



A LEAGUE-UNION OF THE ISLES

A booklet of constitutional reflections by
Glyndwr Cennydd Jones
including the essay
These Isles

**A LEAGUE-UNION
OF THE ISLES
BY GLYNDWR
CENNYDD
JONES**

Note that use of the term Assembly and Senedd in this document is reflective of the institution's title at the time of writing the various articles and essays contained within.



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Alongside articles published by the Institute of Welsh Affairs, Centre on Constitutional Change, The Constitution Society, The Federal Trust, Cardiff University, Western Mail, Welsh Agenda magazine, Golwg and Y Cymro, Glyndwr Cennydd Jones's work has appeared in the following books and booklets exploring UK constitutional questions in recent years.

Towards Federalism and Beyond

by Lord David Owen, Gwynoro Jones, Lord Elystan Morgan and Glyndwr Cennydd Jones, including a preface by Martin Shipton.

September 2017

Brexit, Devolution and the Changing Union 2018

by Lord David Owen, Gwynoro Jones, Lord Elystan Morgan and Glyndwr Cennydd Jones, including an afterword by Martin Shipton.

February 2018

These Isles

by Glyndwr Cennydd Jones.

April 2019

Towards an Independent Wales

by the Independence Commission.

Y Lolfa, September 2020

Whose Wales? The Battle for Welsh Devolution and Nationhood, 1880–2020

by Alun Gibbard and Gwynoro Jones.

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**PREFACE BY CARWYN
JONES, FIRST
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OF WALES
2009-2018**



The UK is arguably facing its greatest existential challenge to its territorial integrity since the partition of Ireland over a hundred years ago. Independence is very much a live issue in Scotland and has been growing as an issue in Wales. In Northern Ireland the debate around the position of six of Ulster's counties in the world post Brexit has crystallised around the Northern Ireland Protocol and the potential to unravel the Belfast Good Friday Agreement. Any sense of European identity that helped to bind us together has gone with the UK's departure from the EU. As there has been a departure from one union so there is debate in different parts of the UK as to whether this should lead to departure from another.

Yet it is far from clear if there is a majority anywhere in the UK at this moment in time to end a political arrangement that has been in place for hundreds of years. There is however an active debate as to what that arrangement should look like in the future. The UK, despite devolution is still a state where power is held centrally by the Westminster Parliament. It claims supremacy and the right to do as it wishes. This model is one which may have stood the test of time in the past but which faces significant challenges in the future. The UK has, in the main, been flexible in creating constitutional change in years gone by as the establishment of devolution followed by its extension has moved forward in different parts of the UK. Yet there are many parts of the UK which are still to obtain for themselves the voice that they deserve, in particular the regions of England.

For some the solution lies in independence, for others in turning back the clock and removing devolution from the UK's constitution altogether. Neither of these views have majority support at the present but there is a duty on us to think about what the UK might look like in the future. If the UK remains too inflexible in its structure, then there is every chance it might crack in the future. The failure to be flexible and deliver Irish home rule in the pre First World War period led directly to the departure of most of that island from the UK as more radical voices began to be heard by people there after years of waiting.

There are many possible models for a future UK. A minimalist approach would be a simple extension of the current devolution process but that would leave ultimate power in the hands of one legislature. In the absence of a written constitution there is always a danger that a future UK parliament could reverse some or all of the devolution process although the political fallout would of course be profound. Proposals such as a UK federation or confederation all have their advocates and all have their strengths and weaknesses.

Glyndwr has been an important part of the debate around constitutional futures and I welcome his latest contribution to the ideas that have been generated, particularly in the aftermath of Brexit. We will all have our thoughts as to what the future relationships between the nations of these islands should look like but it is important that there is an informed debate on what kind of future would get the greatest possible support from the public.

Constitutional change is unfinished business in the UK and will remain so until a lasting settlement can be agreed. Any state where a significant portion of its territory votes in large numbers for parties that wish to leave it has to ask questions of itself and find ways of alleviating the concerns of those voters. The difficult part is finding those answers but this publication will help charter a course which enables us to secure a future UK where its advantages such as fiscal redistribution and the lack of trade barriers within its territory can be preserved while at the same time redistributing power away from the centre. That debate has acquired far greater urgency over the last decade and it is incumbent on us to find solutions.

Carwyn Jones

January 2022

1. INTRODUCTION

Including:

- **A Constitutional Convocation**
- **A League-Union of the Isles of Britain**

1.1 A LEAGUE-UNION OF THE ISLES OF BRITAIN

This article first appeared on 5 July 2021.

With the Welsh government today launching its plans for a national conversation on Wales' constitutional future, the following question remains pertinent: 'If we were offered a hypothetical opportunity to constitute Britain from *scratch* once more, would we consciously choose the model of a centralised unitary state that we have inherited?'

Accepting that the federal horse has already bolted, particularly before the relentless wave of Scottish National Party (SNP) electoral successes in recent times, never has there been so much at stake for the future of our nations' relations. We are approaching an uncertain moment in this island journey, if not too, in our collective affairs internationally, with the UK's standing much reduced across the globe. Secessionist tendencies are increasingly prevalent, whether nationally in Scotland and Wales, or at a UK level driven by Brexit. There is a crucial need for us to explore some form of broad, strategic compromise, which embraces the concerns of both unionists and nationalists, moving away from a narrow 'winner takes all' answer to the constitutional question posed. If successful, the long-lasting rewards could be enormous, with fresh political narratives promoting a new kind of partnership across these isles—one which draws on past and present experiences in forming an underlying bedrock of effective collaboration for the century ahead.

At the time of writing, the world is embroiled in the Covid-19 pandemic. The four constituent nations of the UK have taken different tacks in their responses to the social distancing challenges presented, including the application of lockdown conditions. This has reaffirmed the national borders extant within these isles. The trend for significant divergence in policy stances, across the various parliaments, has compounded other clear political disagreements centred on constitutional change, with different parties holding power in each institution for over ten years.

If we were offered a hypothetical opportunity to constitute Britain from 'scratch' once more today, would we consciously choose the model of a centralised unitary state that we have inherited? I suspect England would not have any real intent or interest in pursuing such a proposition as the nation has its own marked difficulties of internal inequality and tensions to overcome.

The UK is the legacy of a different era in world history, one which was embroiled by conflict, empires and two World Wars. Indeed, the main political groupings of our age remain those

which rallied and formed around the issues of those times. The constituent nations of Britain have long since travelled at differing economic rates. More recently, the European Union (EU) has been part of the fabric that holds the UK together. The pre-eminence of EU law, and its interpretation by the EU Court of Justice, has safeguarded legal and regulatory norms across copious fields, including the devolved areas. The UK internal market has effectively been sustained by the conventions of the EU internal market. Brexit risks these interrelated competences becoming increasingly unsound. The need for a renewed isles-wide framework made fit for purpose for the 21st century is now paramount.

If we had a second chance, would we not simply recognise the sovereignty of the different nations and peoples of the UK and seek to work within a robust social, economic and security partnership directed by a limited, but mature, political legislature? Even before the age of devolution, the various identities of the UK's constituent territories were deeply rooted despite occasional, sporadic attempts to standardise across the piece. The fact that such efforts were unproductive places a spotlight on the synthetic nature of the unitary state, which is possibly at the heart of our current condition of constitutional soul-searching.

Globally, these isles are known, amongst many other things, as home to the mother of all parliaments. Would it not speak powerfully of our stature, confidence and foresight, if we acted together, but as individual nations, to enact the mother of all reforms too? Our collective shoulders would have to be broad in setting aside any differences, whether substantial or petty, real or imagined, firmly to embrace shared interests and responsibilities in continuing this remarkable island journey, hand in hand as sovereign nations, but within a League-Union of the Isles of Britain*.

* Devolution involves a sovereign Westminster, in effect, delegating a measure of sovereign authority to the devolved institutions. A League-Union of the Isles turns this constitutional approach on its head, advocating four sovereign nations of radically different population sizes delegating some sovereign authority to central bodies in agreed areas of common interest such as internal trade, currency, large-scale economic considerations, defence and foreign policy, with the British monarch continuing in role.

1.2 A CONSTITUTIONAL CONVOCATION

This article first appeared on 16 July 2019.

In April 2019 my essay *These Isles* was published in four parts on the website of the Institute of Welsh Affairs. This followed the February 2018 release of the joint pamphlet *Brexit, Devolution and the Changing Union 2018* by Lord David Owen, Gwynoro Jones, Lord Elystan Morgan and I, as well as the September 2017 launch of our booklet *Towards Federalism and Beyond*. The below highlights the pressing need for a UK-wide Constitutional Convention.

The ongoing Brexit process, by nature, involves a strong steer towards centralisation in favour of Westminster. This is due to the parliament's twin role in expediting the UK government and that for England. In time, currently observed EU-centred regulation must be replaced to advance the development of an isles-wide framework structured to facilitate a single market, conformity with international rules, negotiation of trade accords, use of shared resources and safeguarding of rights. However, as emphasised by Professor Richard Rawlings in his report *Brexit and Territorial Constitutions* (The Constitution Society 2017) 'the temptation to treat devolutionary aspects as if they were some kind of second front best frozen while supranational negotiations proceed, rather than to take them forward in tandem in a spirit of cooperation, must be firmly resisted.'

To protect the UK's unity post-Brexit, the Welsh Government has suggested federalism as a possible way forward, mirroring unionist views in Scotland. Federalism, whilst admittedly delivering more powers to Wales, offers restricted opportunities for expanding Scottish autonomy beyond the present status quo and does little to tackle the UK's future relationship with the EU in a way that is satisfactory to the Scottish Government. Federalism would likely deliver reform of the Barnett formula, as desired by the Welsh Government, but would impact negatively on the Scottish block grant, strengthening the attraction of a second independence referendum. Some politicians may even consider it intolerable to restructure the UK along federal principles, seeking instead to expand Westminster's reach through Brexit. This would cast an ever longer shadow over the devolution settlements as the UK economy adapts to functioning separately from the EU. Repatriation to Westminster of EU competences in fields otherwise devolved could also hasten calls for Scottish secession.

The fact that 45% of Scottish voters would have preferred to leave the Union in 2014 might suggest a lessening in appeal of the British identity, despite a majority of the electorate in Scotland being opposed to independence. However, some pause is required before jumping

to this conclusion as the dual identity of the Scottish people within the UK has complex roots and meanings. The same is true of the population in Wales. Interestingly, the recognition of multiple identities, highlighted in recent decades by the European dimension of UK politics has created a genuine paradox for some nationalists—in that if it is possible to be Welsh or Scottish and European, is it therefore not possible to be Welsh or Scottish and British too? Admittedly the situation in Northern Ireland is more complicated.

Devolution, as a governance model, leaves Westminster's parliamentary sovereignty, that most conceptual of constitutional principles, technically intact, hence its acceptance by most UK politicians. Wales and Scotland today hold legislative competence over all matters not explicitly reserved to Westminster, which implies a form of federalism, but without the usual sharing of sovereignty across parliaments. The House of Commons in London, according to the Sewel convention, also ought not to legislate on devolved matters without consent of the respective parliaments in Cardiff, Edinburgh and Belfast. The customary argument that parliamentary sovereignty should rest solely with Westminster in future years stands challenged.

With many asserting a multicultural Welsh, Scottish, Northern Irish or English character before claiming a form of dual nationality which also embraces a British personality, it is legitimate to reconsider the nature of Westminster's parliamentary sovereignty such that it more appropriately encompasses authority only over select key isles-wide functions held in mutual interest and regard by the nations. These could include large-scale economic policy, defence, foreign affairs, and aspects of welfare. The consequential and pressing strategic issue going forward relates to whether sovereignty, as currently understood, should be shared across these five territorially defined identities (including that of Britain) in a traditional federal arrangement or instead assigned individually to the four nations—Wales, Scotland, Northern Ireland and England—which in turn would delegate parts of their sovereign authority to common central institutions of a fundamentally British character.

British ideals and values are partly forged by geographic, historic and cultural influences which usefully bridge the demands of world interdependence and the desire for increased autonomy in the nations. The challenge is to capture these principles in a new constitutional framework which strengthens arrangements for self-government—through emphasising common respect for human dignity, freedom, democracy, equality and rule of law—within an isles-wide civic societal structure typified by pluralism, non-discrimination, tolerance, justice and solidarity.

The most effective modern constitutions articulate the essential framework of governance and are open to appropriate modifications, such as the pooling of sovereignty in international treaties and bodies, over time. They also balance the basic principles with current and developing demands which may necessitate the reassignment of an authority or

responsibility of government from one level to another. Creating such a written framework for these isles could prove invaluable across the political spectrum, with some finding reassurance in attempting to articulate the more distinctive elements of the UK's practices in a codified constitution, and with others seeking to cement the sovereignty position of the four nations individually in relation to a common British civic structure.

As globalisation and migration intensify, states around the world are becoming increasingly diverse culturally, ethnically, legally, politically and religiously. All unitary states would be wise to pay attention to the attachments their populations feel towards the constituent nations, especially in cultivating and sustaining a sense of belonging to the larger political body. A widely accepted approach to successfully embracing and managing such variations is to revise and improve the nature and quality of governance. This is as true for the UK as it is for other states. Indeed, the safeguarding of individual liberty within the nations of these isles could serve as a useful counterweight to the inevitable instinct of the institutional centre to aggregate power deep within its core. The fact that written constitutions make the machinery of government more accessible and transparent is one of the most persuasive arguments for their application.

The integral buoyancy of today's UK is depressed by the four nations' differentiated politics, apprehensions about the Brexit negotiations, uncertainties regarding the post-EU Northern Ireland border, debates concerning a second Scottish independence referendum, and broad unease with the Wales Act 2017. It is now necessary to progress a UK-wide Constitutional Convention, with the involvement of all political parties and elements of Welsh, Scottish, Northern Irish, English and British society to explore the nature of the Union going forward, so that it can be made modern and fit for purpose for the 21st century.

2. REFLECTIONS AND REALITIES

Including **part one** of the essay
**A sovereign Wales in an
Isles-wide confederation**
which first appeared in
early February 2021.

This extract is conceived as a reflection on my constitutional writing over recent years and particularly how I came to settle on a model of a League-Union of the Isles, which has gratifyingly attracted some attention.

My first essay, *Towards Federalism and Beyond* (June 2016), was a quick response to the outcome of the Brexit referendum, highlighting the challenges facing today's Wales in economic and social terms. It advocated the immediate need for a campaign to redefine the UK as a federation so that those competences returning from the EU could be suitably allocated to the nations, along with other much needed reforms to the arrangements underpinning devolution.

Devolution

It was Ron Davies, former Secretary of State for Wales, who said, before the dawn of the Welsh Assembly in 1999, that 'devolution is a process not an event.' Since then, Wales has experienced executive devolution with secondary law-making powers from 1999 to 2007, executive devolution with enhanced secondary powers between 2007 and 2011, legislative devolution under a conferred powers model from 2011 to 2018, and legislative devolution under a reserved powers model from 2018 to the present day. During this period there have also been three Scotland Acts, each augmenting powers north of the border. Nevertheless, England continues to be omitted from the devolution reforms without its own discrete national parliament.

