

The Ongoing Devolution Processes in the United Kingdom

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The Scottish independence referendum in 2014 was a significant constitutional event in the United Kingdom. Following the Scottish vote to remain a part of the union, the UK Prime Minister, David Cameron, initiated several processes to enhance devolution in Scotland and in every other nation of the UK as well. This chapter discusses those reforms in Scotland, Wales, England and Northern Ireland and consider their implications for the UK constitution as a whole.

Devolution in the UK has been a process of continuing changes since it was introduced formally to Scotland and Wales, and re-introduced to Northern Ireland, in 1999.¹ These have been seen as individual processes with little in common between them. However, one significant event which has impacted all parts of the UK was the 2014 Scottish independence referendum. The Scottish decision to remain a part of the UK can be seen as a catalyst to push on with devolution, not just in Scotland but in other parts of the UK as well. On the morning following the referendum David Cameron MP announced:

So now it is time for our United Kingdom to come together, and to move forward. A vital part of that will be a balanced settlement – fair to people in Scotland and importantly to everyone in England, Wales and Northern Ireland as well...It is absolutely right that a new and fair settlement for Scotland should be accompanied by a new and fair settlement that applies to all parts of our United Kingdom.²

As devolution in the UK has been a process of asymmetrical changes this chapter will consider the developments which have been initiated since the Scottish independence referendum in each nation of the UK. Mitchell notes that the legacy of each part of the UK needs to be taken into account to understand devolution because the UK is a ‘state of unions’ rather than a ‘union state’.³ It will conclude with a short consideration of constitutional implications and challenges which the UK and devolved administrations will need to respond to in the near future.

Scotland

Even prior to the independence referendum, Scotland was the most powerful devolved nation in the UK. Reforms since the referendum have increased the powers of the Scottish Parliament with claims from the UK government that Scotland now has ‘one of the most

¹ Scotland Act 1998, Government of Wales Act 1998, and Northern Ireland Act 1998.

² David Cameron MP, ‘Scottish Independence Referendum: statement by the Prime Minister’ (19 September 2014) <<https://www.gov.uk/government/news/scottish-independence-referendum-statement-by-the-prime-minister>> accessed 28 April 2016.

³ James Mitchell, *Devolution in the UK* (Manchester UP 2009) 6.

powerful devolved parliaments in the world.’⁴ Since the initial Scotland Act 1998, the Scottish devolution settlement has gone through constitutional reforms in 2012 and 2016.

The Scotland Act 1998 established the Scottish Parliament and the Scottish Government.⁵ The parliament is elected through an additional member system, which is part proportional representation, and has 129 members. Scotland has a reserved powers model which means that the parliament may legislate on any matter other than what is reserved to the Westminster Parliament through Schedule 5 of the 1998 Act. General reservations include, *inter alia*, the constitution, foreign affairs, and defence.⁶ Other matters are specifically reserved in subjects such as, *inter alia*, finance and economy, home affairs, trade and industry, energy, transport and social security.⁷ The parliament also had fiscal powers under the Scottish variable rate to vary income tax by a rate of 3 pence.

Although Scotland had a relatively stable form of devolution there was still room to consider reform. The Commission on Scottish Devolution (the Calman Commission) reported in 2009.⁸ Its remit was to ‘review the provisions of the Scotland Act 1998 in light of experience’ and to make recommendations regarding constitutional arrangements, financial accountability of the Parliament, and to ‘secure the position of Scotland within the United Kingdom.’⁹ Calman found that devolution to Scotland had been a success and that devolution was ‘here to stay’ within a political, economic and social union.¹⁰ In particular, it found a need to improve the financial accountability of the Scottish Parliament and lessen the reliance on the block grant received from the UK.¹¹ Therefore, it recommended the introduction of a new Scottish rate of income tax, to allow more borrowing powers for the Scottish Ministers and to devolve powers over other forms of tax.¹² The division between devolved and non-devolved areas were quite ‘well drawn’ but there were some specific matters which could be devolved such as executive powers for the administration of Scottish Parliament elections and regulatory issues such as drink-driving and speed limits.¹³ It also made recommendations for strengthening the intergovernmental relations between Scotland and the UK.¹⁴

⁴ Scotland Office, ‘Scotland Act 2016 receives Royal Assent’ (News Story, 23 March 2016) <<https://www.gov.uk/government/news/scotland-bill-completes-its-passage-through-parliament>> accessed 27 April 2016; Nicola McEwen questions this statement as, although it is very powerful among union states, it is not when compared to federal states, Nicola McEwen, ‘Can Holyrood be one of the most powerful devolved parliaments in the world?’ (*Herald Scotland*, 8 March 2016) <http://www.heraldscotland.com/opinion/14327361.Nicola_McEwen__Can_Holyrood_be_one_of_the_most_powerful_devolved_parliaments_in_the_world_/> accessed 27 April 2016.

⁵ Scottish Parliament under Part I. Scottish Government under Part II, as amended by Scotland Act 2012, Part 2 s 12(2)(a); For background see V Bogdanor, *Devolution in the United Kingdom* (OUP, 2001) 110-143.

⁶ Scotland Act 1998, Schedule 5, Part I.

⁷ Scotland Act 1998, Schedule 5, Part II

⁸ Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century* (June 2009)

⁹ *ibid* para 1.1.

¹⁰ *ibid* 5-6.

¹¹ *ibid* 7-8.

¹² *ibid* 10.

¹³ *ibid* 15.

¹⁴ *ibid* 11.

Its recommendations led the way towards the second stage of devolution in Scotland through the Scotland Act 2012.¹⁵ This Act transferred more fiscal powers to the Scottish Parliament in line with the Calman recommendations. Most prominently, it removes the Scottish variable rate and replaces it with a new Scottish rate of income tax, as well as transferring other taxes and the power to create new taxes.¹⁶

When the Scottish National Party won a majority of seats in the 2011 Scottish Parliament one of their key proposals was to give the Scottish people a referendum on independence.¹⁷ The constitutional power to allow the Scottish government to hold such a referendum was transferred through an Order following the Edinburgh Agreement in 2012.¹⁸ The referendum itself was a tightly fought campaign. The beginning of September 2014 saw the campaign in favour of independence edge slightly ahead of their rivals in the polls for the first time.¹⁹ This initiated a response from the unionist UK parties who published a set of promises, which became to be known as ‘the Vow’, to the Scottish electorate if they voted to stay in the Union.²⁰ These would guarantee that the Scottish Parliament would be a ‘permanent and irreversible part of the British constitution’ with more extensive powers, there would be fairness for Scotland within the Union, and a guarantee that the Barnett formula would continue so that Scotland could spend more on the National Health Service.²¹

Following the No vote on 18 September, the UK Prime Minister initiated a swift process to implement those guarantees.²² The Smith Commission was announced on the morning of 19 September and reported by the end of November.²³ The Commission was tasked with leading a cross-party debate and agreement on further devolution of powers to the Scottish Parliament.²⁴ This was done in three pillars; providing a durable and responsive constitutional settlement for Scotland; delivering prosperity, a healthy economy, jobs, and social justice; and strengthening the financial accountability of the Scottish Parliament.²⁵ The Conservative Manifesto in 2015 promised to implement the recommendations of the Commission and to

¹⁵ HM Government, *The Coalition: our programme for government* (2010) 28.

