation. *UK Supreme Court Yearbook*, 10, 100–121. <https://doi.org/10.19152/ukscy.801>
- Llywydd. (2021, December 15). *Written statement. The co-operation agreement – Senedd business*. <https://senedd.wales/media/jlnly0ze/gen-ld14775-e.pdf>
- McAllister Panel on Assembly Electoral Reform. (2017). *A parliament that works for Wales*.
- McEwen, N., Kenny, M., Sheldon, J., Brown Swan, C. (2020). Intergovernmental relations in the UK: Time for a radical overhaul? *The Political Quarterly*, 91(3), 632–640. <https://doi.org/10.1111/1467-923X.12862>
- Morgan, R. (2002, December 11). *Clear red water*. Speech.
- Nason, S., & Pritchard, H. (2020). Administrative justice in Wales. *Journal of Law and Society*, 47(S2), 262–281. <https://doi.org/10.1111/jols.12273>
- National Assembly Commission. (2019a). *Assembly reform programme*.
- National Assembly Commission. (2019b). *Citizens' assembly: Full report*.
- Plaid Cymru Independence Commission. (2020). *Towards an independent Wales*.
- Rabey, T. (2015). *Connection, coherence and capacity* (Welsh Government Research Report).
- Rawlings, R. (1998). The new model Wales. *Journal of Law & Society*, 25(4), 461–509. <https://doi.org/10.1111/1467-6478.00100>
- Rawlings, R. (2003a). *Delineating Wales: Constitutional, legal and administrative aspects of national devolution*. University of Wales Press.
- Rawlings, R. (2003b). Cymru yn Ewrop/Wales in Europe. In P. Craig & R. Rawlings (Eds.), *Law and administration in Europe* (pp. 241–271). OUP.
- Rawlings, R. (2015). Riders on the storm: Wales, the Union, and territorial constitutional crisis. *Journal of Law & Society*, 42(4), 471–498. <https://doi.org/10.1111/j.1467-6478.2015.00722.x>
- Rawlings, R. (2017). *Brexit and the territorial constitution*. Constitution Society.
- Rawlings, R. (2018). The strange reconstitution of Wales. *Public Law*, 2018, 62–83.
- Rawlings, R. (2019). The Welsh way. In J. Jowell & C. O’Cinneide (Eds.), *The changing constitution* (9th ed., pp. 296–322). OUP.
- Richard Commission. (2004). *The powers and electoral arrangements of the national assembly for Wales*.
- Sargeant, J. (2020). *Co-ordination and divergence: Devolution and coronavirus*. Institute for Government.
- Schutz, R., & Tierney, S. (2018). *The United Kingdom and the federal idea*. Bloomsbury.

- Senedd Committee on Senedd Electoral Reform. (2020). *The next steps*.
- Silk Commission. (2012). *Financial powers to strengthen Wales*.
- Silk Commission. (2014). *Legislative powers to strengthen Wales*.
- Thomas Commission. (2019). *Justice in Wales for the people of Wales*.
- UK Cabinet Office. (2021). *The European Union (withdrawal) act and common frameworks, eleventh statutory report*.
- UK Cabinet Office. (2022). *Review of intergovernmental relations*.
- UK Government. (2013). *Scotland analysis*, Cm. 8554.
- UK Government. (2020). *UK internal market*, CP 278.
- UK Government. (2021). *The UK government's plan for Wales*.
- UK Government/Welsh Government. (2016). *Agreement on the Welsh government's Fiscal framework*.
- UK Government/Welsh Government. (2018). *Intergovernmental agreement on the European Union (withdrawal) bill and the establishment of common frameworks*.
- Wales Governance Centre and Constitution Unit. (2016). *Challenge and opportunity*.
- Waters, L. (2021, October 1). *Tudor Watkins memorial lecture*.
- Watkin, T. (2012). *The legal history of Wales*. University of Wales Press.
- Welsh Affairs Committee. (2020). *Wales and the shared prosperity fund*. HC 90 (2019–21).
- Welsh Affairs Committee. (2021). *One-off session with the first minister of Wales*. HC 1255 (2019–21).
- Welsh Government. (2016). *Explanatory summary to government and laws in Wales draft bill*.
- Welsh Government. (2017). *Brexit and devolution*.
- Welsh Government. (2019). *Reforming our union: Shared governance in the UK* (1st ed.).
- Welsh Government. (2020a). *Analysis of the UK government's white paper on a UK internal market*.
- Welsh Government. (2020b). *Model amendments to the United Kingdom internal market bill*.
- Welsh Government. (2021a). *Reforming our union: Shared governance in the UK* (2nd ed.).
- Welsh Government. (2021b). *Programme for government, with accompanying Well-being statement*.
- Welsh Government & Plaid Cymru. (2021a). *The co-operation agreement*.
- Welsh Government & Plaid Cymru. (2021b). *The co-operation agreement: Mechanisms*.
- Welsh Government with Plaid Cymru. (2017). *Securing Wales' future*.
- Welsh Labour. (2021). *Moving Wales forward*.
- Wincott, D., Murray, C., & Davies, G. (2021). The Anglo-British imaginary. *Territory, Politics, Governance*, 9. <https://doi.org/10.1080/21622671.2021.1921613>
- Wyn Jones, R., & Lerner, J. (2020). Progressive home rule? *IPPR Progressive Review*, 27(3), 235–245. <https://doi.org/10.1111/newe.12221>