Today, Wales and Scotland hold legislative competence over all matters not explicitly reserved to Westminster, which implies a form of federalism, but without the usual sharing of sovereignty across parliaments. The statutes founding the devolved institutions are analogous to the constitutions regulating federal systems, both providing for and limiting powers of the legislatures and administrations, and dividing responsibilities between the territories and the centre. Established by approval through referenda, the parliaments in Cardiff, Edinburgh and Belfast hold a measure of political entrenchment which has legal foundation in the Wales Act 2017, Scotland Act 2016 and Northern Ireland Act 1998, confirming devolution as a permanent component of the UK constitution—and detailing that the UK government will not normally introduce bills in Westminster to legislate on devolved spheres of competence. Still, Brexit challenges this.

More broadly, as highlighted by Dr. Andrew Blick in his article *A United Kingdom Federation: The Prospects* (Federal Union 2018), the Human Rights Act 1998 partly reflects the Bill of Rights existing in most federal systems, while the UK Supreme Court operates several roles associated with a similarly titled body in a federal jurisdiction. The Joint Ministerial Committee, though found wanting in its application, somewhat

replicates a federal mechanism for states to participate in important central decision-making. Despite this constitutional scaffold, the Senedd in Wales remains an institution lacking real influence and power. The customary argument that parliamentary sovereignty should rest solely at Westminster is under question.

The 'Towards Federalism' component of the essay's title was a pragmatic acknowledgement of what could actually be achieved in the short to medium term. However, it was mostly understood that the 'and Beyond' element had more significance than simply echoing the catchphrase of a well-known Hollywood film franchise.

A Constitutional Continuum (December 2016), my second essay, explored the developing momentum for change and reform amongst many academics, politicians and the public at large, specifically investigating potential models of governance based on partnership principles.

Federalism

In a federation, sovereignty is shared between central and constituent national or state governments. Each level has clearly articulated functions, with some powers pooled between them, but none has absolute authority over the others. An individual is a citizen of the central overarching structure and the state within which they reside, participating democratically in electing representatives to the legislative parliaments at both levels of government, usually with a party political system operating across the whole. Central institutions are in place to implement many taxes. Examples of federations include Germany and the USA.

Agreed practices and rules are confirmed through a written constitution, which details the division of responsibilities between the federal and state tiers. It identifies those powers assigned to the centre which may typically cover: the armed and security forces; border, diplomatic and international affairs; shared public services; cross-recognition of legal jurisdictions; currency and monetary policies; a single market, and select taxation. The remainder rests with the states. The constitution also apportions powers across two chambers of a central parliament. Representation of the states in the second chamber is desirable, allowing a firm place for them to consider laws on behalf of the whole federation, with decisions such as joining or leaving international bodies, and constitutional changes made subject to its approval. The constitution and charter of rights, by which public institutions must abide, are enforced by a Supreme Court.

A federation sets out to provide constitutional clarity and stability across the states, with shared mechanisms in place for advancing joint interests and resolving disputes. It also capitalises on potential for realising some economies of scale in delivering centrally held functions, allowing for a proportional redistribution of the joint

prosperity generated by the federal capital to the states. However, in the UK context, questions remain as to how England, with approximately 85% of the total population, could be integrated successfully into a federation without causing disputes between both UK and English levels, and also whether the intended benefits of various functions being exercised closer to the people could be realised in such a large unit. England's regions may well be the only practical option for inclusion in a UK-wide federal system.

Confederalism

A confederation is a union of sovereign member nations that for reasons of efficiency and common security have assigned a limited portfolio of functions and powers to a joint body. In contrast to a federal constitution, a confederation is usually established by treaty which addresses crucially shared interests such as internal trade, currencies, defence, and foreign relations. Returned representatives take part in central decision-making processes more in the nature of trustees acting on behalf of their member nation's affairs. National parliaments, not individuals, are formally represented in shared institutions, with people first relating to their member nation and next to the confederation. Collective budgetary funds are raised annually through each member nation's contributions of a defined proportion of their Gross Domestic Product (GDP). The nations operate distinct tax regimes and are free to act unilaterally in all areas, unless centrally assigned. The Benelux Union has developed along these kinds of lines.

In the UK context, a confederal treaty would enable Westminster to continue as the parliament of England, with a Confederal Assembly established to deliver a limited range of central powers. Each member nation would adopt its own institutions within a broad constitutional framework—protecting the integrity of political processes and ensuring fundamental rights—whilst encountering the advantages and challenges of running a sovereign state within what is best summed up as a loose alliance or partnership. A treaty on issues of shared concern aims to mitigate any risks and costs associated with fragmenting previously held joint functions, noting that competitive considerations between member nations inevitably complicate relationships within the structure of a confederation.

Two of the more pressing challenges of adopting a pure confederal model concern the matters of large-scale economic management and currency controls. Since the central body is relatively weak, decisions made by a Confederal Assembly would require subsequent implementation by individual member nations to take effect. These pronouncements are therefore not laws acting directly upon members, but instead have more the character of agreements between nations, which are always open to challenge and review, creating uncertainty in collective, strategic aims. However, the attraction of a confederation, comprising member nations of radically different

population sizes, is driven by a view that the UK already has more diversity than is often found in federations.

It was around this time that I stumbled on *Confederal Federalism and Citizen Representation in the European Union* (Western European Politics, Volume 22: 1999 Issue 2) by Professor John Kincaid, which took my developing continuum considerations to more nuanced ground. In a nutshell, the article explains ‘what seems to have developed in the EU is...a confederal order of government that operates in a significantly federal mode within its spheres of competence.’ This find was without doubt a timely piece of good fortune. The realisation had dawned on me that the constitutional choice between federalism and confederalism need not be binary.

My third essay, *A Federation or League of the Isles?* (July 2017) was, as it says on the tin, an in-depth exploration of federalism, confederalism, and more significantly—that possible middle ground—confederal-federalism. Not wishing to alienate the generally moderate elements of both unionism and nationalism to the substance of the proposition, I labelled the model a League-Union of the Isles and embarked on setting out a detailed description of what such a framework might look like, a summary of which follows.

Confederal-federalism: A League-Union of the Isles

Devolution involves a sovereign Westminster, in effect, delegating a measure of sovereign authority to the devolved institutions. A League-Union of the Isles turns this constitutional approach on its head, advocating four sovereign nations of radically different population sizes (Wales c. 3.2m, Scotland c. 5.5m, Northern Ireland c. 1.9m and England c. 56m), delegating some sovereign authority to central bodies in agreed areas of common interest.

The model proposes a confederation of Wales, Scotland, Northern Ireland, and England, with aspects of federal-type control built into key policy portfolios to reflect the principles of equality and solidarity among member nations. Each nation holds all powers and rights which are not by treaty assigned to joint institutions, operating distinct legal jurisdictions. The British monarch continues in role as Head of the confederation.

A Council of the Isles acts with mechanisms in place to address the asymmetry between population sizes of member nations, specifically through the composition and distribution of seats. Members of the Council are typically elected for a four-year period by the electors of each nation, convening annually for a fixed time unless urgent business is demanded. The Council assumes its own standing orders, confirming a Presiding Officer and Executive whose Prime Minister and Ministers are

responsible for enacting power on specific matters involving defence, foreign policy, internal trade, currency, large-scale economic considerations, and isles-wide affairs.

Each Bill considered by the Council is circulated to the National Parliaments of Wales, Scotland, Northern Ireland, and England, in advance of final reading, with member nations empowered to make objections or suggest amendments before voting. This provides a counterweight to any aspirations of the centre to aggregate power within its core, and to act unilaterally on issues such as defence and foreign affairs. On passing, the Head of the confederation confirms the Bill as an Act of the Council of the Isles. The ultimate authority on the legitimacy of any laws and rights assigned to the centre remains with the Supreme Court.

A Committee of Member Nations (comprising the Council's Prime Minister and Minister for Isles-wide Affairs, and the First Minister of each member nation), convenes regularly to discuss more general considerations which demand a degree of cooperation and harmonisation of laws across borders, over and above the key functions enacted in Council. These include: postal, telephonic and internet communications; railways, roads and associated licensing; airports, ports and traffic controls; coastguard and navigational services; energy, water and related infrastructure; income and corporation taxes; rates of sales, weights and measures; copyrights, patents and trademarks; scientific and technological research; broadcasting; meteorological forecasting; environmental protection; civil defence; emergencies, and the prevention of terrorism and serious crime.

The Committee, with the support of the Council, also holds controls for confirming contractual-type arrangements for supplying any requested public services to member nations. To cover the common functions and agreements in place, the Council levies charges upon each member nation according to a defined proportion of their GDP annually relative to that of the League-Union of the Isles as a whole. These monies are paid into a consolidated fund from which the interest on the UK public debt continues as a standing charge. The centre aims to promote equality across all territories by sharing a measure of baseline investment for infrastructure projects, operating formal instruments for resolving disagreements. National Parliaments are discouraged from misusing any advantages they possess in areas of potential contention including, for example, the economy of England, the oil of Scotland, and the water of Wales. Some central responsibility is also assigned for pensions and what are currently termed National Insurance Contributions (appropriately renamed), mitigating elements of financial risk and promoting ongoing solidarity. Further, federal-type mechanisms may be introduced to support fiscal decentralisation from the UK position.

The National Parliament of each member nation sits as the sovereign, legislative and representative body of its people, enacting powers and laws on every issue not identified as within the Council's competence. A Government with executive powers, comprising a First Minister and other ministerial positions as required to oversee the various offices, is appointed from the nation's parliamentary members. The superior judges are nominated on the advice of an independent authority. Nations further subdivide their lands through Acts of National Parliament, defining the composition and responsibilities of local or regional authorities.

A Federation or League of the Isles? appeared in a joint booklet with Lord Elystan Morgan, Lord David Owen, Gwynoro Jones and Martin Shipton. The publication was called *Towards Federalism and Beyond* (a perhaps unwise reuse, on my part, of the title given earlier to essay number one), which was launched in September 2017 to celebrate the 20th anniversary of the vote to establish the National Assembly of Wales. A second joint booklet, topically named for the time *Brexit, Devolution and the Changing Union*, followed in February 2018. Both documents remain available electronically and are lodged in the libraries at Cardiff Bay and Westminster, where I hope they will stimulate further discussion amongst parliamentarians.

Moving onwards, I had always imagined constructing an argument that would encompass the main drivers and influences of geography, history, industry, peoples and politics on our island story, whilst corralling, researching and synthesising the evidence in a manner clearly to present the case for a constitutional compromise of strategic significance. The resulting essay, my fourth, *These Isles* (April 2019), is a work with which I remain pleased, viewing it as a useful contribution to the developing debate not only in Wales, but in the context of the UK as a whole. The Institute of Welsh Affairs undertook to release the text in four parts during Spring of that year, and the complete piece appears in section five of this booklet.

In summary, it affirms that most states are synthetic constructs and are subject to change. That said, unitary states face ongoing challenges in acknowledging the partial autonomy and diversity of their constituent nations, especially in cultivating and sustaining a sense of allegiance and belonging to the larger political body. The exposition frames the UK constitutional question as follows.

With many today asserting a multicultural Welsh, Scottish, Northern Irish, or English character along with a form of dual nationality which embraces a British personality, it is reasonable to reconsider the nature of Westminster's parliamentary sovereignty. The pressing issue of our time relates to whether sovereignty, as currently understood, should be shared across these five territorially defined identities (including that of Britain) in a traditional federal arrangement, or instead assigned individually to the four nations—Wales, Scotland, Northern Ireland, and England—

which in turn could delegate parts of their sovereign authority to common central institutions of a fundamentally British composition, and/or European.

These Isles was followed by the briefing paper *Constitutional Relationships and Sovereignty in these Isles* (September 2019) and its infographic supplement *Illustrated Constitutional Models and Exemplar Principles* (September 2019). They upheld the line of reasoning that Britishness as a concept is much older than the UK and it is unrealistic to argue that the Welsh or Scottish people, in notional independent territories, would start considering the English as fellow Europeans instead of fellow British.

The papers, in essence, summed up the constitutional options as below and, for the purposes of encouraging wider comparative conversation, included the more challenging scenario of an independent Wales acting exclusively within the EU.

- Devolution: A sovereign Westminster delegating some sovereign authority to the devolved institutions
- Federalism: A partially sovereign Wales sharing sovereignty within a UK Federation
- Confederalism: A sovereign Wales pooling a few key functions within a British Confederation
- Confederal-federalism: A sovereign Wales delegating some sovereign authority to a League-Union of the Isles
- Independence: A sovereign Wales delegating some sovereign authority to the EU

An independent Wales within the EU

Wales acting as a sovereign nation within the EU is, in principle, a workable model. However, a practical difficulty rests with Wales's largest trading partner England and its uncertain relationship with Europe. A form of isles-wide constitutional framework is essential to facilitate the necessary economic, political and social understandings, or at very least an Atlantic Union, of EU nations, comprising treaties between Wales, Scotland, Northern Ireland, and the Republic of Ireland. In June 2016, the Welsh public effectively voted against EU membership, creating some doubt about the likely political traction of a future sovereign Wales joining the EU, but there are indications the mood may be changing, if only steadily.

Hypothetically, an autonomous Wales could be underpinned internally by five regional authorities partially mirroring the geographical composition of present regional seats for Senedd elections, and constituted by the amalgamation of enclosed principal areas or unitary authorities for local government, and the restructuring of other relevant bodies. These may cover: the health boards; police, fire and rescue authorities; and consortia for education, social services, transport, and trunk roads. Enacting Welsh government policy, such authorities would promote economies of

scale; clarity in directing long-term planning and delivery; accountability for achieving shared outcomes across geographical areas; improved governance, and increased capacity.

The potential for Wales to act unilaterally outside any European or isles-wide agreements is impossible in the era of enhanced cross-border cooperation, which demands some pooling of sovereignty within supra-national frameworks. It has been suggested that Wales's operational interactions with England could be addressed through a bilateral treaty of sorts, but this approach is likely to prove unsustainable, with ambiguity and doubt over collective aims resulting in a drift of capital and employment prospects towards the larger neighbour to the east. The challenge is highlighted in the report *A Constitutional Crossroads: Ways Forward for the UK* (Bingham Centre for the Rule of Law 2015) which highlights that the 'border between England and Wales is crossed about 130,000 times each day' and that '48% of the Welsh population lives within 25 miles of the border with England.' The picture as we move into the third decade of the 21st century is probably more complex still.

By December 2019, having recently participated in the joint discussion article *Unionism, Federalism and Nationalism* with David Melding MS and Helen Mary Jones MS for the Welsh Agenda magazine, I somewhat accidentally but interestingly found myself acting as a commissioner on Plaid Cymru's constitutional Independence Commission. Its report *Towards an Independent Wales* was published by Y Lolfa in September 2020. The model of a League-Union of the Isles informed much of the Commission's explorations of confederalism and was publicly presented as an option alongside the Benelux model, proposed by Adam Price MS. During summer 2020, I also had the pleasure of liaising with Professor Jim Gallagher on his developing thoughts for *Could there be a Confederal UK?* (University of St Andrews 2020) which is an important paper by a past Director General of Devolution for the UK's Ministry of Justice.

Reflections aside, I am now actively considering the fundamental elements of a founding treaty that could hypothetically underpin the introduction of a League-Union of the Isles—for the purposes of promoting deeper debate in future years. It is therefore timely for me to clearly state on the record why an isles-wide constitutional model of confederal-federalism is a more suitable proposition than that of federalism, a loose confederation, or an independent Wales acting solely within the EU.

However, before setting out the case in section seven of this booklet, I would like to share a few more constitutional thoughts from my journey since 2016...