¹⁶ Scotland Act 1998, Part IVA, as amended by Scotland Act 2012.

¹⁷ Scottish National Party, *Re-elect: SNP Scottish Parliament Manifesto* (2011) 28.

¹⁸ HM Government & The Scottish Government, *Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland* (12 October 2015); The Scotland Act 1998 (Modification of Schedule 5) Order 2013, SI 2013/242.

¹⁹ Will Dahlgreen, ‘Yes’ campaign lead at 2 in Scottish Referendum’ (*YouGov*, 6 September 2014) <<https://yougov.co.uk/news/2014/09/06/latest-scottish-referendum-poll-yes-lead/>> accessed 28 April 2016.

²⁰ David Clegg, ‘David Cameron, Ed Miliband and Nick Clegg sign joint historic promise which guarantees more devolved powers for Scotland and protection for NHS if we vote No’ (*The Daily Record*, 15 September 2014) <<http://www.dailyrecord.co.uk/news/politics/david-cameron-ed-miliband-nick-4265992#Ki2wQ8zA42xDago4.97>> accessed 28 April 2016.

²¹ *ibid.*

²² Cameron (n 2).

²³ The Smith Commission, *Report of the Smith Commission for further devolution of powers to the Scottish Parliament* (27 November 2014).

²⁴ *ibid* para 2.

²⁵ *ibid* para 16.

introduce a Scotland Bill.²⁶ Subsequently, the Scotland Act 2016 is the third stage of Scottish devolution.

The constitutional provisions in the Act are significant from a Scottish and UK perspective. Section 1 of the Act provides that the Scottish Parliament and the Scottish Government are a permanent part of the UK constitutional arrangements and are not to be abolished other than by a referendum of the people of Scotland. Also, section 2 places the Sewel convention, that the UK Parliament will not normally legislate on devolved matters without the consent of the Scottish Parliament, on a statutory footing.

These are very significant constitutional developments in the UK context and raises fundamental issues regarding parliamentary sovereignty. In response to these proposals the House of Lords Committee on the Constitution has expressed concern regarding their constitutional implications.²⁷ The Committee believes that section 1 provides a level of political entrenchment, but not legal entrenchment. However, it may also bring with it an element of uncertainty which may be open to differing interpretations.²⁸ The Committee noted:

It is a fundamental principle of the UK constitution that Parliament is sovereign and that no Parliament may bind its successors... While we do not consider that it imposes any legal or constitutional restriction on the power of the UK Parliament, it does create the potential for misunderstanding or conflict over the legal status of the Scottish Parliament which may result in legal friction in the future.²⁹

Putting the Sewel convention on a statutory footing could also have constitutional implications. Again, the committee were of the opinion that this had a 'symbolic significance' and would recognise its existence rather than turn it into a 'legally binding principle.'³⁰ However, the Committee remained concerned that the courts could be unnecessarily drawn into an area traditionally controlled by conventions.³¹

The 2016 Act extends the reforms under the 2012 Act by transferring further powers over elections and the composition of the Scottish Parliament. This gives the Scottish Parliament powers to change the franchise for its elections and to reform the disqualification and removal of its Members. The House of Lords Committee were concerned regarding the indirect constitutional effects of these provisions as it may lead to demands from other devolved legislatures for similar powers.³² The 2016 Act also devolves further specific

²⁶ The Conservative Party, *The Conservative Party Manifesto 2015* (2015) 70; HM Government, *Scotland in the United Kingdom: An enduring settlement* (Cm 8990, January 2015).

²⁷ Committee on the Constitution, *Proposals for the devolution of further powers to Scotland* (HL 2014-15, 145) para 22.

²⁸ *ibid* para 64; Committee on the Constitution, *Scotland Bill* (HL 2015-16, 59) para 32.

²⁹ Committee on the Constitution (n 27) para 64.

³⁰ *ibid* para 72.

³¹ *ibid* para 75.

³² *Ibid* paras 81-82.

powers to Scotland over the Crown Estate, equal opportunities, tribunals, transport and consumer advocacy and advice.³³

The Act transfers further tax, borrowing and financial powers and powers over welfare benefits and employment support. The Barnett formula of allocating a block grant will continue in Scotland but will be adjusted in line with the new tax raising powers devolved to the Scottish Parliament.³⁴ The devolution of welfare benefit could also have significant effects as it has traditionally been seen as a common Great Britain (GB) system.³⁵ This will give the Scottish Government powers to amend the operation of GB wide benefits for Scottish claimants in certain circumstances and allow the Scottish Parliament to create new benefits to replace existing discretionary benefit schemes for carers, disabled people, and housing payments.³⁶ The House of Lords Committee on Economic Affairs were concerned that the reforms to the Scottish fiscal framework were not logical, long-term or based on principle.³⁷ As a result, they were worried that this could lead to a threat to the ‘existence of the Union.’³⁸ These further powers also introduce an element of shared competence between Scotland and the UK which is an extra dimension to the tradition devolved or non-devolved divide.

Scotland has received important powers since 2012 which sees it as one of the most powerful devolved legislatures in the World. This is a significant step forward for Scotland in terms of their autonomy. It may also have fundamental effects on the UK constitution and other nations of the UK as will be explored in the next sections.

Wales

It has been a cliché of Welsh devolution that it was dragged towards devolution ‘on the hem of a Scottish Kilt.’³⁹ Wales were still hanging on to the proverbial kilt when Scotland advanced devolution in 2014. However, not much else is in common between the Scottish and Welsh devolution models at the moment as Wales has undergone a process of quite novel devolution designs.⁴⁰ Establishing a standard and common settlement in Wales continues to be a challenge for the UK Government and a new impetus was gained in light of the Scottish referendum to implement changes which were already on the table.

³³ Scotland Act 2016, Part IV.

³⁴ HM Government, *Scotland in the United Kingdom: An enduring settlement* (Cm 8990, January 2015) 27.

³⁵ *ibid* para 4.13.

³⁶ *ibid* para 4.3.10.

³⁷ Committee on Economic Affairs, *A Fracturing Union? The Implications of Financial Devolution to Scotland* (HL 2015-16, 55) 3.

³⁸ *ibid* 5.

³⁹ Professor Sir David Williams, ‘Devolution: The Welsh Perspective’ in The University of Cambridge Centre for Public Law, *Constitutional Reform in the United Kingdom: Practice and Principles* (Hart 1998) 43.

⁴⁰ A Sherlock, ‘A New Devolution Settlement for Wales’ (2008) 14(3) EPL 297; A Sherlock, ‘Devolution in Transition in Wales’ (2011) 17(1) EPL 25; A Sherlock, ‘Wales: The Continuing Development of Devolution in Wales’ (2015) 21(3) EPL 429.

The National Assembly for Wales was established by the Government of Wales Act 1998 as a corporate body with subordinate law making powers under a conferred powers model.⁴¹ The National Assembly has 60 members and is elected through the additional member system like Scotland. Due to this limited model of devolution constitutional debate has been a consistent part of devolution in Wales.⁴² The National Assembly gradually received full law-making powers through reforms under the Government of Wales Act 2006 but still within a conferred powers model.⁴³

The Commission on Devolution in Wales (the Silk Commission) was the corresponding report to the Calman Commission in Scotland. It reported in two stages; its first report focused on fiscal devolution⁴⁴ and its second report made recommendations regarding constitutional matters.⁴⁵

The Wales Act 2014 was passed in December 2014 and reflects the first report published by the Silk Commission. It devolves partial income tax powers to the National Assembly by allowing it to set a Welsh Rate of Income Tax.⁴⁶ It also devolves other forms of taxes for land transactions and allows the Welsh Ministers powers to borrow money.⁴⁷ This is in line with the UK Government's objective of increasing the accountability of devolved administration for the revenue they spend.⁴⁸ Regarding the National Assembly itself, it changes the term of an Assembly to five years, allows candidates to stand in a constituency and in a region at the same election, and removes the ability to sit in the Assembly and the House of Commons at the same time.⁴⁹

The Scottish independence referendum was the catalyst to start implementation of some of the Silk Commission's constitutional recommendations from their second report.⁵⁰ The UK Government paper *Powers for a Purpose* promised Wales a 'clear, robust and lasting devolution settlement.'⁵¹ A draft Wales Bill was published in October 2015 to bring these

⁴¹ It had powers over 18 fields listed in the Government of Wales Act 1998, Schedule 2. Specific executive powers within those fields were transferred through The National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672; See further, R Rawlings, *Delineating Wales* (UWP 2003).

⁴² Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, *Report of the Richard Commission* (Spring 2004); *All Wales Convention Report* (November 2009).

⁴³ Government of Wales Act 2006, Part IV, the National Assembly for Wales can legislate on matters within 21 subjects listed under Schedule 7 of the Government of Wales Act 2006.

⁴⁴ Commission on Devolution in Wales, *Empowerment and Responsibility: Financial Powers to Strengthen Wales* (November 2012); See also, Independent Commission on Funding & Finance for Wales, *Fairness and accountability: a new funding settlement for Wales* (July 2010).

⁴⁵ Commission on Devolution in Wales, *Empowerment and Responsibility: Legislative Powers to Strengthen Wales* (March 2014).

⁴⁶ Wales Act 2014, Part 2.

⁴⁷ Wales Act 2014, Part 2.

⁴⁸ HM Government, *Wales Bill: Financial Empowerment and Accountability* (Cm 8838, March 2014).

⁴⁹ Wales Office, *A Green Paper on future electoral arrangements for the National Assembly for Wales* (Cm 8357, May 2012).

⁵⁰ Wales Office, *Powers for a Purpose: Towards a Lasting Devolution Settlement for Wales* (Cm 9020, February 2015).

⁵¹ *ibid* 6.

constitutional proposals into effect. It proposed a reserved powers model for Wales, similar to the settlement in Scotland.⁵² It would also have declared the permanence of the National Assembly and Welsh Government, and statutorily confirmed the Sewel convention for Wales as done for Scotland. Other proposals were to transfer powers over the Assembly's own affairs and elections. It would also devolve further powers to the National Assembly and Welsh Ministers over transport regulations, local government, energy and the environment.⁵³

At first sight it seems that there are clear parallels with the Scottish settlement which closes the asymmetrical divide. However, the draft Bill was heavily criticised as not being based on rational principles and not meeting the aims set by the Government of a 'stronger, clearer and fairer devolution settlement.'⁵⁴ Criticisms were mainly seen in three areas; the design of the reservation model, the division of executive powers between the UK and the Welsh governments, and the reservation of criminal and private law.⁵⁵

Changing from a conferred to a reserved powers model has been a particular challenge. Even though the Silk Commission recommended a reserved powers model it also highlighted some of the virtues of the conferred powers model.⁵⁶ Following a Supreme Court case challenging the Agricultural Sector (Wales) Bill it was held that the National Assembly has powers which extended beyond those expressly conferred if those provisions fairly and realistically relate to a matter which is devolved.⁵⁷ This allowed the National Assembly some competence outside those subjects expressed in the 2006 Act which meant that its competence was broader than expected. However, the proposals in the draft Bill attempted to reduce the National Assembly's current powers by reserving significant amount of matters, around 220, without clear justification.⁵⁸

Executive powers in Wales are not aligned with legislative powers of the National Assembly.⁵⁹ Therefore, some executive powers over devolved areas may still lie with the UK Minister who needs to consent to any changes made in Wales. The draft Bill required further consent from UK Ministers if Welsh laws affected the functions of public authorities. In this regard, it was argued that this extended the powers of UK Ministers and reduced the legislative competence of the National Assembly.⁶⁰ The National Assembly was concerned that it could lead to the UK executive over-ruling the legislature in Wales, which was,

⁵² HM Government, *Draft Wales Bill* (Cm 9144, October 2015) 82.

⁵³ *ibid* 82.