3. FEDERALISM, CONFEDERALISM AND A MODEL IN-BETWEEN ...

Including abridged versions of:

- **Towards Federalism and Beyond**
- **A Constitutional Continuum**

3.1 TOWARDS FEDERALISM AND BEYOND

The full version of this piece first appeared on 29 July 2016.

Wales has a proud tradition of being at the forefront of political transformation when the economic and social circumstances of the time demand it. However, the inertia created by the lack of real challenge and debate within today's Assembly, not to mention the bureaucratic nature of chamber and committee proceedings, has impacted negatively on the development of growth and innovation across the Welsh economy, burdening service provision in the public sector with excessive administration and slowing the development of private businesses.

These are symptoms of an institution lacking true confidence, influence and the power to direct and lead change in inspiring a nation to fulfil its considerable economic and societal potential. This limited managerial—rather than strategically empowering—approach to governance in Wales is inadequate in terms of ensuring effective democratic representation of the aspirations, needs and values of our nation in the developing UK context. A context made more complex by the recent EU referendum result, the rise of a strong voice in Scotland, and the general feeling that successive Westminster governments, in their understandable eagerness to secure votes from more populous areas nearby, have tended to neglect the needs of communities further afield. The legitimate ambitions of all people living in Wales are being undermined by a system which has become increasingly introspective, unwieldy and compromised by short-term considerations, particularly in relation to its structural relevance to the modern global setting. One could suggest that the recent EU referendum result should not have been so much of a surprise as it was to many.

Over recent decades, investment in essential frontline service workers has been unsatisfactory, becoming a source of some concern amongst the public. The disproportionate emphasis on bureaucracy rather than the quality of actual provision is suggestive of a political and administrative structure that is increasingly focused on its own self-perpetuation rather than the developing demands and wishes of the population—which may explain the occasional low voter turnout at elections. The integrity and transparency of the democratic process is made more complicated when there are unelected appointments, confirmed at a UK-level, to certain positions of public influence in Wales. These roles can lack clear accountability and result, through unchecked external pressures, in a disproportionate weighting being given to the aims of major corporations, for example, rather than the needs of mid to small sized businesses, regional employment opportunities and possible impacts on the environment.

Society has a responsibility to ensure that the actions and choices made by individuals, private companies and public bodies do not impact detrimentally on the population as a whole. Unfortunately, we have seen substantial amounts of public money directed towards institutions which, through later unchecked practices, have gone on to disadvantage and bring hardship to many. These instances have often been reviewed and addressed without the introduction of effective prevention measures for the future, leading to public insistence for improved scrutiny of how contractual incentives can affect faithful practice and, notably, whether multinational companies pay their fair share of UK tax.

Government should support the wellbeing of all whether they are young, old or vulnerable; in education or seeking work; in good health or not; have dependents or are unattached; are employed or unwaged; and whether they are born in these isles or elsewhere. It is people's ambitions and talents made real through actions that drive a nation's growth. The principle of a compassionate state underpinning the security of its people from cradle to grave is as relevant today than it ever was, but it must strive for better responsiveness and sustainability in delivering within modern financial constraints, especially empowering those who are unemployed or caring for others to return to education and/or work.

Those in power should be positioned to make decisions that are not always immediately popular with the electorate in the short-term, but benefit and profit society over the longer period. This may appear politically counterintuitive as the continuous cycle of 'first past the post' elections encourages a polarisation of views between political parties and the endorsement of instant 'headline-grabbing' policies, emerging typically in parliaments which are compositionally unrepresentative of the whole population. UK-wide electoral and constitutional reform is essential to tackle the apparent democratic deficit across these isles and to foster a culture of collaboration within and between legislatures—promoting responsible governance rooted in a more strategically focused agenda.

This point is key, as the economic difficulties and social challenges facing today's Wales contrast considerably with those of the UK generally. Growth along the M4 corridor has brought real benefits, but has led to over development in some areas and increased the exclusion of already disadvantaged communities in others. The remainder of Wales is suffering economic decline, including low wages, poverty and out-migration of young people. The whole nation has experienced reductions in manufacturing jobs. Meanwhile, Westminster's financial policies have led to a gradual shift of resources away from Wales. These experiences, along with collapse of the traditional industries over time have led to the nation's GDP falling behind the UK average. The proportion of older people has also increased with obvious impact on demands for health and social services.

However, our National Health Service is suffering the effects of under-funding with staff morale undermined by the burden of bureaucracy. The artificial distinction made between

nursing and personal care is particularly damaging, as it has delayed early medical intervention to prevent ill health. In a nation that suffers from some of the highest incidences of cardiac disease, respiratory problems and cancers in the western world, it is intolerable that Wales has potentially the least capacity to treat the problems, in proportional terms, than any part of the UK. These issues are compounded by the Barnett formula not taking account of the nation's ageing population and increasing deprivation levels within many communities. Not only are the poorest the sickest members of society, but illness itself is a key generator of poverty. Shelter further highlights that too many people live in housing of unacceptable condition with contributing factors including a backlog in repairs, lack of social accommodation, insufficient numbers of 'new builds' and inflated house prices.

It is now not good enough to carry on simply papering over the cracks using the presently ungainly legislative arrangements and tools in hand. It is necessary to stand back and take an objective, realistic view of the challenges facing today's Wales from a wider global perspective and with longer timeframes in mind. This is imperative after the recent referendum result to leave the EU, as Wales is/was a net beneficiary of European funding to the tune of approximately £245 million annually. These considerable complexities require responses devised by those closest to them and who best understand their impact on our cities, towns and rural communities, and are well-positioned to build the necessary connections and relationships across governments and industries.

To carry Wales forward into the modern era, the establishment of a federalised UK structure within the next five years is essential for our governance to function with strengthened accountability, innovation and transparency—and to harness the necessary talents to deliver the lasting and robust solutions required for effectively addressing the tests ahead. Strategic planning at a national Welsh government level is critical to promote sustainability on the one hand and to enable regionalisation on the other. It is unsatisfactory that a large proportion of public procurement is spent outside the nation as there is a potential to harness this spending directly to boost the economy in Wales. Indeed, development strategies are needed that treat urban and surrounding rural areas as integrated through growth and diversification initiatives that are promoted centrally and delivered regionally.

For example, a Welsh government established as part of a federalised isles-wide framework could be supported internally by five regional authorities, partially mirroring the composition of regional seats for the current Assembly elections. These would be constituted by amalgamation of the enclosed local government principal areas/unitary authorities, complementing present and past partnership programmes for supporting joint working opportunities to secure better service provision and economies of scale across the whole. Enacting Welsh government policy, the regional authorities could also take on the roles of: health boards; police, fire and rescue authorities; as well as consortia for education, social services, transport and trunk roads. Such a structure would provide:

- Clarity and stability in directing and facilitating long-term planning and delivery
- Accountability for achieving shared outcomes in each geographical area
- Improved governance between central government, regional and local partners
- Better efficiency and integration in the convergence of contracted and operational arrangements with partners
- Increased capacity

A reformed UK would be underpinned by a codified constitution confirming the division of responsibilities between the central and constituent nation state tiers in Scotland, Wales, England and Northern Ireland. The federal government in London could typically maintain control over: defence; border, diplomatic and international affairs; shared public services; currency and monetary policies; the UK single market, and select taxation—with all other responsibilities assigned to the states.

In April 2016, the Wales Governance Centre at Cardiff University published its report on *Government Expenditure and Revenue* which identified total public sector revenue in Wales as £23.3 billion for 2014-15, amounting to some 3.6% of the total £648.8 billion of UK revenues for the fiscal year. The greatest source of Welsh revenue was Value Added Tax followed by Income Tax and National Insurance Contributions. This profile contrasted significantly with that for the UK as a whole where direct taxes such as Income Tax and Corporation Tax constituted a larger proportion. The report also estimated managed expenditure in Wales for the same period as £38 billion, approximately 5.2% of the total UK expenditure of £737.1 billion. Social protection accounted for most of Welsh expenditure, encompassing social security payments and pensions etc., followed by health and education. The Assembly government in Cardiff and local authorities were responsible for 53% of this spend with the remainder attributed to UK government departments. Therefore, increased fiscal devolution presents both risks and opportunities for the future. In the medium to long term much depends on how a more powerful Welsh government and informed public respond to financial empowerment, whilst questions remain on how the deficit should be supported during any transition period, whether by adjustment of the Welsh block grant and/or borrowing.

Fundamentally, the nation must move forward with renewed confidence and vision. Not bearing past burdens, but striving to form a common consensus across society in acting faithfully with the wisdom of lessons learnt. Never leaning blindly to the left or right of a notionally theoretical policy platform, purely on a matter of some historical principle, but devising ambitious and sustainable solutions appropriate to the modern challenges facing each governmental portfolio as presented in the context of today's Wales.

Sectors that have growth potential require support including, for example, technology, tourism, and renewable energy—in which the nation has a distinct geographical advantage.

Targeted investment along with strengthened road and rail links would promote improved economic robustness and social cohesiveness. And since small businesses comprise the vast majority of firms in Wales, our labour market strategy must address the needs of entrepreneurs and industry, promoting meaningful employer engagement in the design and offer of vocational training across further and higher education.

Education creates a better future. It encourages people to understand themselves and their communities. Our curriculum should place an emphasis on transferable skills, employability, key global issues, and Welsh and British citizenship, along with subject specialism. These elements must further be delivered within a clear ethos of lifelong learning and continuous professional development if we are to succeed in staying one step ahead of our international competitors, and to reinforce good career progression prospects for the working population.

An empowered Welsh parliament complemented by a separate legal jurisdiction for Wales could more imaginatively endeavour to prevent crime, improve conviction rates and reform offenders. In formulating a new constitutional settlement, we should also recognise the common concerns held by all peoples of these isles, giving priority to the shared values of care and opportunity for everyone, which transcend borders. This, in turn, would ensure that our inclusive Parliament:

- Is committed to being a clear voice for the whole population of Wales, addressing the deprivation levels encountered in some communities
- Strives to support development and growth across key target industries and the private business sector, stimulating employment prospects and infrastructure projects
- Enacts an approach to policy and planning which is realistic and sustainable—one which acknowledges our limited resources and addresses the pressures on public services and housing
- Aims to reduce bureaucracy across various tiers of administration so that public money is spent directly where it is most needed
- Delivers accountable governance, inspiring all who live within the nation to help shape the future with ambition, confidence and security

In the context of Brexit and the forthcoming return of many EU powers overlapping with devolved competencies, the establishment of a new isles-wide constitutional framework is both a natural and urgent development at this time, of which federalism may only be an initial stride along the road towards a more appropriate and long-lasting settlement resting beyond... to satisfy greater aspirations within the nations. To paraphrase Bernard of Chartres: 'We stand on the shoulders of giants.' Let us make sure that future generations of people can say that of themselves in relation to our efforts in creating a modern Wales.

3.2 A CONSTITUTIONAL CONTINUUM

The full version of this piece first appeared on 12 December 2016.

Summarising the nature and functions of today's UK, the introduction to the report *Devolution and the Future of the Union* (Constitution Unit, University College London 2015) explains that the 'economic union provides the UK with a single market, with a single currency and strong central fiscal regime. The social union provides the social solidarity which binds the UK together, by redistributing revenue, and pooling and sharing risk through welfare benefits and pensions. In the political union, every part of the UK is represented in the Westminster Parliament, which manages the economic and social unions, and as the sovereign parliament can itself reshape the political union.' However, the report goes on to highlight that 'Whitehall lacks capacity to think about the Union because it has relegated it to issues of devolution on the fringes' and that 'devolution policy making has become rushed to the point of recklessness.'

This observation is mirrored in the *Constitutional Convention* report (Institute of Welsh Affairs 2015) which asserts that 'policies around the UK and the union have been dealt with in an ad-hoc and reactive manner and there has been little cohesive thought to address the role of the union as a whole.' Interestingly, respondents to the convention felt that 'UK Government policies were often detrimental to Wales and not in keeping with the grain of public opinion' and that there was a lack of 'vision about what the union should provide for each person in the UK regardless of whether they live in Belfast or Bangor.'

These challenges have been brought sharply into focus over recent years through the increasingly differentiated politics across the four nations as well as the vigorous debates about English Votes for English Laws, a second independence referendum for Scotland and the Wales Bill 2016-17. For example, a consultation on the design options for an English Parliament is presently in progress at the Constitution Unit, University College London. The outcome of the EU referendum in June 2016 has compounded events even further, particularly in relation to determining the correct constitutional process for triggering Article 50 of the Lisbon Treaty.

The UK Supreme Court, in November 2016, heard cases for and against whether Parliament not Government should have the authority to activate the process for exiting the EU. Speaking on behalf of the First Minister of Wales, Carwyn Jones, public law barrister Richard Gordon QC stressed in his written submission that the UK is now 'a voluntary association of nations which share and redistribute resources and risks between us to our mutual benefit and to advance our common interests.' He elaborated by explaining that the Assembly

exercises a plethora of powers through EU law and that 'devolution is about how the UK is collectively governed by four administrations which are not in a hierarchical relationship to one to another.' The tone of this assertion is interesting as the language alludes to a more quasi-federal framework of relationships between the four nations rather than the current devolution settlement within an overarching unitary state.

Pausing for a moment, we should not underestimate the extent to which the UK's entry to the EU during the 1970s tempered a measure of perceptible disenchantment across the isles at a time when constitutional matters had just been explored in some detail by the Crowther/Kilbrandon Royal Commission, resulting in the devolution referenda of March 1979 in Scotland and Wales. It could be suggested that membership of the EU was instrumental in promoting respect for the rich cultural diversity of peoples within the UK and the range of languages spoken.

If we are indeed approaching a crossroads of sorts in our island journey, what are the alternative models of governance available? With consideration that we are all intrinsically linked culturally and historically in modern times through shared industrial, political and international experiences—whilst acknowledging the various ancient traditions of our roots—this question prompts a range of responses depending on where one places an emphasis on the economic to social measuring scale. An alternative way of posing the problem might be to ask how we could better set about empowering the people of these isles from Land's End to John o' Groats and Londonderry to Newcastle in improving standards of living and personal fulfilment through a political system and ensuing policies which promote economic success regionally and nationally, whilst maintaining internal and external security?

It was Ron Davies, former Secretary of State for Wales, who said before the dawn of the Welsh Assembly in 1999 that 'devolution is a process not an event.' Though wholly appropriate at the time, it was a statement most likely born of an acknowledgement that the arrangements for Wales would limit the likelihood of progress from the beginning, particularly when compared with the robust powers offered to Scotland. The journey ever since has been one of uncertainty, lacking in strategic direction. Lord Elystan Morgan recently summed up this viewpoint by explaining 'when you deal with a long period of transferring small powers, day in day out... you create a situation that almost guarantees some constitutional neurosis on the part of Welsh lawyers.' He further asserts that 'the Wales Bill 2016-17 is deeply flawed and a blue print for failure and disaster' particularly because of the 'fact that there are about two hundred reservations—the very nature of which makes the matter a nonsense.'

Does a dependency governance structure predictably result in a dependency culture, to

which despite eloquent arguments to the contrary, the economic profile of the UK's constituent parts might uncomfortably attest? Does a unitary state system with devolution included as an adjunct compare awkwardly to the relationship between a parent/guardian and a young person in terms of developing accountability and responsibility? Is it only by seeking greater independence that individuals are empowered to make informed decisions and accept the consequences of their actions in time—and indeed to take account of the legitimate concerns and opinions of others for the wider benefit? In national terms, there is a clear distinction between the existentialist and utilitarian views of self-government. The former demands more autonomy simply because of a belief that it is the natural right for nations, and the latter considering it as a path to a better society—to achieve the most effective political unit to secure the economic growth and social justice that people deserve.

Any constitutional settlement for these isles must take account of the economic and social interrelationships between the four nations. Such considerations are critical in a political environment where the EU cannot be relied upon as the mechanism for implementing shared policies and practices in the future. The report *A Constitutional Crossroads: Ways Forward for the United Kingdom* (Bingham Centre for the Rule of Law 2015) highlights that the 'border between England and Wales is crossed about 130,000 times each day' and that '48% of the Welsh population lives within 25 miles of the border with England.' Many people living in Wales have close family and friends in England as well as vice versa. Human considerations of this kind cannot be ignored in the discussion. The Bingham report recommends that the 'UK should remain a fully integrated single market with a single currency and common macro-economic framework in which citizens are free to live, to work, to trade and to retire without legal impediment.'

It is therefore essential that the 'four countries of the Union severally and together commit to the principle of shared solidarity, collaborating for the common good and for economic and social cohesion across the UK as whole.' This statement is taken from the report *The UK's Changing Union: Towards a New Union* (Wales Governance Centre, Cardiff University 2015) which explores some of the potential core principles underpinning a possible settlement. In particular, it goes on to suggest that the 'parties to the Union acknowledge the dominant role of England within it and that England has its needs and rights, but that England also acknowledges that the asymmetry between it and the other nations is of such a scale as to require tempering, in the interests of fairness, by the introduction of a range of institutional mechanisms.'

What are the specific governance options available to our island community? To continue on the present course is to accept constitutional uncertainty and political vulnerability as illustrated by the recent lively debates on the proposed Wales Bill 2016-17 in both Houses of Parliament and the process for triggering Article 50 in the UK Supreme Court. Devo-max

may rank as an attractive solution to some, but even this does not address the ambiguity and complexity introduced by the general primacy of Westminster and the inherent challenges presented by the unitary state model—accompanied by the now disconcerting shadow of a potentially hard Brexit imposed on all four nations.

Many observers suggest that the answer rests in a 'system of government in which central *and constituent nation* authorities are linked in an interdependent political relationship, in which powers and functions are distributed to achieve a substantial degree of autonomy and integrity in the national units. In theory, such a system seeks to maintain a balance such that neither level of government becomes sufficiently dominant to dictate the decision of the other, unlike in a unitary system, in which the central authorities hold primacy to the extent even of redesigning or abolishing *constituent nation* and local units of government at will.' This is the definition of federalism offered by the *New Fontana Dictionary of Modern Thought* (HarperCollins 2000), with the word 'regional' replaced by the term 'constituent nation' as italicised above for the contextual purpose of this essay.

A federation of the isles would aim to bond the desirable principles of empowerment and responsibility alongside accountability and authority to provide constitutional clarity and stability across constituent nations and the whole—with established mechanisms in place to progress joint interests and resolve disputes. It would also capitalise on the potential for realising economies of scale in the application of some key centrally-held functions such as currency, defence, foreign relations and the internal market, as well as a greater projection of political influence to attract investment from overseas. Examples of federations include Germany and the USA.

In contrast to the option of a federal constitution, others propose a confederation established by treaty, typically addressing the shared interests of internal trade and currency as well as defence and foreign relations, if so wished. Under a confederal framework, the central body is relatively weak, compared with a federal parliament, as decisions made by an Assembly of member nations require subsequent implementation by the individual nations to take effect. These pronouncements are therefore not laws acting directly upon individual members, but instead have more the character of agreements between nations.

A confederation presents to each member nation the advantages and challenges of acting as a sovereign, independent state within an isles-wide alliance. A treaty on issues of joint concern would aim to mitigate the risks associated with fragmenting previously delivered common functions. However, competitive considerations between member nations could have more prominence when negotiating within a confederal-type relationship, balanced against the consensus-built model offered by federalism. In addition, the likely cost savings realised through the operation of shared formal mechanisms across significant areas of

policy would not be secured. The Benelux and European Unions are examples of this kind of understanding.

Wales as a nation state within the EU is worth mentioning as a model for further exploration in time, but would not be realistically workable if England—Wales's largest social and trading partner—was not in the EU too. The Welsh public also effectively voted against EU membership in June 2016. A form of treaty, approaching confederalism, would have to be in place to facilitate the necessary economic, political and social relationships with our close neighbour. It goes without saying that an independent Wales acting on its own outside any European or isles-wide agreements would have limited longevity and support, doing little to improve the population's standard of living and prospects.

So to answer the question posed, there are indeed constitutional alternatives to the present unitary system with devolution 'tagged on' since 1999. In November 2016, Lord David Owen issued the pamphlet *A Federal UK Council* calling for a cross-party convention to consider the creation of a federal council modelled on the German Bundesrat. He wrote passionately that such an institution could help unite the UK in the aftermath of the EU referendum and 'restore our very democracy which had been distorted by the false claim of post-modernism that the days of the nation-state were over. Far from being over' Lord Owen insists, 'national identity, whether it be Scottish, Welsh, Irish or English deserves to be treasured as a binding force, not a divisive one. It all depends on whether we can find the correct balance.' The pamphlet goes on to explore a federal model which invites participation of the English regions. A similar view was expressed by Gordon Brown in his article *A Revolt of the Regions* (New Statesman 2016) of the same month. The former Prime Minister's intervention prompted the following joint statement by London Mayor Sadiq Khan, First Minister of Wales Carwyn Jones, and mayoral candidate for Greater Manchester Andy Burnham: 'Only by achieving a new, fair settlement for all nations and regions can we be sure of saving the UK from further fracture' and 'tackling rising inequality.'

Another report, *Federal Britain: The Case for Decentralisation* (Institute of Economic Affairs 2015) advocates 'a federal state...with Scotland...England, Wales and Northern Ireland separately, becoming nations within a federal union. The federal government should have a very limited number of powers including defence, foreign affairs and border control and a small parliament and executive.' It affirms that 'no other proposed solution to the English question can provide the same stability or beneficial economic outcomes.' The establishment of a federal UK with England, as one unit, alongside Wales, Scotland and Northern Ireland presents opportunities and challenges in terms of offering a lasting constitutional settlement for these isles. For Wales, Scotland and Northern Ireland, the real sticking point is that England's population equates to almost 85% of the whole, approximately accounting for 56 million individuals of an overall 66.5 million. London's economic prominence is also a significant consideration.

England, as a nation, is indeed a better counterpart to Wales and Scotland for participation in a federal configuration than the English regions, due to its stronger political and social cohesion. However, a bicameral federal parliament—formed to deliver those responsibilities consigned to a central level as defined by a written constitution—with an upper chamber comprising representatives of London, Edinburgh, Cardiff and Belfast would inescapably raise questions about the number of votes assigned to each constituent nation if steered by population sizes. This is discussed by David Melding AM in his book *Will Britain Survive Beyond 2020* (Institute of Welsh Affairs 2009). No doubt, a constitutional court would strive to guard the privileges of all governance levels, but any counter-balancing mechanisms designed to support the sharing of authority centrally must be easily understood by the civil service, politicians and public alike to ensure harmony and transparency going forward.

An English parliament would, in principle, be supported by the authorities of Greater London and other city regions at the direct level of governance beneath—mitigating the risk of over-centralisation in relation to the sizeable population of England. The historical counties may also aspire to an aspect of autonomy. Quite naturally, the actions and choices of one constituent nation could have negative or positive consequences on others in a federal arrangement as explored in the report *A Federal Future for the UK: The Options* (Federal Trust for Education and Research 2010). Various scenarios would need to be deliberated earnestly when designating powers within a written constitution, including appropriate instruments for resolving disagreements. The federal parliament, typically based in London, would be expected to promote dependable equalisation in service provision, particularly through a redistribution of a proportion of the joint prosperity generated by the federal capital to the constituent nations. To again quote from the report *UK's Changing Union: Towards a New Union* we should move to a 'system for determining the fair distribution and redistribution of financial resources on a clear statutory basis.'

Despite the comparative scale of England compared to Wales, Scotland and Northern Ireland, the benefits of introducing constitutional reform across these isles significantly outweigh the challenges faced. On balance, the progressively sustainable model rests along the continuum between a federation and a confederation. In crude terms, the former option has aspects of a safety net deployed with many shared instruments of governance established to support the realisation of economies of scale, in delivery, and to address the common interests held by constituent nations. The latter option allows for agreement and partnership amongst fully empowered and sovereign member nations on matters of collective concern, but with competitive considerations likely to complicate interactions between them.

We should not underestimate the extent and weight of our mutual interests, as an island community, in defence, social mobility and trade for which an incline towards federalism would provide constitutional clarity, comfort and confidence. However, the sovereign will of

the peoples of Scotland and Wales may well be better assured, represented and faithfully served through a shift towards a confederal settlement of sorts... To paraphrase an old Chinese curse which doubles as an expression of the opportunity change presents: 'We live in interesting times.'

4. A FEDERATION OR LEAGUE OF THE ISLES?

This essay first appeared on 1 August 2017.

The UK is governed as a unitary state comprising England, Northern Ireland, Scotland and Wales, all of which are intrinsically linked culturally and historically in modern times through shared industrial, political and international experiences.

Devolution, as introduced in the late 1990s, aimed to address a measure of perceptible disenchantment across the isles due to unease with over-centralisation whilst retaining sovereignty in the hands of the Westminster parliament. Subsequent electoral majorities in Westminster, coalitions and the present supply and confidence agreement have challenged the governments in Belfast, Cardiff and Edinburgh with the twin prospects of constitutional uncertainty and political vulnerability. The latter specifically complicates power sharing at Stormont and generally raises questions about the fair distribution of funding. The finance secretaries of both Scotland and Wales wrote a letter to the UK Treasury in late July 2017 stressing that the Barnett formula should apply to the one billion pounds of additional support now earmarked for Northern Ireland.

The extent of divergence in today's UK is highlighted by the four nations' differentiated politics, apprehensions about the Brexit negotiations, uncertainties regarding the post-EU Northern Ireland border, debates concerning a second Scottish independence referendum, and broad unease with the recent Wales Act. In March 2017, Professor Richard Rawlings observed in a BBC Radio Wales interview that the Act's list of reserved powers, as retained by Westminster and Whitehall, is too extensive and potentially 'claws back' devolution in some fields.

Interestingly, the report *Devolution and the Future of the Union* (The Constitution Unit, University College London 2015) affirms that 'the UK is hardly unique in facing challenges to its structure and integrity...though it is unique in seeking to do so without a formal written constitution.' This report explores three models of increasing devolution as possible solutions. Heftier doses of the same medicine may appeal as a remedy to some, but does not address the symptomatic ambiguity introduced by the general primacy of Westminster and the inherent challenges presented by the unitary state, especially now in the context of Brexit.

Earlier this year, Lord Elystan Morgan highlighted that 'a good proportion of the reserved powers in the Wales Act 2017 reside at Brussels not Westminster.' Former Prime Minister Gordon Brown asserted that the UK should 'use the repatriation of powers from the EU to establish a new federal state of equals.' Lord David Owen advocates a federal structure based on the German model in his paper *A Federal UK Council* (2016), whilst the report *UK's Changing Union, Towards a New Union* (Wales Governance Centre, Cardiff University 2015) proposes a union state not a unitary state which 'consists of four national entities sharing

sovereignty...and freely assenting to cooperate in a Union for their common good. This signals the end of devolution and a move to a more overtly federal or quasi-federal framework.'

Professor Jim Gallagher goes further: 'people often talk about federalism as if it were a solution for the UK. In truth the UK is already moving beyond it, to a more confederal solution.' Reflecting on his paper *Britain after Brexit, Toxic Referendums and Territorial Constitutions* (2016), Gallagher envisages 'a confederation of nations of radically different sizes, sharing things that matter hugely, like economic management, access to welfare services and defence.' He explains that Brexit presents the 'UK's first chance in decades of an effective regional economic policy, so that central government can direct resources to the poorer areas of the country and use them in imaginative ways.'

In a federation, sovereignty is shared between central and constituent nation governments. Each level has clearly articulated functions, with some powers pooled between them, but none has absolute authority over the others. Agreed practices and rules are confirmed through a written constitution with compliance enforced by a Supreme Court. In contrast, a confederation is a union of sovereign member nations that for reasons of efficiency and common security assign a portfolio of functions and powers by treaty to a central body.

Collective functions of a federation or confederation might typically encompass, to varying degrees: the armed and security forces; border, diplomatic and international affairs; shared public services; cross-recognition of legal jurisdictions; currency and monetary policies; a single market; and select taxation, as appropriate. Federations generally have central institutions in place to implement many taxes (e.g. USA operates the Internal Revenue Service, the Alcohol and Tobacco Tax and Trade Bureau, and the US Customs and Border Protection), and foreign policy. Confederations raise collective budgetary funds annually through each member nation's contributions of a defined proportion of their GDP. Internally, these nations operate distinct tax regimes and act unilaterally in most fields of foreign affairs and law, unless centrally assigned.

The report *Federal Britain, The Case for Decentralisation* (Institute of Economic Affairs 2015) perceptively explains that 'fiscal decentralisation is associated with higher national income, better school performance and higher levels of investment. In particular, the decentralisation of revenue-raising powers has a stronger effect on performance than the decentralisation of spending. The evidence suggests that increasing the local share of taxation from 5% to 20%—still low by G7 standards—could raise GDP per capita by 6%. With especially low levels of revenue decentralisation, and as a large country, the UK is in a particularly good position to gain from transferring powers and revenue-raising.' More research is required to better understand the probable medium to long term economic impacts on each nation of moving towards a federal or confederal order of governance.

In a federation, an individual is a citizen of the central overarching structure and the constituent nation within which they reside, participating democratically in electing representatives to the legislative parliaments at both levels of government. Typically, a party political system operates across the whole. In a confederation, individuals elect representatives to take part in central policy decision-making processes more in the role of trustees acting on behalf of their member nation's interests. National parliaments, not individuals, are represented in the central institutions with citizens relating directly to their member nation and only indirectly to the confederation. For example, Article 8:1 of the mainly confederal *Treaty on European Union* declares that 'every person holding the nationality of a member state shall be a citizen of the Union.'

Therefore, a federation sets out to provide constitutional clarity and stability across constituent nations with shared mechanisms in place for advancing common interests and resolving disputes. It also capitalises on the potential for realising economies of scale in the delivery of a few centrally held key functions, which may allow for the proportional redistribution of joint prosperity generated through the federal capital, and a greater projection of political influence in attracting investment internationally. By comparison, a confederation presents to each member nation both the advantages and challenges of acting as a sovereign state within an isles-wide alliance. A treaty on issues of shared concern aims to mitigate any risk associated with fragmenting previously delivered common functions. Competitive considerations have more prominence between member nations when negotiating within a confederal-type relationship, balanced against the consensus model largely offered by federalism, and the cost savings achieved through operating formal joint mechanisms across many key areas of governance are not secured to the same extent.

The constitutional choice may not be purely binary in nature. Professor John Kincaid, in his article *Confederal Federalism and Citizen Representation in the European Union* (Western European Politics, Volume 22: 1999 Issue 2), details 'what seems to have developed in the EU is...a confederal order of government that operates in a significantly federal mode within its spheres of competence.' Member nations have delegated, in effect, parts of their sovereignty over time to central bodies which agree laws on their behalf. For example, the existence of an EU common currency within what is mainly a confederal treaty illustrates the point.