⁵⁴ Constitutional and Legislative Affairs Committee, *Report on the UK Government's Draft Wales Bill* (National Assembly for Wales, December 2015) para 166; Wales Governance Centre and The Constitution Unit, *Challenge and Opportunity: The Draft Wales Bill 2015* (February 2016) 14, 59.

⁵⁵ Welsh Affairs Select Committee, *Pre-legislative scrutiny of the draft Wales Bill* (HC 2015-16, 449) 6.

⁵⁶ Commission on Devolution in Wales (n 45) Chapter 4.

⁵⁷ *Agricultural Sector (Wales) Bill - Reference by the Attorney General for England and Wales* [2014] UKSC 43, [2014] 1 WLR 2622.

⁵⁸ Constitutional and Legislative Affairs Committee (n 54) paras 134-137; Wales Governance Centre and The Constitution Unit (n 54) 50.

⁵⁹ Welsh Affairs Select Committee (n 55) 24; In Scotland, there was a general transfer of executive functions in line with devolved competences through s.53 of the Scotland Act 1998.

⁶⁰ Constitutional and Legislative Affairs Committee (n 54) para 109.

according to the constitutional and legislative affairs committee, ‘constitutionally unacceptable’.⁶¹ It therefore risked creating a more complex system where the National Assembly had fewer powers.⁶²

Lastly, the draft Bill attempted to reserve private law, criminal law and civil penalties. Reserving these legal matters was an attempt to protect the single legal jurisdiction of England and Wales. In effect, this meant that the National Assembly could not legislate to change the law on these matters unless it was ‘necessary’ to do so. This was seen as a very high test for National Assembly legislation to reach and was, according to the Welsh Affairs Committee at Westminster, not the correct test to use.⁶³ The difficulties of retaining a single jurisdiction while transferring legislative powers brings into question the sustainability of a single England and Wales jurisdiction which can accommodate two legislatures. Recently, the Welsh Government has strengthened its support for a distinct jurisdiction to recognise the laws of Wales.⁶⁴ However, the UK Government have so far rejected such calls. This will be a fundamental issue to resolve to ensure a long-term devolution settlement in Wales.

Wales is still a distance from achieving a clear and long-term constitutional settlement. With the impetus from Scotland for further devolution it has been suggested that the process in Wales has been rushed.⁶⁵ With that in mind, the Secretary of State for Wales has paused the progress of the Bill and made commitments to make substantial changes to the three areas highlighted in this section.⁶⁶ The next version of the Bill is expected in the summer of 2016. The devolution settlement in Wales has always been behind Scotland, and Northern Ireland, and that asymmetry is set to continue with Wales still hanging on to the hem of the kilt.

England

On the morning following the Scottish referendum David Cameron had a specific message for England. He said; ‘I have long believed that a crucial part missing from this national discussion is England...and now the millions of voices of England must also be heard.’⁶⁷ The House of Commons also noted that the referendum and the promise of further powers to the devolved nations of the UK had ‘generated the political momentum towards further

⁶¹ *ibid* para 111.

⁶² *ibid* para 163, The Welsh Government claimed that 25 Acts of the National Assembly which have been passed since 2011 would not be within the competence of the National Assembly under the proposed new settlement. The Secretary of State for Wales disputed this but conceded that there 5 which would have required UK Ministerial consent.

⁶³ Welsh Affairs Select Committee (n 55) 20.

⁶⁴ Welsh Government, *Government and Laws in Wales Draft Bill: Explanatory Summary* (No.3:WG28243, March 2016) 5, 19-20.

⁶⁵ Wales Governance Centre and The Constitution Unit (n 54) 58; Welsh Affairs Select Committee (n 55) 27.

⁶⁶ Wales Office, *Amended Wales Bill will deliver a stronger devolution settlement* (Press Release, 29 February 2016).

⁶⁷ Cameron (n 2).

devolution in England.⁶⁸ The Government established a Cabinet Committee to set out the devolution options for England to run alongside the Smith Commission. Their report, *The Implications of Devolution for England*, was published in December 2014 but it highlighted differences between both sides of the coalition government at the time regarding the future governance of England.⁶⁹

Professor Robert Hazell has highlighted the breadth and dynamics of the ‘English Question’.⁷⁰ It is possible to consider it from two perspectives. On the one hand, there is the consideration of England’s place in the Union on similar terms to other nations of the UK. On the other hand, there is the perspective of regionalism and devolution of powers within England.⁷¹ The UK Government have initiated reforms to tackle both issues, initially from a regionalism perspective and more recently from a national perspective.

Regionalism and Localism in England

Devolution in England has received greater publicity since the Scottish referendum but an array of initiatives had already been undertaken by the Conservative and Liberal Democrat coalition government since 2011.⁷² Their intention was to remove the ‘top-down bureaucracy’ in the regional structure and adopt a subsidiarity approach to decentralise power to ‘the lowest appropriate level’.⁷³ This was in line with their localism agenda which promised ‘radical devolution of power and greater financial autonomy to local government and community groups.’⁷⁴

The coalition government started their work on the localism agenda by abolishing the regional structures created in England by the last administration a decade before. Regional Spatial Strategies were revoked and Regional Development Agencies were abolished.⁷⁵ As well as removing the Labour government initiatives the coalition government went further by abolishing the Government Offices of the Regions which was a form of administrative decentralisation.⁷⁶ The government were of the opinion that those administrative regions were significantly complex and did not reflect ‘real functional economic areas.’⁷⁷ Its change of approach invited local authorities to come together to form local enterprise partnerships. This

⁶⁸ Political and Constitutional Reform Committee, *The future of devolution after the Scottish referendum* (HC 2014-15, 700) para 74.

⁶⁹ Cabinet Office, *The Implications of Devolution for England* (Cm 8969, December 2014).

⁷⁰ Robert Hazell ‘Introduction: what is the English question?’ in Robert Hazell (ed) *The English Question* (Manchester UP 2006) 3.

⁷¹ *ibid* 2-3, Hazell also suggests that the English may simply want to continue with the status quo as a third option. However, changes since the announcement by David Cameron make it clear that this is now no longer an option.

⁷² Coalition Government (n 15) 11-12.

⁷³ Cabinet Office (n 69) 7-8.

⁷⁴ Coalition Government (n 15) 11.

⁷⁵ Local Democracy, Economic Development and Construction Act 2009, s 79(6); Public Bodies Act 2011, s 30.