As well as those key common interests demanding some form of agreed centrally-held functions for defence, foreign policy, finance and home affairs as already outlined, there are other mutual considerations of a more general nature which may require the establishment of additional structures to promote cooperation and harmonisation of laws across the isles. These considerations include: postal, telephonic and internet communications; railways, roads and associated licensing; airports, ports and traffic controls; coastguard and navigational services; energy, water and related infrastructure; income and corporation

taxes; rates of sales, weights and measures; copyrights, patents and trademarks; scientific and technological research; broadcasting; meteorological and oceanographic forecasting; environmental and ecological protection; civil defence and emergencies; prevention of terrorism and serious crime. Such structures could be critical within a political climate where the EU can no longer be relied upon to promote the necessary collaborations and understandings.

Reflecting on the varied politics across the four nations, the progressively sustainable model is likely to rest along the continuum between a federation and confederation. A confederal-type solution would provide for the wishes of Scotland if independence is sought in the future. It could also possibly invite participation by the Republic of Ireland if so desired, dealing neatly with the post-Brexit issue of the border with the north. An incline towards confederalism, with England established as one unit alongside Northern Ireland, Scotland and Wales could further provide a solution to one of the more difficult issues presented by the federal-only system. To quote Dr Andrew Blick from his web article *Four Options for Configuring the British Constitution* (London School of Economics and Political Science 2015): 'the UK already has more diversity in certain respects than might be found even in a federation, for instance through the existence of three different legal systems...with a fourth possibly coming in Wales.' Blick highlights that 'a practical problem involves how to incorporate England into a federal UK. If England were included as a single unit, since it accounts for more than 80% of the population, federalism might create instability worse than that which it sought to correct. Another approach could be for England to participate in a federation in a series of more manageably-sized regions. Yet it is not clear how to demarcate these territories, and whether they would command sufficient popular attachment to make the federal project politically viable. Nonetheless, a federal UK may become the most plausible means of preserving the UK, necessitating a resolution to this English dilemma.' It should be noted that both constitutional models of federalism and confederalism allow for some further devolution of powers within England at a tier of governance immediately below that of National Parliament level.

In national terms, there is a clear distinction between the existentialist and utilitarian views of self-government. The former demands more autonomy simply because of a belief that it is the natural right for nations, and the latter considers it as a path to a better society—to achieve the most effective political unit for securing the economic growth and social justice that people deserve. A solution embracing the most appropriate qualities of federalism and confederalism to the current context, such as offered by confederal-federalism, would encourage and support a real partnership of equals across these isles, sharing specific powers to address collective interests whilst valuing the autonomy of each nation. It could also promote many of the aspirational advantages sought for by self-government at the same time as ensuring confidence in the fields of diplomacy, economic policy and security which

the current unitary state advocates. So what might such a governance model, which for the moment I will call a League or Union of the Isles, look like?

A League or Union of the Isles would be established as a confederation of England, Northern Ireland, Scotland and Wales with aspects of federal-type control built into key policy portfolios to reflect the principles of equality and solidarity amid member nations. The Head of the confederation could continue to be Her Majesty and successors. Each nation would hold every power and right which were not by treaty, or constitution, delegated to joint institutions, operating distinct legal jurisdictions. Such a jurisdiction in Wales would be subject to formation by the National Parliament in Cardiff.

A Council of the Isles would be introduced with mechanisms created to address the asymmetry between the population sizes of member nations, particularly through the composition and distribution of seats. Members of the Council would be elected for a four-year period, potentially through the political party-list approach of proportional representation by the electors of each nation, convening annually for a fixed period unless urgent business is demanded. The Council would assume its own standing orders, confirming a Presiding Officer and Executive whose Prime Minister and Ministers would be responsible for enacting power throughout the isles on specific matters involving defence, foreign policy, internal trade, currency, large-scale economic considerations and isles-wide affairs, as defined by treaty.

Each Bill considered by the Council could usefully be circulated to the National Parliaments of England, Northern Ireland, Scotland and Wales in advance of final reading, with member nations empowered to make representations, as necessary, to affirm objections or suggest amendments before voting. On passing, the Head of the confederation would confirm the Bill as an Act of the Council of the Isles. Interestingly, Professor Gallagher has proposed (2016) that 'the House of Lords' might be used 'as an effective Senate...of the Isles, holding the UK's governments to account for their joint activities.' He evokes 'a grand committee of the House...with no partisan majority, and with 55% English members so the devolved are consciously overrepresented.' The ultimate authority on the legitimacy of any laws and rights assigned to the centre would remain with the Supreme Court.

A Committee of Member Nations, comprising the Council's Prime Minister and Minister for Isles-wide affairs, as well as the First Minister of each member nation, would convene regularly to discuss those general and mutual considerations which demand a degree of cooperation and harmonisation of laws as outlined earlier, besides the key centrally held functions. The Committee, with the support of the Council, could also hold controls for confirming contractual-type arrangements for the supply of additional public services to member nations if requested. To cover the common functions and other agreements in place, the Council would levy charges upon each member nation according to a defined proportion

of their GDP annually relative to that of the confederation as a whole. These monies would be paid into a consolidated fund from which the interest on the UK public debt would continue as a standing charge. The Council, working with the Committee, should aim to promote equality in sharing a measure of the baseline investment for infrastructure projects across the isles. In the interests of advancing ongoing solidarity and mitigating elements of financial risk, it might also be desirable to assign some central responsibility for pensions alongside federal-type mechanisms for collecting what are presently termed National Insurance Contributions appropriately renamed.

The National Parliament of each member nation would sit as the sovereign, legislative and representative body of its people, enacting powers and laws on every issue that is not identified as the Council's sole competence. A Government with executive powers would be appointed from the nation's parliamentary members, comprising a First Minister and other ministerial positions as required to oversee the various offices. The superior judges in each member nation would be nominated on the advice of an independent authority with established institutions in place to scrutinise public appointments, including auditor general, and to operate as an ombudsman. Nations could further sub-divide their lands through Acts of National Parliament, defining the composition and responsibilities of local government authorities.

Is there a detectable appetite in England, Scotland and Wales for exploring a journey towards federalism and beyond? The report *A Constitutional Crossroads, Ways Forward for the United Kingdom* (The Bingham Centre for the Rule of Law 2015) does indeed propose 'moving towards a more federal, codified constitutional arrangement for the UK' as it would 'establish permanent devolution on the basis of more clearly defined principles and rules.' Also, the Constitution Unit, University College London is presently working on a substantial project investigating the design options for an English Parliament. Support for such a development has grown considerably in recent years with potential governance models now being examined seriously. A report is due to be published in autumn 2017.

The Constitutional Commission in Scotland goes further in its web-article *A Confederal UK?* (2015). This suggests that a confederal-type arrangement 'would enable Westminster to continue as the Parliament of England, while a limited range of confederal powers—relating to the Crown, defence, foreign policy, currency, passports, and a few incidentals—would be vested in a new Confederal Assembly. Each state would be able to adopt its own institutions within a broad constitutional framework that would secure fundamental rights and help protect the integrity of political processes.' Intriguingly, a confederal response to the constitutional question could be to the advantage of England and Scotland more than Northern Ireland and Wales, whose less affluent regions might benefit from the greater support made available through a federal arrangement.

Speaking from a Wales perspective, Gwynoro Jones (2017), an experienced political commentator on matters of devolution, has gone on the record as saying that 'the Welsh Assembly has been hamstrung from the beginning and has been devoid of the freedom to act with effective powers. I do not blame Nicola Sturgeon for re-opening the conversation on support for independence in Scotland, nor Gordon Brown for suggesting a federal solution for Scotland in the UK. With the Brexit result I believe that the future lies, at the very least, in a self-governing Wales within a federal UK.'

Greater fiscal devolution does, of course, present challenges, opportunities and risks. In the medium to long term, much depends on how a more influential Welsh government and an informed public respond to financial empowerment over time. Questions also remain as to how the present significant deficit in Wales could be supported during transition whether through adjustment of the block grant, substantially restructured budgeting and judiciously strategic borrowing, or a combination of these approaches. In this regard, the report *UK's Changing Union, Towards a New Union* advocates a 'system for determining the fair distribution and redistribution of financial resources...designed to be equitable between all parties on the basis of examination of needs and with no expectation that transfers would be continued when needs had been met satisfactorily.'

Anyone who has read the report *Government Expenditure and Revenue Wales* (Wales Governance Centre, Cardiff University 2016) must concede that something of a fundamentally structural nature should be done to stimulate the Welsh economy, so as to encourage entrepreneurship internally and investment externally through capable and confident institutions which are focused and motivated on supporting businesses and creating employment opportunities. There are indeed examples of hitherto financially challenged nations which on establishing greater autonomy, within the last two decades or so, are now bearing the fruits of their ambitions, innovations and labours, having admittedly experienced difficulties at the outset.

In February 2017, an event on Brexit, Federalism, and Scottish Independence at the Constitution Unit, University College London concluded that 'federalism appears to be a way out of the intractable, binary divisions that are fracturing the UK and its constituent nations.' There is a 'need to shift away from a winner-takes-all mentality and to focus instead on healing divides through strategic compromise. A federal or confederal solution that works for the overwhelming majority, rather than a marginal one, seems to be an effective way to achieve this. It is up to the UK government and its constituent nations to gather the will to work for such a compromise.'

As with most things in life, he or she who pays the piper usually has first choice of tune, or in this instance, controls the agenda for a much needed Constitutional Convention...

5. THESE ISLES



Photograph by Glyndwr Cennydd Jones

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In his book *Facing the Ocean: The Atlantic and its Peoples*, Barry Cunliffe (Oxford University Press 2001) references French historian Fernand Braudel's description of history as being fashioned conceptually by three wavelengths of time, with the environment both facilitating and constraining human actions in the long term, according to climatic and geographical factors. In accessible, habitable landscapes societies create, over the medium term, diverse economic and political systems, which encourage either stable or gradually developing technologies and ideologies about identity and belief, influencing peoples towards conservative or innovative outlooks in their short term day to day activities.

The shape of the isles of Britain today is the result of ancient geological forces during the ice age, modified by fluctuations in sea-level, framing what are the submerged uplands of an extensive plateau situated at the western extremity of the Eurasian land mass. The coastline around Wales, Scotland, Northern Ireland and England stretches some 11,000 miles, with the warm waters of the Gulf Stream having an ameliorating effect on climate. Coastal life played a major part in fashioning human development, as did the network of connected estuaries and rivers which gave access to substantial inland resources and locations suited to farming, manufacturing and settlement, especially for the purposes of civil protection. In this topography, waves of peoples put down roots, assimilated and fought to craft the essential fabric of the nations of today's isles, which over recent centuries have been corralled into the unitary state known as the UK.

The inward and outward forces forging this island story created a natural melting pot for the sharing and application of pioneering ideas. During the industrial revolution, these pressures came to fashion an internal market of such magnitude that a truly modern state, whose institutions and political principles directed and inspired similar advancements worldwide, was formed. The generative actions of this innovative society rippled outward globally to build a present and a future, both instant and intermingled which, when exposed to the weight of historical analysis, left a contrasting trail of nostalgic veneration and progressive regret, observable in our time through the judicious prism of objective reflection. Occasionally, during this journey, the full unsettling extent of change was masked by the cloak of ceremonial continuity worn reassuringly by long serving British monarchs, promoting a sense of political stability.

As discussed in Linda Colley's book *Acts of Union and Disunion* (Profile Books 2014), most states are synthetic constructs and subject to change, experiencing conflict at some stage of their evolution. That said, unitary states face ongoing challenges in acknowledging the partial autonomy and diversity of their constituent nations, especially in cultivating and sustaining a sense of allegiance and belonging to the larger political body, as was effectively

enacted by the UK during the era of the British Empire. Historians often associate the Empire with England, but while English institutions influenced the way in which much of the Empire was run, especially through common law, people moving into this expansive construct as administrators, missionaries, professionals, settlers and soldiers mirrored the multi-national nature of the UK, disseminating Welsh, Scottish, Irish and English customs globally, along with shared British ideals.

In time, the UK unitary state developed mature political institutions, considerable defensive resources, effective instruments for preserving internal order, a complex narrative of ideological underpinning, and a measure of material well-being. The unprecedented scale of conflict experienced during World Wars One and Two cemented the UK state's cohesion, strengthening the administrative reach of London at a time when most of the population felt a genuine sense of togetherness and courage in tackling a hostile, external threat. The multi-national character of the UK was further fractured after the years of conflict through the rise of a re-energised British identity, founded mostly on civic principles, which was fuelled by the positive introduction of universal suffrage after World War One and the offer of widespread benefits and services through a centralised welfare system in the wake of World War Two. From the late 1940s onwards, pre-war discussions and party-political commitments to Home Rule were swiftly forgotten as the focus of attention shifted towards uniform rights and entitlements across the isles.

By the 1970s, the growth in global trade saw the traditional heavy industries and manufacturing sectors lose out more and more to competition from overseas, leading to a less dependable tax yield for the UK Treasury. Many suggested that the role of central government was becoming overstretched, which increasingly amplified calls for some reform of the UK constitutional framework to empower Wales, Scotland and Northern Ireland with a degree of flexibility in responding to the economic and social challenges they faced. Simultaneously, many acknowledged the need for improved international cooperation through the pooling of sovereignty within appropriate supra-national frameworks, such as the United Nations' economic and monetary mechanisms, international law, the North Atlantic Treaty Organisation (NATO), Common Market and the EU. As the traditional understanding of UK state sovereignty adjusted to the practicalities of an interconnected world, those advocating greater autonomy for Wales, Scotland and Northern Ireland could progressively present a sophisticated platform of debate for self-government, or even modern independence, which wholeheartedly subscribed to outward facing international structures. This view was most prevalent after the introduction of devolution in 1999, contrasting starkly with the Eurosceptic attitudes held by many which promote an increasingly centralised unitary state through seeking to seemingly 'take back control' from the continent.

Devolution, as a governance model, leaves Westminster's parliamentary sovereignty, that most conceptual of constitutional principles, technically intact, hence its acceptance by most UK politicians. Wales and Scotland today hold legislative competence over all matters not explicitly reserved to Westminster, which implies a form of federalism, but without the usual sharing of sovereignty across parliaments. The House of Commons in London, according to the Sewel convention, ought not to legislate on devolved matters without consent of the respective parliaments in Cardiff, Edinburgh and Belfast. However, the customary argument that absolute parliamentary sovereignty should rest continually and solely with Westminster in future years now stands challenged. The devolution era has seen a greater willingness to modify constitutional arrangements than ever, with Wales experiencing executive devolution with secondary law-making powers from 1999 to 2007, executive devolution with enhanced secondary powers between 2007 and 2011, legislative devolution under a conferred powers model from 2011 to 2018, and legislative devolution under a reserved powers model from 2018 onwards. There have also been three Scotland Acts in this period, each augmenting powers north of the border.

The concept of Westminster's parliamentary sovereignty affirms a legislative authority that is legally unlimited, maintaining that it is not restricted by any norms which are lawfully enforceable through the courts or any other human agency. The formulation of the doctrine is relatively modern, relying on developing agreement and clarity in legal terminology, as well as the differentiation between matters of law and morality. However, the authority that the concept describes is much older, and has survived many historical changes in legal language, political thought and division of power, affirming that the monarch and the two Houses, when acting in concert, possess unlimited legislative authority.