⁷⁶ See, Mark Sandford, *The Abolition of Regional Government* (HC Library Standard Note, SN/PC/05842, 27 March 2013).

⁷⁷ HM Government, *Local Growth: Realising Every Place’s Potential* (Cm7961, 28 October 2010) para 2.5.

would give powers to local authorities and local businesses to promote their own local development.⁷⁸

Co-operation between local authorities was further enabled with the ability to create combined authorities through the Local Democracy, Economic Development and Construction Act 2009. Under the procedure in the Act the Secretary of State could agree to create an Order establishing specific combined authorities. Greater Manchester Combined Authority became the first such organisation in 2011. Under the 2009 Act, combined authorities could take responsibilities over economic development, regeneration, transport, or functions which the local authorities wanted to transfer to it.⁷⁹

At a lower level the government also initiated legislative reform to devolve powers to neighbourhoods and local communities through the Localism Act 2011. The Act allowed local authorities more freedom and flexibility from central government. The 2011 Act gave local authorities a ‘general power of competence’ and it allowed Ministers to transfer functions from central government or government agencies to local authorities and combined authorities. This would potentially give cities, in particular, more control over housing, planning, and economic development.⁸⁰ Following from the 2011 Act there are now several initiatives where local authorities can receive enhanced powers.

In line with the focus of economic regeneration of cities the government announced a programme of ‘City Deals’ and ‘Growth Deals’.⁸¹ These agreements allow cities greater freedom and flexibility for developing growth and infrastructure with the transfer of more finance from the Treasury but in return must have stronger accountability.⁸²

The Conservative Party were keen to continue with this model of localism and decentralisation.⁸³ As a result, the combined authority approach was significantly expanded by the Conservative government following the 2015 general election and complimented its ambition for a ‘Northern Powerhouse’ to regenerate the North of England.⁸⁴ This saw the introduction of ‘Devolution Deals’ under the Cities and Local Government Devolution Act 2016. These go beyond City Deals by allowing combined authorities, and other local authority bodies, to take responsibility for more functions than the 2009 Act. This has

⁷⁸ Coalition Government (n 15) 10; HM Government, *Local Growth: Realising Every Place’s Potential* (Cm 7961, 28 October 2010) 3.

⁷⁹ Local Democracy, Economic Development and Construction Act 2009, ss 104 and 105 prior to amendment.

⁸⁰ The Act also enables new rights for communities for matters such as taking over the running of local authority services, to bid for local community centres, and neighbourhood planning.

⁸¹ HM Government, *Unlocking Growth in Cities* (December 2011); HM Government, ‘Government Formalises the First Wave of City Deals’ (Press Release, 18 September 2012) <www.gov.uk/government/news/government-formalises-the-first-wave-of-city-deals--2> accessed 24 April 2016.

⁸² HM Government, *Unlocking Growth in Cities* (December 2011) 2

⁸³ HM Government (n 69) 22-23.

⁸⁴ George Osborne MP, ‘Chancellor on building a Northern Powerhouse’ (Speech, 14 May 2015) <<https://www.gov.uk/government/speeches/chancellor-on-building-a-northern-powerhouse>> accessed 24 April 2016.

allowed authorities to negotiate a significant range of powers. For example, the Greater Manchester Devolution Deal will transfer responsibility to the Greater Manchester Combined Authority for a wide range of projects such as, *inter alia*, education and skills, transport, employment support, land and housing, and public services such as integrating health and social care, the fire service and responsibilities of the police and crime commissioner.⁸⁵ Currently, there are 12 devolution deals agreed each with their own level of powers.⁸⁶ Therefore, devolution within England is just as much an asymmetrical process as is devolution on the national level in the UK.⁸⁷

It is significant that the government have insisted on using ‘devolution’ rather than ‘decentralisation’ to describe its reforms in England. A cabinet paper for the coalition government noted that devolution to the nations of the UK is ‘different to localism and decentralisation within a country.’⁸⁸ There are clear differences in their design compared to national devolution as they are created through secondary legislation and central government still retain substantial control.⁸⁹ However, that does not necessarily make ‘devolution deals’ less significant as they may confer further and wider powers in future. As Dr Andrew Blick notes, consideration of devolution in the future will require the consideration of local government and the appreciation that both the local and national level of governance are ‘distinct but associated.’⁹⁰

The National Level

As the McKay Commission noted, ‘strengthening local government in England does not tackle the governance of England.’⁹¹ On the national level, there have been attempts to tackle the English Question and to recognise England as a distinct part of the UK. The McKay Commission was established by the coalition government in 2012 to consider how the House

⁸⁵ HM Treasury, ‘Devolution to the Greater Manchester Combined Authority and transition to a directly elected mayor’ (3 November 2014 and updated up to 16 March 2016) <<https://www.gov.uk/government/publications/devolution-to-the-greater-manchester-combined-authority-and-transition-to-a-directly-elected-mayor>> accessed 14 May 2016.

⁸⁶ Local Government Association, ‘Devolution Deals’ <<http://www.local.gov.uk/devolution-deals>> accessed 14 May 2016; Mark Sandford, *Devolution to Local Government in England* (House of Commons Library, Briefing Paper No.07029, 5 April 2016) Appendix.

⁸⁷ Communities and Local Government Committee, *Devolution: the next five years and beyond* (HC 2015-16, 369) para 27.

⁸⁸ HM Government (n 69) 15; Dr Andrew Blick, ‘Devolution in the UK: Historical Perspective’ (APPG) 5 <www.local.gov.uk/documents/10180/6917361/Historical+background.pdf/4730da4e-9e32-4059-a11d-078534b72ca8> accessed 26 April 2016, ‘The relationship between devolution and local government is a subtle one. It is not always clear where devolution ends and localism begins.’

⁸⁹ Cities and Local Government Devolution Act 2016, s 15 for example; R Thomas, ‘Local Government Devolution in England’ (*UK Constitutional Law Blog*, 2 March 2016) <<https://ukconstitutionallaw.org/2016/03/02/robert-thomas-local-government-devolution-in-england/>> accessed 14 May 2016.

⁹⁰ Blick (n 88) 5.

⁹¹ The McKay Commission, *Report of the Commission on the Consequences of Devolution for the House of Commons* (March 2013) para 8.

of Commons could deal with ‘legislation which affects only part of the United Kingdom’.⁹² Since devolution of primary law-making powers the UK Parliament is increasingly legislating for England only. The McKay Commission found that ‘governing arrangements for England in the post-devolution era are emerging more or less by default.’⁹³ However, Parliament had not adapted to recognise its new role as the Parliament of England as well as of the UK.⁹⁴ The question can be further framed as the ‘West Lothian Question’; that Scottish, Northern Irish and Welsh Members of Parliament can vote on legislation which only affects England, while English MPs cannot vote on the same matters in the devolved parts of the UK.

The McKay Commission set the principle that decisions which have a distinct or separate effect on England should only be taken with the consent of a majority of MPs from England.⁹⁵ This is a similar principle to that of the Sewel Convention in Scotland.⁹⁶ Consequently, the House of Commons procedures would need to be amended to allow English-only legislation to be identified and for the voice of English MPs to be heard.⁹⁷

The Government did not respond immediately to the McKay Commission.⁹⁸ However, in light of the Scottish referendum, tackling the West Lothian Question became a necessity.⁹⁹ The Conservative Party were in favour of an ‘English Votes for English Laws’ (EVEL) model which was underpinned by the principle in the McKay Commission.¹⁰⁰ They proceeded to promise a veto for English MPs in their 2015 General Election Manifesto and then moved to implement their EVEL proposals by proposing amendments to the Standing Orders of the House of Commons.¹⁰¹ After initial proposals were criticised¹⁰² the amended Standing Orders were approved by the House of Commons in October 2015.

The new procedure requires the Speaker of the House of Commons to certify whether a bill should be subject to the new procedure when the Bill, or particular clauses, relates to England only, or England and Wales, matters and is within the legislative competence of the other relevant devolved legislatures.¹⁰³ Once certification is granted the relevant Bill will proceed

⁹² *ibid* 5.

⁹³ *ibid* para 39.

⁹⁴ *ibid* para 41.

⁹⁵ *ibid* para 12.

⁹⁶ The Bingham Centre for Constitutional Reform, *A Constitutional Crossroads: Ways Forward for the United Kingdom* (May 2015) 29.

⁹⁷ McKay Commission (n 91) paras 16, 20, The Commission recommended several ways that this could be achieved such as creating a legislative consent motion for English MPs, special public bill committees with appropriate party balance, and English report committee.

⁹⁸ Bingham Centre (n 96) 26.

⁹⁹ HM Government (n 69) 4, however, the coalition partners to the Government could only list their separate intentions for reforming governance in England (Chapter 6).

¹⁰⁰ The Conservative Party (n 26) 70.

¹⁰¹ *ibid* 70.

¹⁰² Procedure Committee, *Government proposals for English votes for English laws Standing Orders: interim report* (HC 2015–16, 410).

¹⁰³ HM Cabinet Office, *English Votes for English Laws: An Explanatory Guide to Proposals* (July 2015) 2; House of Commons, *Standing Orders of the House of Commons* (February 2016) 83J.

in a similar way to other Bills but will go through a Committee stage which involves only members from England, or England and Wales as appropriate. Following that, it will go to the Report stage of the House as normal but then to a Legislative Grand Committee (LGC) of the relevant countries affected. Any member of the House can speak in the LGC but only members from the relevant countries can vote to give consent to the Bill. In effect, this is legislative consent motion for English MPs, along the lines of the Sewel convention for devolved legislatures. The Bill continues through the other procedures in the House of Commons and House of Lords as normal following those supplementary stages.

The House of Commons Public Administration and Constitutional Affairs Committee (PACAC) have raised concerns regarding this new procedure.¹⁰⁴ In particular, its sustainability and long-term use seem in doubt due to the complexity of the drafting and the fact that a future government could easily revoke them.¹⁰⁵ As a result, the committee noted that ‘they cannot be considered to be part of a stable constitutional settlement that will endure.’¹⁰⁶ PACAC also expressed concerns about the wider constitutional implications in terms of determining what ‘relates exclusively to England or to England and Wales’ as there may be cross-border implications.¹⁰⁷ This places the Speaker in a very difficult position and PACAC suggested that the test is not as simple as it first appears.¹⁰⁸ There is also a perception that it is creating two tiers of MPs.¹⁰⁹

Responding to the West Lothian question was an important concern for the Conservative government, especially following the devolution of further powers to Scotland. However, there is some scepticism regarding how sustainable the current procedure for EVEL will be and so it is unlikely that this has settled the governance of England on a national level for the long-term.

Northern Ireland

Devolution in Northern Ireland is again a unique process. The first devolved administration in the UK was established in Northern Ireland under the Government of Ireland Act 1920 which created the partition of Ireland. It was in response to the calls for Home Rule for Ireland that it became necessary to create two separate administrations, one in the North for the six counties of Ulster and one in the South, which is now the Republic of Ireland.¹¹⁰ This was to appease the unionist community in Northern Ireland who wanted to continue with the union with Britain. The deep rooted history of conflict between the unionist and nationalist

¹⁰⁴ Public Administration and Constitutional Affairs Committee, *The Future of the Union, part one: English Votes for English Laws* (HC 2015-16, 523) para 46.

¹⁰⁵ *ibid* paras 50, 54.

¹⁰⁶ *ibid* para 54.

¹⁰⁷ *ibid* para 61; The Bingham Centre (n 96) 29.

¹⁰⁸ Public Administration and Constitutional Affairs Committee (n 104) para 63.

¹⁰⁹ *ibid* para 64.

¹¹⁰ V Bogdanor, *Devolution in the United Kingdom* (OUP 2001) 65.

communities in Northern Ireland was a factor in the origins of devolution in Northern Ireland and continues to be so today.¹¹¹

The 1920 Act established a Northern Ireland Parliament, government and a courts system.¹¹² However, due to the troubles and violence between both communities in Northern Ireland the Parliament had to be prorogued in 1972 and direct rule returned to Westminster.¹¹³ This continued to be the position until the Belfast Agreement was signed on Good Friday 1998.¹¹⁴

The Good Friday Agreement set the foundations for establishing the Northern Ireland Assembly (NI Assembly) through the Northern Ireland Act 1998. The NI Assembly has 108 members elected through the Single Transferrable Vote system. Northern Ireland has a reserved powers model but has two tiers of reserved powers. 'Excepted matters' are matters such as *inter alia*, the crown, defence and international relations which cannot be devolved.¹¹⁵ On the other hand, 'reserved matters' are matters which may be devolved in future or which the NI Assembly may legislate on with the UK Minister's consent.¹¹⁶ A unique element of the Northern Ireland settlement is the requirement of a power-sharing executive. So far, this has required unionist and nationalist parties to form a coalition government together.¹¹⁷ However, this has been particularly difficult due to the history of both sides and as a result the NI Assembly was suspended between 2002 and 2006.