With many now asserting a multicultural Welsh, Scottish, Northern Irish or English character before claiming a form of dual nationality which also embraces a British personality, it is legitimate to reconsider the nature of Westminster's parliamentary sovereignty such that it more appropriately encompasses authority only over select key isles-wide functions held in mutual interest and regard by the nations. These could include large-scale economic policy, defence, foreign affairs, and aspects of welfare. The consequential and pressing strategic issue going forward relates to whether sovereignty, as currently understood, should be shared across these five territorially defined identities (including that of Britain) in a traditional federal arrangement or instead assigned individually to the four nations—Wales, Scotland, Northern Ireland and England—which in turn would delegate or 'lease' parts of their sovereign authority to common central institutions of a fundamentally British civic character. Such a constitutional arrangement could be established through a form of confederal-federalism as explored in my essay *A Federation or League of the Isles?* which appeared in the booklet *Towards Federalism and Beyond* (2017) and article *Confederal-federalism: A League-Union of the Isles* (Institute of Welsh Affairs 2018, parts one and two).

People have an appreciable human interest in experiencing the treatment of their territorial grouping as valued. This is conducive to promoting a context for living in which individual autonomy can be applied in a meaningful way and where people are prepared to make sacrifices for others through a sense of shared distributive justice. The application of a more deliberative democracy, exercised at the national level rather than that of central institutions, is predicated on the assumption that genuine decision-making demands active participation by the public in society's debates and developments, over and above that of simply casting votes at elections.

During the last century, nation-building at the UK level, with the purpose of promoting a type of standardised British society, has come at some cost, particularly in terms of advocating equality and fairness across all peoples in these isles. The make-up of individuals' identities is complex and partly comprises their beliefs, social affiliations, and relationships within national groupings. If people sense that these are not treated by central political bodies with equal dignity and respect, then they are likely to experience the circumstances of government as unjust. All unitary states would be wise to pay attention to the emotional and practical attachments their populations feel towards the constituent nations, if they aspire to be the object of similar loyalty. Indeed, the safeguarding of individual liberty within the nations could serve as a useful counterweight to the inevitable instinct of the institutional centre to aggregate power deep within its core, especially at the expense of territories more geographically distant.

Since the inhabitants of the UK in modern times are intrinsically linked, culturally, geographically and historically, through shared industrial, political and international experiences, any future constitutional settlement must take account of the economic and social interrelationships between the four nations. One model for this could be a League or Union of the Isles involving a confederation of Wales, Scotland, Northern Ireland and England with aspects of federal-type control built into key policy areas underpinning the principles of equality and solidarity amid member nations. In such an arrangement, a Council of the Isles could be responsible for enacting power on specific matters involving defence, foreign policy, internal trade, currency, large-scale economic considerations and isles-wide affairs, with a Committee of Member Nations, convening regularly to discuss other relevant issues which may demand a degree of cooperation and harmonisation of laws. The Head of the confederation could continue to be Her Majesty and successors, holding frequent audiences with the nations' First Ministers, possibly accompanied by a reoriented privy council containing Welsh, Scottish, Northern Irish and English divisions.

The National Parliament of each member nation would sit as the sovereign, legislative and representative body of its people, having every power and right not by treaty or constitution delegated to the joint institutions. The national legislatures should be mirrored by robust legal structures, supporting the continued rule of law as administered by an independent

judiciary. Scotland possessed its own judiciary before 1999 whilst the development of a genuine devolved legislature in Wales has led to a compelling case for introducing a distinct Welsh legal jurisdiction. The ultimate authority on all questions regarding the legitimacy of any laws and rights assigned to the centre would sit with a Supreme Court of the Isles.

In 1999, England was omitted from the devolution reforms as it was not allocated an institutional political entity of its own through the foundation of a parliament in common with Wales, Scotland and Northern Ireland. England now comprises over 56 million people, more than five times the total number living in the other UK nations combined. This demographic disparity is widening and it is one of the many reasons why support for increased autonomy across the nations is coalescing. However, England's continued unity is not without question as the territory contains significant regional variations. In terms of wealth, status, power and population, England is orientated heavily towards the South. Producing almost 22% of the UK's total output, London acts as a strong centripetal force, undermining the position of Northern England and the sense of a pervasive, sustainable English identity more broadly. It could be said that England suffers from the absence of a discrete parliament through which its internal disparities and inequities may be analysed and addressed.

The risk of reframing the UK as a League or Union of the Isles is not so much that an influential and powerful English parliament might dominate Welsh, Scottish and Northern Irish institutions, but that it could destabilise the work of joint isles-wide bodies if the new arrangements were not held with respect. Overrepresentation of the smaller nations in the Council might act as a limited counterbalance to the challenges faced, but there is little escaping the fact that England, with approximately 85% of the population, could potentially cause significant tests to the successful management of the market by common British institutions. Nevertheless, decentralised, federally inspired constitutions, which are better placed to interact nimbly with international economic decision-making and be representative of cultural and ethnic diversity within nations, are more appropriate to the context of the developing 21st century.

As explored by David Melding AM in his book *The Reformed Union: The UK as a Federation* (Institute of Welsh Affairs 2013), protection of the isles-wide economic union, which works to address opportunities, risks and threats collectively over time, is as important as supporting the political and social aspects underpinning the relationships between nations. For example, a robust system of fiscal decentralisation might not immediately include allocation to the national governments of responsibility for setting taxes on capital, retail sales and excise duties, whereas those on corporations, income, payroll and property are suited. Sharing the income tax base is an obvious approach. However, the large-scale economic implications of national governments having the comprehensive powers to vary differently the higher and lower rates through a 'tax on base' model must be considered

carefully. This is because income tax is a major source of receipts which varies in yield during the economic cycle, demanding some provision of borrowing powers to the nations for dealing with fluctuations in revenue. Intergovernmental relationships within a federation or confederation could be seriously strained by any debt crises caused through injudicious borrowing, especially if accompanied by creditors expecting, whether rightly or wrongly, bailouts from central bodies. Therefore, until the new fiscal arrangements are embedded, access to global markets by national governments should be discouraged for a transitional period, with an isles-wide body established to act as a facilitator of lending for capital programmes of a substantial nature.

The decentralisation of wide-ranging tax raising powers would clearly diminish the need for distributing large block grants from the centre. However, special care should be taken to create a system which is stable, compensating for any uneven distribution of prosperity through appropriate equalisation grants. To this effect, a shared fund could be established into which wealthier nations contribute and less affluent ones draw. The substantial tax payments made by Wales to the Treasury during its natural resource boom over a century ago, which significantly supported Britain's economic development, more than justify the transfers assigned by the Exchequer to the nation today in aid of equalisation. These could be described as an insurance payout of sorts, based on historical premiums paid. Such recognition of significant contributions made over time in sustaining shared aims, past and present, might even help untangle ongoing discussions regarding the future ownership of offshore resources, responsibility for which could continue to rest centrally initially, whilst onshore resources should be allocated to the national governments. Barnett looms large in this debate, leading to calls for a revised needs-based formula with equalisation grant-levels fixed through formal constitutional mechanisms, allowing national governments some predictability in planning and delivery.

In time, an alternative approach to equalisation is for fiscal policy increasingly to be shaped by a design whereby the majority of tax revenues are retained by the national governments, which in turn would transfer resources centrally to support joint isles-wide functions, and underpin economic stability across the internal market to ensure that public goods and services are funded at similar levels. This would make the costs and benefits of the system transparent, but could be a step too far to begin with, as reducing the level of inequality between the territories of a newly formed federation or confederation must be a strategic priority.

The challenge to both Conservative and Labour parties is to become more formally representative of the nations within their organisational structures. The make-up of the Liberal Democrats is already federalised, and the strength of the nationalist movements in Wales, Scotland and Northern Ireland is at a level uncommonly seen in other multinational states globally, with the notable exception of Spain i.e. Catalunya. Interestingly, the SNP's

stance during the independence referendum of 2014 was closer to that of devo-max than a classic sovereignty model of the past—better suited to the modern era of globalisation, worldwide corporations and growing integration between states. As described by Tom Devine in his book *Independence or Union* (Penguin Press 2016), the SNP intended that ‘an independent Scotland would retain the monarchy, membership of NATO and sterling, through a currency union with the rest of the former UK. This would inevitably have had major implications for the economic powers of a new Scottish state. There was also much talk of a future social union between Scotland and England in the event of independence, which would have eased some of the trauma of separation.’

The fact that 45% of Scottish voters would have preferred to leave the Union in 2014 might suggest a lessening in appeal of the British identity, despite a majority of the electorate in Scotland being opposed to independence. However, some pause is required before jumping to this conclusion as the dual identity of the Scottish people within the UK has complex roots and meanings. The same is true of the population in Wales. Moreover, feeling British, whether wholly or partly, may not necessarily denote that a person is committed to supporting political unionism. It could also be based on a pride in past achievements and a continuing awareness of the cultural and social connections forged between the populations of the isles during many centuries. Interestingly, the recognition of multiple identities, highlighted in recent decades by the European dimension of UK politics has created a genuine paradox for some committed nationalists—in that if it is possible to be Welsh or Scottish and European, is it therefore not possible to be Welsh or Scottish and British too? Admittedly the situation in Northern Ireland is more complicated.

The challenge to UK-wide unionists who advocate reformed institutions, made modern and fit for purpose for the 21st century, is that the majority of Eurosceptics within their ranks distrust supra-national and federally inspired governance structures on principle, instead favouring centralised unitary constitutional models domestically. However, is it entirely a coincidence that the only UK territory which does not have its own parliament in the era of devolution is the one most likely to express alienation from the EU?

A new constitutional framework promoting multicultural Welsh, Scottish, Northern Irish and English identities within an overarching British civic partnership could well flourish with the monarch as a continued Head of state or confederation, and the parliamentary model of government, inspired by Westminster, underpinning the developing political institutions in Wales, Scotland, Northern Ireland and England. The tacit acceptance by Westminster of Scottish, and by some implication Welsh, independence as a legitimate option suggests that sovereignty is ultimately determined by the populations of the nations separately and not by the people of the UK collectively. To argue that it is the British people who are first amongst equals is wilfully to ignore the long established, respected status of the home nations in European history. Further, could Westminster unilaterally dissolve the

devolved parliaments in the various capitals even if it so wished? Nevertheless, Britishness as a concept is much older than the UK and it is unrealistic to argue that the Welsh or Scottish people, in notional independent territories, would start considering the English as fellow Europeans instead of fellow British.

British ideals and values are partly forged by geographic, historic and cultural influences which usefully bridge the demands of world interdependence and the desire for increased autonomy in the nations. The challenge is to capture these principles in a new constitutional framework which strengthens arrangements for self-government—through emphasising common respect for human dignity, freedom, democracy, equality and rule of law—within an isles-wide civic societal structure typified by pluralism, non-discrimination, tolerance, justice and solidarity. A League or Union of the Isles could even make some use of an approach based on multicultural national identities, rather than sovereignty principles, in exploring a treaty or constitution, hence avoiding inevitable disagreements in the context of that most theoretical of constructs, when addressing the legal and moral claims of member nations. Interestingly, the practice of mutually exclusive spheres of sovereign powers coexisting at both national and central levels of governance, as in the model of dual federalism, has declined, being replaced by a form of cooperative federalism where two tiers of government increasingly collaborate within the scope of their shared powers. Such principles protect national interests in a world where policy areas have become more and more intertwined and where sovereignty is a dynamic and not a fixed concept.

It is now widely conceded that the devolution measures of the 1990s were insufficiently thought out. If England does join Wales, Scotland and Northern Ireland in establishing a parliament, then the UK will require new provisions for governance. In today's world, nearly two hundred states are underpinned by written constitutions. Surprisingly, the UK is not, but ironically it has involved itself in drafting constitutions for countless others during the last century, particularly in the British colonies. As globalisation and migration intensify, states around the world are becoming increasingly diverse culturally, ethnically, legally, politically and religiously. A widely accepted approach to successfully embracing and managing such variations is to revise and improve the nature and quality of governance. This is as true for the UK as it is for other states. The fact that written constitutions make the machinery of government more accessible and transparent is one of the most persuasive arguments for their application.

Beyond the unitary state, models of federation and confederation may appear structurally similar, at first glance, with individuals participating democratically in electing representatives to established legislative parliaments at two levels of government in both. However, each model has subtly different implications for the way in which individuals relate to their respective national parliaments and that of the centre. In a federation, an individual is a citizen of the central overarching structure and the constituent nation within

which they reside. In a confederation, national parliaments, not individuals, are formally represented in central institutions with people relating to their member nation, initially, and to the confederation next. The extent to which federalism would support greater clarity, comfort, and confidence should not be underestimated. However, a tilt along the constitutional continuum towards confederalism could also provide a lasting solution which supports a real partnership of equals going forward, underpinned by close geographical proximity, common values and a few shared institutions addressing key functions.

The most effective modern constitutions articulate the essential framework of governance and are open to appropriate modifications in time, such as the pooling of sovereignty in international treaties and bodies. They also balance the basic principles with current and developing demands which may necessitate an authority or responsibility of government to be reassigned from one level to another. Creating such a written framework for these isles could prove invaluable across the political spectrum, with some finding reassurance in attempting to articulate the more distinctive elements of the UK's practices in a codified constitution or treaty, and with others seeking to cement the sovereignty position of the four nations individually in relation to a common British civic structure. Who knows, this approach could well provide some fresh constitutive stories for a new kind of partnership across these isles—one which draws on past and present experiences and narratives in forming an underlying bedrock for the future?

In the book *The Challenge to Westminster* (Tuckwell Press 2000), James Mitchell observes that 'opposition to change has often been understated. The inter-play of context and political activity, among both proponents and opponents of change, were important factors in the establishment of the Scottish and Welsh parliaments and they will continue to contribute to the future constitutional development of both nations. The base of a strong sense of Scottish and Welsh identities has been reinforced as a consequence of establishing the parliaments in Edinburgh and Cardiff but, as we have seen, national identity is not nationalism. Devolution is now understood as unfinished business—the real business of the UK has only just started.'

The dynamics of the Union itself, now over 300 years old, and the nature of Britishness are both at stake. In the early 21st century, might not the more constructive elements of the political spectrum from nationalism to unionism, which advocate contrasting isles-wide constitutional solutions, from apparent territorial separatism to unitary centralism, find some common ground, if not a strategic compromise, in the broad principles of confederal-federalism?

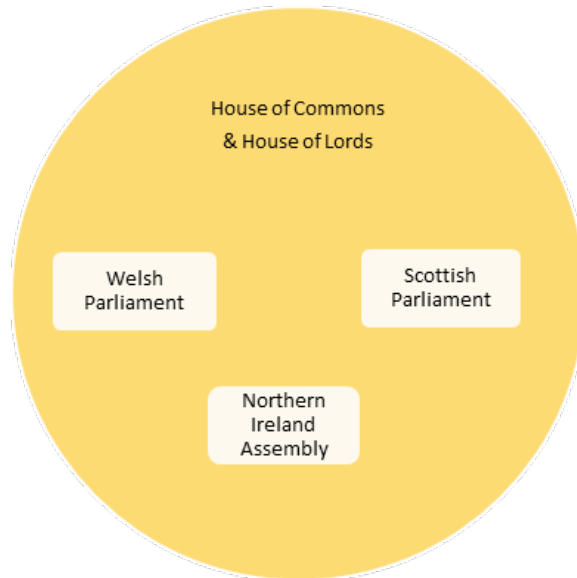
6. CONSTITUTIONAL COMPARISONS

The following illustrated options and exemplar principles condense the several applications of a partially sovereign and sovereign Wales in relation to a selection of potential isles-wide and European structures, including federalism, confederalism, and what is understood by independence.