The St Andrews Agreement 2006 saw the NI Assembly re-established in 2007.¹¹⁸ This Agreement ensured support for policing and the rule of law across the community so that policing and justice could be devolved, and reformed the power-sharing arrangements of the executive so that they are not so strict.¹¹⁹ However, even the new power-sharing arrangement has been difficult to implement and has, according to Dickson, caused 'paralysis.'¹²⁰ As a result, much of the recent tensions and talks have been regarding the continuing peace process and dealing with the legacy of the troubles.¹²¹

The difficult political and community context of Northern Ireland meant that the Scottish referendum had a different impact and reaction in Northern Ireland compared to other parts of

¹¹¹ *ibid* 55-56.

¹¹² *ibid* 69-70.

¹¹³ *ibid* 97.

¹¹⁴ Northern Ireland Office, *The Belfast Agreement* (10 April 1998).

¹¹⁵ Northern Ireland Act 1998, Sch 2.

¹¹⁶ Northern Ireland Act 1998, Sch 3.

¹¹⁷ Brice Dickson, 'Devolution' in Jeffrey Jowell, Dawn Oliver & Colm O'Cinneide (eds.) *The Changing Constitution* (8th edn. OUP 2015) 264.

¹¹⁸ The St. Andrews Agreement (13 October 2006); Northern Ireland (St. Andrews Agreement) Act 2006.

¹¹⁹ Colin Knox, *Devolution and the Governance of Northern Ireland* (Manchester UP 2010) 12, 24.

¹²⁰ Dickson (n 117) 265.

¹²¹ Northern Ireland Office, 'Theresa Villiers' statement to Parliament on the Haass talks' (Statement to Parliament, 8 January 2014); The Report of the Hallett Review, *An Independent Review into the On the Run Administrative Scheme* (July 2014).

the UK.¹²² It was a matter of trying to resolve issues of the past and on-going issues regarding devolution in Northern Ireland rather than introducing further powers. There had also been issues regarding financing devolution which required resolution. The Stormont House Agreement was signed in December 2014 and aims to deal with those issues.¹²³

To do so, the agreement establishes several options to tackle the historical issues in Northern Ireland such as establishing a Historical Investigations Unit. In terms of finance, corporation tax would be devolved and a financial support package of £2 billion was agreed.¹²⁴ In return the Northern Ireland executive will have to reform and reduce the size of public services and welfare. Lastly, institutional reform to the NI Assembly and executive were agreed which will reduce the NI Assembly to 90 members and government departments to 9.¹²⁵ There are also provisions for putting in place an ‘official opposition’ if parties did not want to take their place in the power-sharing executive.¹²⁶

Like other nations in the UK, devolution in Northern Ireland has its own dynamic and context and the historical troubles and the strict institutional design make devolution difficult to implement. Changes through the Stormont Agreement will ease some pressures but will likely require further agreements and reform in the future.

Implications for the UK Constitution

Before concluding, it is worth considering the possible implications of the several devolution processes on the UK constitution.¹²⁷ The House of Lord Committee on the Constitution have expressed concern that the Union, as a whole, is not being taken into account and that things are being done in an ad-hoc way.¹²⁸

One reason for this may be that the ‘Scottish Vow’ meant that political leaders were already committed to the Smith Commission and this, according to the Lords Committee, did not give Parliament a place for consultation and discussion.¹²⁹ Consequently, it has been argued that

¹²² Edward Scott & Eren Waitzman, ‘Debate on 29 October 2014: Devolution Following the Scotland Referendum (HL Library Note, 23 October 2014) 12.

¹²³ Northern Ireland Office, *The Stormont House Agreement* (14 December 2014); *A Fresh Start: The Stormont Agreement and Implementation Plan* (17 November 2015) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf> accessed 14 May 2016.

¹²⁴ Northern Ireland Office, *The Stormont House Agreement* (14 December 2014) [3]; Corporation Tax (Northern Ireland) Act 2015.

¹²⁵ Northern Ireland Office, *The Stormont House Agreement* (14 December 2014) [56], [60]; The Constitution Unit, *Devolution and the Future of the Union* (April 2015) 39

¹²⁶ The Stormont House Agreement (n 124) para 59.

¹²⁷ Committee on the Constitution (n 27) paras 22-24.

¹²⁸ Committee on the Constitution, *Scotland Bill* (HL 2015-16, 59) paras 10-11; The Bingham Centre (n 96) 20-21, ‘Rather than the current haphazard approach, the Bingham Centre for the Rule of Law has set out proposals for a Charter of Union, as a type of written constitution, to set out principles of union constitutionalism and confirm the UK as a ‘voluntary union of four component nations.’

¹²⁹ Committee on the Constitution (n 128) paras 24-25.

where constitutional reform usually takes years to occur the current tranche of reforms have been rushed.¹³⁰ This has also meant that reforms have developed separately in each part of the UK without a ‘coherent process for planning the future of a devolved Union.’¹³¹ As a result, there have been concerns that some fundamental constitutional matters were being devolved without discussion as to whether they ‘are better dealt with in a consistent manner across the UK.’¹³²

The provisions which have the most direct implications for the UK constitution are sections 1 and 2 of the Scotland Act 2016. The House of Lords Constitution Committee argued that it could be interpreted that Parliament is limiting its powers in a procedural way and there is a possibility that judges may uphold that limitation on Parliament.¹³³ As a result, the committee argued that these provisions ‘risk introducing uncertainty concerning the absolute nature of parliamentary sovereignty where there should be none.’¹³⁴

In turn, there is a perception that the UK is moving towards federalism:

Nonetheless, we note that both these draft clauses appear to be moving the United Kingdom in a federal direction, attempting to crystallise by way of statute, if not a written constitution, the status and powers of the devolved institutions in a way that has hitherto not been the case.¹³⁵

Moving towards a more federal and codified constitution is advocated by some groups so that there are clearer principles and rules uniting the Union.¹³⁶ However, although there are federal characteristics in the current reforms to devolution, moving towards a formal federal constitution seems to be unlikely due to the lack of a written constitution,¹³⁷ parliamentary sovereignty, and the overpowering size of England if it was not separated into regions.¹³⁸ It seems, therefore, that asymmetrical devolution is here to stay for now.¹³⁹

To ensure that the new devolution reforms are effective particular attention will need to be given to intergovernmental relations in the UK.¹⁴⁰ The intergovernmental relationship is currently regulated through a Memorandum of Understanding between the administrations of

¹³⁰ The Constitution Unit, *Devolution and the Future of the Union* (April 2015) 70.