Powers and functions of governance are pooled, or shared, centrally to varying extents within many of these options, having different implications for the way in which individuals relate to their respective national parliaments, and to that of the centre.

These infographics first appeared on 19 September 2019.

6.1 DEVOLUTION



A sovereign Westminster delegating, in effect, some sovereign authority to the devolved institutions within the UNITED KINGDOM (UK).



An individual is a citizen of the unitary state incorporating Wales, Scotland, Northern Ireland, and England, which is formally known as the UK.



Central institutions are in place to implement most taxes, alongside some fiscal decentralisation to the devolved institutions. There is an official common currency and a central Bank of England.



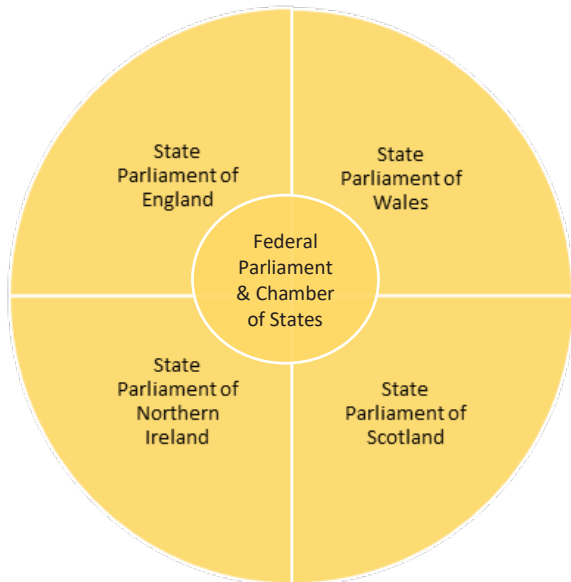
The current statutes founding the devolved institutions provide for and limit powers of the legislatures and administrations, and divide responsibilities between the territories and the centre. These have legal basis in the Wales Act 2017, Scotland Act 2016, and Northern Ireland Act 1998. England continues to be omitted from the devolution reforms, without its own discrete parliament.



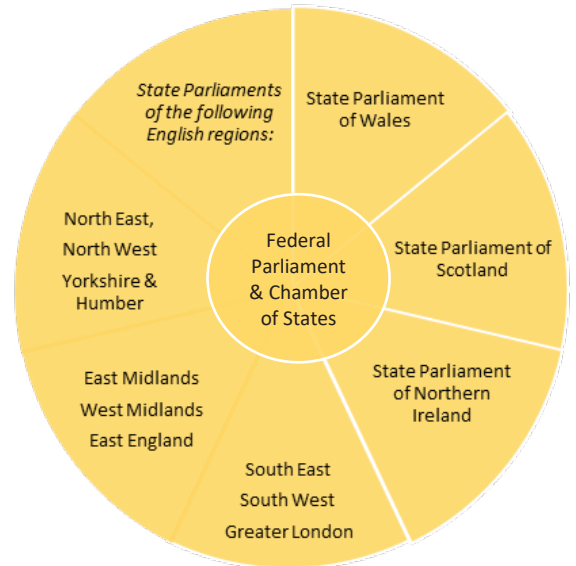
There are three distinct legal jurisdictions operating in the UK namely England & Wales, Scotland, and Northern Ireland. The Supreme Court of the UK is the ultimate authority.

6.2 FEDERALISM

i. including England as a single unit



ii. including suggested regions of England



A partially sovereign Wales sharing sovereignty within a UK FEDERATION.



An individual is a citizen of the central overarching structure *and* the constituent nation or state within which they reside, participating democratically in electing representatives to the legislative parliaments at both levels of government, and with rights of movement, residence, and employment across the whole.



Central institutions implement many taxes, alongside a measure of fiscal decentralisation to the states. There is a formal common currency and a central federal bank.

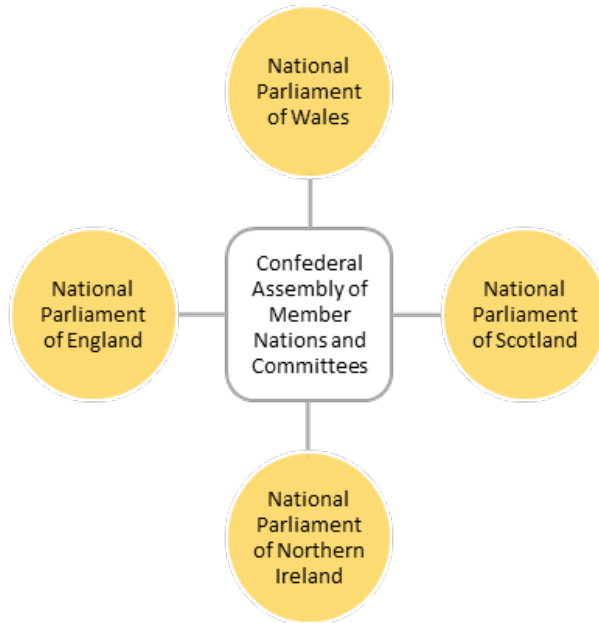


Practices are confirmed through a written constitution, identifying those powers assigned to the centre, which may typically cover: the armed and security forces; border, diplomatic and international affairs; shared public services; cross-recognition of legal jurisdictions; currency and monetary policies; a single market, and select taxation. The remainder rests with the states.



In model (i), each state operates its own legal jurisdiction. In model (ii), the English regions are subject to the laws of England, with other states operating distinct legal jurisdictions. The constitution is enforced by a Supreme Court of the Federation.

6.3 CONFEDERALISM



A sovereign Wales pooling a few agreed functions within a **BRITISH CONFEDERATION**.



National parliaments, not individuals, are represented in the Confederal Assembly. Citizens relate to their nations foremost, with rights of movement, residence, and employment in neighbouring countries subject to negotiation.



Joint budgetary funds are raised annually through each member nation's contribution of a defined proportion of their GDP. The nations operate distinct tax regimes. There is no central confederal bank, but nations may agree to use another member's currency, subject to the usual constraints.



Confederations are established by treaty, addressing limited shared interests such as internal trade, use of currencies, and security. Decisions made by a unicameral Confederal Assembly are not in the character of laws acting upon members, requiring implementation by each individual nation to take effect. The right to secession from the centre is implicit in the model as sovereignty rests with the nations.

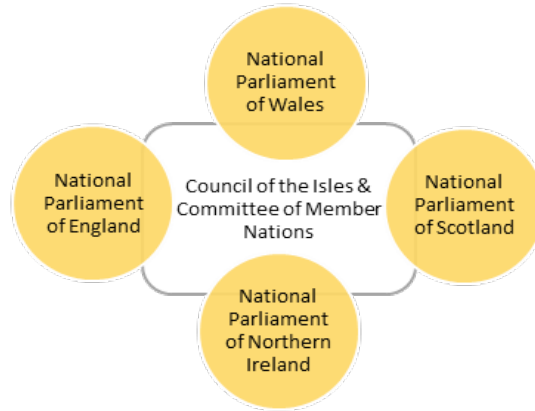


Nations operate separate legal jurisdictions and Supreme Courts.

6.4 CONFEDERAL-FEDERALISM



A sovereign Wales delegating some sovereign authority to a confederal LEAGUE-UNION OF THE ISLES OF BRITAIN, with aspects of federal-type control built into key shared functions.



Individuals elect representatives to their respective National Parliament and a central Council of the Isles, relating to their member nation, initially, and to the League-Union next, and with rights of movement, residence, and employment in all nations.



The Council levies charges upon each member nation according to a defined proportion of their GDP annually. Joint controls support fiscal decentralisation away from the UK position, with nations operating distinct tax regimes unless centrally assigned, and borrowing monitored. There is an official common currency and a central Bank of the Isles.



Each nation holds all powers which are not delegated to the centre by treaty or constitution. The Council enacts clearly defined authority on matters involving defence, foreign policy, internal trade, currency, large-scale economics, and isles-wide affairs. A Committee of Member Nations promotes cooperation across borders.



Each nation operates its own legal jurisdiction. A Supreme Court of the Isles is the ultimate authority on the legitimacy of any laws and rights assigned to the centre.



The sovereign nations of a League-Union independently hold four seats at the United Nations (UN) General Assembly but potentially still retain, subject to negotiation, the single collective permanent seat on the UN Security Council—strongly representing our shared geopolitical and geographical interests at the top diplomatic table, balancing change with continuity.

6.5 EUROPEAN UNION



A sovereign Wales delegating some sovereign authority to the confederal EU, with federal-type control built into select areas.



Individuals elect representatives to their respective National Parliament and a central European Parliament, relating to their member nation, initially, and to the EU next, and with rights of movement, residence, and employment in every EU nation.



The EU levies charges upon member nations, each of which operate distinct tax regimes. There is an official common currency and a central European Bank.

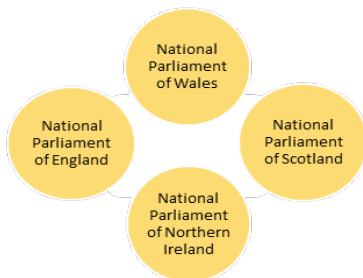


Nations hold all powers which are not delegated centrally. Shared concerns cover large scale economic factors, including monetary practices and a single market, as well as diplomacy, security, and social policies.



Each nation has its own legal jurisdiction. For certain interests an EU legal framework is in operation with an EU Court of Justice.

6.6 INDEPENDENCE



A sovereign Wales existing outside any isles-wide or European frameworks.



Individuals elect representatives to their National Parliament. Citizens relate directly to their nation only, with rights of movement, residence, and employment in neighbouring countries subject to strict negotiation.



The nations have distinct tax regimes and markets, operating their own official currencies and separate central Banks.



Nations are underpinned by written constitutions and act unilaterally in all areas, subject to any agreements with other countries, supra-national bodies, and international organisations such as the International Monetary Fund, World Trade Organisation, NATO etc.



Nations operate separate legal jurisdictions and Supreme Courts.

7. A STRATEGIC COMPROMISE

Including **part two** of the essay
**A sovereign Wales in an
Isles-wide confederation,**
which first appeared in
early February 2021,
and a **recent
postscript.**

Why a League-Union of the Isles?

This option presents the opportunity to empower the peoples and countries of these isles within an overarching collaborative framework that aims to promote national sovereignty, or 'independence', on the one hand, and effective working relationships for key shared interests on the other. To this end, it defines a realistic and sustainable proposition of sovereign nations successfully coexisting in close geographical proximity, whilst firmly recognising longstanding interactions between our peoples and their common journeys through history.

The model is underpinned by the principles of social, economic, defence, cultural, and indeed political, equality and solidarity amid member nations, efficiently tackling our mutual interests, whether regional or global, and empowering each territory to address its own distinct combination of challenges and needs. In constitutional terms, the new relationship is introduced through a codified confirmation that all powers and rights rest with the individual nations, which in turn delegate or pool a balanced portfolio of strategic functions and objectives to the centre by means of an agreed confederal treaty, with aspects of federal-type controls built into specific mechanisms.

- To sustain our economic union, the proposition assumes a common currency, bank and market, as well as an isles-wide responsibility for macro-economic decision making. This particularly aims to support fiscal decentralisation away from the current UK arrangements with borrowing monitored.
- The social union is maintained through the guarantee of individuals' rights of movement, residence and employment across all member nations, along with continuation of the British monarch in role as the Head of the League-Union of the Isles.
- In upholding our joint security, the forces of defence and organisation of foreign policy are both held centrally. This is the protective rock on which our shared principles and values, as projected through common, practical functions, can develop, be maintained, and prosper.
- The cultural union is supported through official recognition of the extant isles-wide language, English, and those tongues indigenous to each territory. These languages' longstanding contributions to the story of Britain and its new future are formally acknowledged.

In application and execution, the balance of social, economic and defence interests are effectively and efficiently enacted through a limited but mature political union comprising a central Council of the Isles to which individuals elect representatives, in addition to their

respective National Parliaments. With usual consideration of legal structures, each territory operates its own jurisdiction, with a Supreme Court of the Isles acting as the ultimate authority on the legitimacy of any laws and rights which are assigned to the Council by treaty.

This measured equilibrium of selective unions allows empathy for the principle of convergence to be understood and actually realised, to a degree, across the League-Union of the Isles, with individuals relating to their member nation, initially, and to the centre next. A Committee of Member Nations which comprises the First Ministers of the individual territories and the Prime Minister of the Council promotes cooperation, where necessary, on matters that, whilst requiring cross border coordination, are the direct responsibility of the National Parliaments. Further, the sovereign member nations independently hold four seats at the UN General Assembly but aspire to retain, subject to negotiation, the single collective permanent seat on the UN Security Council so as strongly to represent our shared geopolitical and geographical interests at the top diplomatic table—balancing change with continuity.

Therefore, confederal-federalism embeds the values of equality and solidarity within its strategic objectives and practical structures, providing opportunities for these ideals to be reinforced in action through promoting partner members' financial robustness and security going forwards. As a counterweight to any encroachment or misuse of powers in enacting the shared, central functions, and since sovereignty rests with each nation, the right of secession is implicit in the model, subject to appropriate referenda and other treaty-bound checks and balances.

Why not a loose confederation?

The proposition of a League-Union of the Isles clearly contrasts with a looser confederal order focused mainly on successful operation of a common market treaty, where Wales would in effect opt to use the British pound, along with maintaining elements of a social union. In such a scenario, likely facilitated by an Assembly of Member Nations, the driver for meaningful economic union is reduced as the influencing motives for adopting common long-term stances are not complemented by joint political and defence structures. England will likely see no reason to reform the Bank of England and share monetary controls to any consequential extent within this option. The values of solidarity would be weakened, with the principle of convergence having little incentive and traction across the nations.

It could be possible for Wales to introduce its own currency, but this would present significant challenges and risks, demanding additional gears and mechanisms to articulate with neighbouring positions. Such a development would 'water down' any firm confederal arrangements in place and potentially prove the relationship unsustainable, due to the

uncertainties around collective aims. It is doubtful that England would agree to a form of unstable confederation, seemingly motivated, at least from Wales's perspective, by the overwhelming desire to ensure some access to its neighbour's greater market wealth.

The peril is that this approach could result, by default, in a sovereign Wales standing separately and suddenly outside any isles-wide and European treaties. Equally, it could lead to a trail of events where the Welsh public sought greater assimilation with England as a counter to the disintegration of an increasingly fragmented relationship—and the consequential economic hardships experienced. The Benelux treaty, which has been suggested by some for confederal consideration, appears appealingly light touch on the surface because it is now established alongside the more substantial EU, of which all Benelux countries are members. In the context of Brexit, it is not possible for obvious reasons to replicate such a framework for Wales, Scotland, Northern Ireland and England today.

Therefore, the option of a loose confederation underpinned by an Assembly of Member Nations, which convenes to agree stances only on matters affecting economic and social unions, does not provide the constitutional traction, public confidence and structural stability required for the values of equality and solidarity to be applied in good faith across the various territories. It is only when elements of the weighty matters of defence and foreign policy are included in the portfolio of shared functions, facilitated by a limited, but meaningful, political union enacted through a Council of the Isles that the proposition coalesces into an effective confederation of depth and potential longevity.

But, a federalist may ask, what is the difference between a League-Union of the Isles and a UK Federation?