¹³¹ Political and Constitutional Reform Committee, ‘The future of devolution after the Scottish referendum’ (HC 2014-15, 700) para 35.

¹³² Committee on the Constitution (n 27) para 87.

¹³³ Committee on the Constitution (n 128) paras 34, 36, 41.

¹³⁴ *ibid* para 36; This is an interesting point as the courts have already suggested that parliamentary is not absolute, see *R (Jackson) v Attorney General* [2005] UKHL 56, [2006] 1 AC 262, para 102 (Steyn L).

¹³⁵ Committee on the Constitution (n 27) para 77.

¹³⁶ The Bingham Centre (n 96) 49.

¹³⁷ The Constitution Unit (n 130) 11.

¹³⁸ *ibid* 64; All-Party Parliamentary Group, *Devolution and the Union: A Higher Ambition* (March 2016) 7.

¹³⁹ All-Party Parliamentary Group, *Devolution and the Union: A Higher Ambition* (March 2016) 10.

¹⁴⁰ Committee on the Constitution, *Inter-governmental relations in the United Kingdom* (HL 2014-15, 146) para 4.

the UK but has often been seen as weak.¹⁴¹ The Smith Commission called for a more ‘productive, robust, visible and transparent relationship’ so that the inter-governmental system is fixed to deal with more complex devolution.¹⁴² The House of Lords Committee on the Constitution has suggested ways forward to enhance the current arrangements with more formal bilateral arrangements in new complex areas such as welfare and taxation, more space for joint policy making, more sub-committees to involve all administrations, and that the government should consider placing the framework for such relations on statutory footing.¹⁴³ Given the growing complexity and shared powers between the UK and devolved administrations managing an effective intergovernmental process will be an important part of ensuring that the new devolution settlements are successful.

Two further factors which may influence the relationship between the UK government and the devolved administrations soon will be the UK referendum on the European Union and the proposals for a UK Bill of Rights to replace the current Human Rights Act 1998.

So far, as foreign policy is a reserved matter, there has been a lack of discussion with devolved legislatures and administrations on the UK’s place in the EU and the upcoming referendum.¹⁴⁴ However, the Scottish First Minister has already indicated the possibility of a second independence referendum if Scotland votes to remain while the rest of the UK voted to leave the EU.¹⁴⁵ There are also suggestions that a legislative consent motion may be required by devolved legislatures if their relationship with EU law under the devolution Acts is changed following the referendum.¹⁴⁶ Whatever the result of the referendum, it is likely to have particular effects on the devolved administrations, as well as the whole of the UK, and will be an interesting context to how the domestic constitutional settlements develop.

Secondly, the devolved administrations may pose an obstacle to enacting a UK Bill of Rights.¹⁴⁷ Firstly, devolved legislatures have a direct relationship with the European Convention on Human Rights (ECHR) as their laws must come within convention rights or risk being quashed.¹⁴⁸ Therefore, if the UK government attempts to pass legislation to repeal the Human Rights Act and impose a UK Bill of Rights it has been suggested that the

¹⁴¹ The Bingham Centre (n 96) 10.

¹⁴² The Smith Commission (n 23) 5.

¹⁴³ Committee on the Constitution (n 140) 57-58.

¹⁴⁴ European Union Committee, ‘The EU referendum and EU reform’ (HL 2015–16, 122) paras 72, 74; The UK in a Changing Europe, ‘The UK’s EU renegotiation: The devolution factor’ (5 January 2016) <<http://ukandeu.ac.uk/the-uks-eu-renegotiation-the-devolution-factor/>> accessed 14 May 2016.

¹⁴⁵ Torcuil Crichton, ‘Nicola Sturgeon: Brexit vote would ‘almost certainly’ trigger second independence referendum’ (*Daily Record*, 25 April 2016) <<http://www.dailyrecord.co.uk/news/politics/nicola-sturgeon-brexit-vote-would-7827481#yl32rAgyhLaEuXWO.99>> accessed 14 May 2016.

¹⁴⁶ Cormac Mac Amhlaigh, ‘Changes to the UK’s EU Membership Might Require the Consent of the Scottish Parliament’ (*European Futures*, 14 October 2015) <<http://www.europeanfutures.ed.ac.uk/article-1826>> accessed 14 May 2016.

¹⁴⁷ European Union Committee, *The UK, the EU and a British Bill of Rights* (HL 2015–16, 139) para 183.

¹⁴⁸ *ibid* para 181, the ECHR has a further role in Northern Ireland due to its importance to the Good Friday peace process.

devolved legislatures could refuse to give legislative consent which would be ‘unchartered constitutional territory’.¹⁴⁹

Conclusion

It is clear that the Scottish independence referendum re-enlightened the debate regarding devolution throughout the UK. In his speech in September 2014 the Prime Minister implied ‘a new and fair settlement that applies to all parts of our United Kingdom’. However, what has emerged is a series of individual and separate processes which reform the constitution in each part of the UK. This is unsurprising to an extent due to the different unions which comprise the UK and that development in the UK ‘has never been uniform.’¹⁵⁰ It may be true that the new reforms show that the UK is further living up to its name as a ‘state of unions’.¹⁵¹

As expected, Scotland has seen a further extension of their legislative and, more prominently, fiscal powers which now makes the Scottish Parliament a very powerful institution. Wales has seen proposals for a more stable settlement but this has not been translated into a concrete legislative settlement as yet. The UK response to the Scottish referendum allowed England to develop structures and procedures to give it a distinct voice at regional and national level. The Stormont Agreement in Northern Ireland will aim to deal further with the historical divisions as well attempting to progress devolution through reforming the structure of the NI Assembly and devolving more financial powers.

Given the fact that each devolution process is individualised and particular to each nation there has been concerns that this has overlooked the UK as a Union. As a result, the UK constitution, and the place of the devolved nations within it, will face further challenges in future which must be carefully monitored to ensure that there is a ‘fair settlement’ for the whole of the UK.

¹⁴⁹ *ibid* para 182.

¹⁵⁰ Mitchell (n 3) 14.

¹⁵¹ *Ibid* 6.