It is the case that many of the central functions map across and, in both models, individuals participate democratically in electing representatives to established legislative parliaments at two levels of government. However, a fundamental difference rests in the nature of decision-making processes underpinning the application of shared functions.

In a UK Federation, a top-down model of representational authority remains within an overarching framework of clearly delineated responsibilities assigned to the territories and that of the core, which remains the centre of gravity. This is especially true in party political terms. Like a spider sitting in the middle of a web, there is no mistaking which body both spins and holds the threads. The territories must remain within their bounds, discouraged from taking on a greater role in governing their peoples in time. The umbrella political identity is a powerful construct, likely constraining genuine national development, progress and reform.

In a League-Union of the Isles, on the other hand, the weight of influence and purpose rests with the nations. The centre exists to serve in facilitating the delivery of the common social, political, economic, defence and cultural aims, as already outlined. Individuals elect representatives to take part in central policy decision-making processes mostly on behalf of their member nations' interests.

A federal solution acts only to entrench many of the structural difficulties extant in the present devolution arrangements, which largely mirror a federal order but without the formal sharing of sovereignty across national parliaments. The UK constitutional debate has moved substantively beyond the context in which many parliamentarians started to advocate a federal solution in 2015. Views in Wales about the nature and quality of Cardiff's interactions with Westminster have changed a good deal, especially due to Brexit and, more recently, Covid-19—and the mood in Scotland is increasingly shifting towards independence. However, the SNP's present platform of pursuing an independent Scotland within the EU is problematic in today's circumstances. By definition, it necessarily confines and restricts the nation's ability to facilitate a single market with its largest trading partner, England, fundamentally because of contrasting positions on Brexit.

Accepting that the federal horse has already bolted, particularly before the relentless wave of SNP electoral successes in recent times, never has there been so much at stake for the future of our nations' relations. We are approaching an uncertain moment in this island journey, if not too, in our collective affairs internationally, with the UK's standing much reduced across the globe. Secessionist tendencies are increasingly prevalent, whether nationally in Scotland and Wales, or at a UK level driven by Brexit. There is a crucial need for us to explore some form of broad, strategic compromise, which embraces the concerns of both unionists and nationalists, in moving away from a narrow 'winner takes all' answer to the constitutional question posed. If successful, the long-lasting rewards could be enormous, with fresh political narratives promoting a new kind of partnership across these isles—one which draws on past and present experiences in forming an underlying bedrock of effective collaboration for the century ahead. Interestingly, David Melding MS in his essay *Unionism and Nationalism in Welsh Political Life* (May 2019) emphasises that unionists and nationalists 'will always have to strike some bargain to manage and utilise the forces created by the geography, culture, and economic needs of the British Isles.'

So, are we any nearer to modernising and reforming those political structures that define today's Britain?

After the failed referendum vote on devolution in 1979, it was not until 1997 that a measure of acceptance that change was required emerged. The establishment in 1999 of a National Assembly for Wales was a step in the right direction, with four Wales Acts since bringing in two broad phases of executive and legislative devolution respectively, leading to the current

status quo. During this time, a greater body of understanding has been fostered in Wales with regards to its specific needs, distinct from those for the UK as a whole. However, the Senedd's limited managerial, rather than strategically empowered, approach to governance still fails to deliver effective democratic representation of the aspirations, needs and values of the people of Wales within an increasingly complicated, developing isles-wide context.

At the time of writing, the world is embroiled in the Covid-19 pandemic. The four constituent nations of the UK have taken different tacks in their responses to the social distancing challenges presented, including the application of lockdown conditions. This has reaffirmed the national borders extant within these isles. The trend for significant divergence in policy stances, across the various parliaments, has compounded other clear political disagreements centred on constitutional change, with different parties holding power in each institution for over ten years. These influences will become a substantial source of crisis as we move on from the EU. Furthermore, Wales's economy is likely to be disproportionately affected in the aftermath of Brexit and Covid-19, with the nation carrying many underlying structural dependencies and unresolved issues of industry and enterprise. These considerable challenges require responses devised by those who best understand their impact on our cities, towns and rural communities—and are well-positioned to build the required connections and relationships, at home and overseas, effectively to bring together both public and private expertise and resources in delivering change.

If we were offered a hypothetical opportunity to constitute Britain from 'scratch' once more today, would we consciously choose the model of a centralised unitary state that we have inherited? I suspect England would not have any real intent or interest in pursuing such a proposition as the nation has its own marked difficulties of internal inequality and tensions to overcome (as highlighted by the Covid-19 stand-offs between the Prime Minister and the metro-mayors of Northern England in Autumn 2020).

The UK is the legacy of a different era in world history, one which was embroiled by conflict, empires and two World Wars. Indeed, the main political groupings of our age remain those which rallied and formed around the issues of those times. The constituent nations of Britain have long since travelled at differing economic rates. More recently, the EU has been part of the fabric that holds the UK together. The pre-eminence of EU law, and its interpretation by the EU Court of Justice, has safeguarded legal and regulatory norms across copious fields, including the devolved areas. The UK internal market has been sustained by the conventions of the EU internal market. Brexit risks these interrelated competences becoming increasingly unsound. The need for a renewed isles-wide framework made fit for purpose for the 21st century is now paramount.

I am truly an admirer of the concept of Britain, if not of the UK unitary state—an oxymoron in all but name today. In its defence, there has been no sustained, successful attempt to

pretend that the 'whole' or the 'sum of all parts' does not in fact comprise a number of separate nations respected in their own right within European history. Even before the age of devolution, the various identities of the UK's constituent territories were deeply rooted despite occasional, sporadic attempts to standardise across the piece. The fact that such efforts were unproductive places a spotlight on the synthetic nature of the unitary state, which is possibly at the heart of our current condition of constitutional soul-searching.

If we had a second chance, would we not simply recognise the sovereignty of the different nations and peoples in these isles and seek to work within a robust social, economic and security partnership directed by a limited, but mature, political legislature? I suspect that England would no more want to take on the challenges of Wales, than Scotland would seek to control the future of England. All nations together cannot solve the issue of Northern Ireland, but we can empower the territory to have the useful conversations required to seek resolution of a conflict that now thankfully belongs to a different time.

Globally, these isles are known, amongst many other things, as home to the mother of all parliaments. Would it not speak powerfully of our stature, confidence and foresight, if we acted together, but as individual nations, to enact the mother of all reforms too? What an example our *Prydain*, and our nations' peoples, would be showing the world. Our collective shoulders would have to be broad in setting aside any differences, whether substantial or petty, real or imagined, firmly to embrace shared interests and responsibilities in continuing this remarkable island journey, hand in hand as sovereign nations, but within a League-Union of the Isles of Britain...

POSTSCRIPT

Debates regarding devolution, Home Rule, self-governance, or even independence for Wales, have inspired and enraged for well over a century—the preferred model being informed by whichever label held the greater sway at the time. We do well to remember that the brand of such rallying calls are often influenced by the impulses of passing campaigns and movements, who are, one might say, but shadows and dust in the midst of the longer human journey.

Like the sea's eternal tide, waves of Prime Ministers, governments and politicians of various convictions and sensibilities have risen and fallen both at Westminster and in the coastal, industrial, rural and urban constituencies of Wales. From the reign of Queen Victoria, through the 20th century's global conflicts and the standoff of the Cold War, to the first two decades of the 21st century and today's Brexit and Covid-19 trials, we are part of a connected

chain of events which temporarily resolve in firm outcomes, on the immense plateau of time, only to be superseded by new demands and solutions as contexts change.

It would be too simplistic to assert that any one political party has had a monopoly on driving the agenda for establishing devolution in Wales and, indeed, across this whole island mass located on the western fringes of the European seaboard. No doubt, the trajectory of constitutional travel within each of the individual home nations impacts on the others, bringing a complexity and dynamism to the study of how different parties' organisational structures influence their relationships with the constituent parts of the UK. Tensions between the needs of discrete territories in relation to the totality have often led to heated internal disagreements within political parties' central decision-making mechanisms, particularly when tackling issues of representation and reform.

Self-government, though a divisive proposition, was openly advocated by some parliamentarians, including Lloyd George, in the late 19th century. In 1895 there was a motion in the House of Commons 'to devolve upon Legislatures in Ireland, Scotland, Wales and England ... the management and control of their domestic affairs.' In 1911, Winston Churchill called for separate parliaments in Wales, Scotland and Ireland, and for regional assemblies in England. Two years later, there was a significant debate in the House of Lords on whether the UK should become a federal state, with separate parliaments in each of its constituent parts.

The extensive history of calls for Welsh self-government from the Cymru Fydd initiative of 1880/90s through to the Parliament for Wales movement of the 1950s and on to the intricate devolution campaigns of the 1970s is well documented. Some suggest that devolution as introduced by the Tony Blair government of the late-1990s marked a return to concepts and trends which were largely put on hold by the demands of fighting two world wars in the first half of the 20th century, and servicing an onerous national debt in its aftermath.

At this point, I would like say a few words about myself in order to put my thoughts in some context.

I was born in Cardiff, subsequently growing up in Carmarthen and then for the greater part of my youth in Swansea. After studying in Leeds, I spent 29 years employed in London during which time, after some challenge at the start, I have been fortunate in my choice of career and the opportunities presented (including now being a chief executive officer of a UK-wide industry body for almost a decade). I do view myself, as many of my generation might, as one who was influenced and pressured by that well-known and quite insensitive quote of Margaret Thatcher's, that you should 'get on your bike.' I have resided in London, in Macclesfield and just outside Llanystumdwy during my working life.

I am related on my mother's side to Jim Griffiths, the First Secretary of State for Wales in 1964. My father, Gwynoro Jones, was the Labour MP who beat Gwynfor Evans, the then President of Plaid Cymru, at the June 1970 and February 1974 General Elections in Carmarthen. He also prepared Welsh Labour's evidence for the Crowther/Kilbrandon Royal Commission on the constitution in the 1970s, and was instrumental in the formation of the Social Democratic Party and subsequently the Liberal Democrats in the 1980s and 90s.

I am a Fellow of the Institute of Welsh Affairs and have stood as a National Assembly and Parliamentary candidate for Plaid Cymru during the period of its Assembly coalition with Labour (2007 to 2011). I contributed as an external Commissioner to the party's constitutional independence Commission in 2020 and appreciate fully that to successfully address the challenges facing the nation there must be some simultaneous consideration of the analogous problems extant throughout the British Isles.

With reference to the above, readers may imagine my delight when Lord David Owen and Lord Elystan Morgan agreed to contribute essays to a joint booklet I was preparing on the UK constitutional question in 2017—to celebrate 20 years of the vote to establish the National Assembly of Wales. In more recent times, Carwyn Jones, the former First Minister of Wales for almost 10 years; Professor Jim Gallagher, a past Director General of Devolution at the UK's Ministry of Justice, and Cynog Dafis, an elder statesman of Plaid Cymru, have been supportive. I should also highlight that I am a keen reader of David Melding's thoughts on constitutional matters, which inspire me in turn to put pen to paper.

Therefore, my cross party influences are considerable and the issues on which my writings focus have been prominent in my life experience since the early days. I cannot over emphasise the lasting impression the disappointing 1979 referendum result left on me as a 9-year-old having leafleted energetically in support of *Yes* at the time. As far as I was concerned the sky had fallen... only to rise again in the early hours of that final count from Carmarthen for the successful 1997 referendum result.

A generation on from 1997 we are now confronted by new challenges and tests which require exploration of fresh solutions and governance models for the future, and that is what this booklet aims to present.

Whatever the debates, discussions and, regretfully but inevitably, disagreements that lie ahead we would do well to remind ourselves of our place on this planet, which is a little rock in a vast universe. Similarly, our small corner of the earth constitutes only one nation of several located on the restricted geography of these isles. As the world now knows to its cost, climate change, pandemics, and economic repercussions respect no national boundaries. We should approach our constitutional deliberations in the spirit of consensus-building and

cooperation, and with a firm eye on the needs and aspirations of those future generations who will call these isles their home...

Glyndwr Cennydd Jones

January 2022

AFTERWORD BY LORD DAVID OWEN



The Covid-19 virus pandemic has shown that the UK can handle an immense challenge with a high degree of unity on basic decisions while preserving across all four nations a varied pattern on devolved responsibilities.

The big question is can we design the next steps towards a Federal Union taking the non-devolved areas of foreign policy, defence policy and intelligence into a new structure involving the devolved Parliaments through their First Ministers. This need not stop the present Westminster Parliament continuing to be responsible for legislation in these areas and for the three First Ministers or their Deputies attending the National Security Council. English votes for English legislation – EVEL - appears to be bedding in fairly well.

This evolutionary way of proceeding has worked so far and fits our island character. We who are Welsh and live in England - and I think I can speak for many of those who are Scottish or Irish living in England - like this measure of cohabitation. We are naturally and rightly not part of devolved referendums but we are not for the most part strangers to the lands of our fathers and or mothers.

Yet a true federal state may need before long a constitutional settlement with a democratic blocking mechanism. I have written in favour of adapting the German Federal Council for the UK. In Germany democratically elected representatives from the Landers of very different sizes in different parts of Germany come together to negotiate with the German Federal Government formed by the Bundestag.¹ For the UK it would mean representation from the four nations, large city Mayors and English local authorities.

Others, like Gordon Brown, in various ways want to transform the House of Lords into an elected chamber while failing to face the fact that this has been repeatedly tried by Labour Governments and most recently by the Cameron/Clegg coalition which was rejected. The

¹ David Owen, A Federal UK Council: <http://www.lorddavidowen.co.uk/wp-content/uploads/2020/07/AUKFederalCouncil-revised-13.12.16.pdf>

repeated failure of the House of Commons to legislate stems from a principled refusal to accept any challenge to their authority. But they could accept a negotiated Union and a changed Constitution.

I would accept this reality and abolish the House of Lords as soon as possible. Whatever the arguments about the format of a Federal UK the present devolved structure, which will be further enhanced on 1st January 2021 over fishing and agriculture, is already in effect federal. The present UK government has decided a generation must elapse before there will be another referendum on Scottish independence. The word generation is a good one, for it has an inbuilt flexibility. But no interpretation of the word allows for a referendum until after the next General Election, which is unlikely to take place until 2024; a decade after the first referendum on Scotland's future. Meanwhile, we should not accept a freeze on sensible further steps towards a federal UK but if they lack coherence they will be rejected and deservedly so.

Now let the debate continue and this booklet by Glyndwr Cennydd Jones is another of his valuable contributions to this debate.

The Rt Hon Lord David Anthony Llewellyn Owen CH

July 2020

'Glyndwr has been an important part of the debate around constitutional futures and I welcome his latest contribution to the ideas that have been generated, particularly in the aftermath of Brexit. We will all have our thoughts as to what the future relationships between the nations of these islands should look like but it is important that there is an informed debate on what kind of future would get the greatest possible support from the public.'

'...This publication will help charter a course which enables us to secure a future UK where its advantages such as fiscal redistribution and the lack of trade barriers within its territory can be preserved while at the same time redistributing power away from the centre.'

Carwyn Jones
First Minister of Wales: 2009-2018

'The Covid-19 virus pandemic has shown that the UK can handle an immense challenge with a high degree of unity on basic decisions while preserving across all four nations a varied pattern on devolved responsibilities. The big question is can we design the next steps ... taking the non-devolved areas of foreign policy, defence policy and intelligence into a new structure involving the devolved Parliaments through their First Ministers.'

'...Now let the debate continue and this booklet by Glyndwr Cennydd Jones is another of his valuable contributions...'

The Rt Hon Lord David Owen



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