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## The forward march of devolution halted and the limits of progressive unionism.

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### *Abstract*

*The philosophy underlying the creation of the devolved institutions in Wales and Scotland was expansive, leading to a growth in powers over twenty years. That approach is now under challenge following recent Brexit legislation, which marks a sharp contrast with the Unionist approaches of the past. The Covid-19 pandemic provided a visibility boost for devolution, while exposing existing tensions in intergovernmental relations. This article identifies four forms of unionism in operation over the last twenty years – passive, activist, progressive and muscular, **and questions whether that muscular unionism can now be considered** a form of statecraft. Those ‘progressive unionists’ who advocate further devolution should avoid ‘constitutional determinism’ - the assumption that muscular unionism will inevitably lead to a break-up of the UK unless further constitutional reform takes place.*

### *Keywords*

*Devolution; unionism; statecraft; Brexit; Covid-19; constitution.*

## **The forward march of devolution halted and the limits of progressive unionism.**

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The original expansive approach to devolution, which promised institutions capable of growing into additional responsibilities, has now come to an end. Proposals for a Scottish Parliament and a National Assembly for Wales arose from different historical and political contexts, but it is worth noting the early recognition, in the founding documents put before the Welsh and Scottish peoples in 1997, of the expansive nature of the devolution promise, going beyond the proposed powers of the new institutions. In Wales, the Secretary of State for Wales at the time of the 1997 referendum and the 1998 Government of Wales Act, Ron Davies, famously declared 'devolution is a process, not an event', a phrase which effectively summarises this initial sense of expansive devolution<sup>1</sup>.

The powers of both the Scottish Parliament and the National Assembly for Wales were significantly expanded in the first twenty years of devolution. In the case of Scotland, a

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<sup>1</sup> Ron Davies, Devolution: a process, not an event, Gregynog Papers, 2 (2), Cardiff, Institute of Welsh Affairs, 1999.

variety of commissions and processes over the 2007-2016 period, in response to the rise of SNP governments, and the threat of a Yes vote in the 2014 referendum, culminated in the September 2014 'Vow' and subsequent initiatives negotiated following the Smith Commission.

In the case of Wales, the essential driver was the shambolic nature of the original 'conferred powers' devolution settlement, partly resolved in the 2006 Government of Wales Act, leading ultimately to the adoption of law-making powers following the 2011 referendum. Further legislation followed the UK Government's Silk Commission, revising the original Welsh settlement to a reserved powers model and granting taxation responsibilities, and a funding floor for Barnett settlements. In 2020, the National Assembly voted to rename itself Senedd Cymru or Welsh Parliament<sup>2</sup>.

It is important to note that this process of 'expansive' devolution had taken place under Labour, Coalition, and Conservative UK governments. Although the adoption of austerity policies by the coalition government of 2010-15 posed serious challenges to the effective implementation of expansive devolution, circumscribing the abilities of the devolved governments to use their growing powers and making them responsible for cutting the

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<sup>2</sup> Useful summaries of these developments are given in David Torrance, "The Settled Will: Devolution in Scotland, 1998-2020, House of Commons Library Research Briefing, 6 April 2020, <https://commonslibrary.parliament.uk/research-briefings/cbp-8441/> and David Torrance, "A process, not an event": devolution in Wales, 1998-2020, House of Commons Library Research Briefing, 6 April 2020, <https://commonslibrary.parliament.uk/research-briefings/cbp-8318/>, both last accessed 24 May 2021

budgets of local authorities and other devolved public service institutions, the process of expanding devolved powers continued. It was Brexit and the legislation required to implement it which threatened to undermine the consensus around an expansive approach to devolution and to end its 'forward march'. Subsequently, the Covid-19 pandemic, which over a very short timeframe led to significant additional funding to the devolved administrations, both provided a UK-wide media platform for the Welsh and Scottish governments as their policies began to diverge from the approach of the UK Government after the Prime Minister's broadcast of 10 May 2020, and also exposed existing tensions in inter-governmental relationships.

Unionism, in this context, has undergone some significant adjustments. In this article, I identify four types of unionism which I have categorised as 'passive', 'active', 'progressive' and, following both Henderson and Torrance<sup>3</sup>, 'muscular'. There is no significant chronological shift, and three of these types – passive, active and progressive - have co-existed at different points, and across UK governments of different parties, until the 'muscular unionism' in evidence from the time of the post-Brexit legislation.

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<sup>3</sup> Ailsa Henderson, Labour must be careful in chasing the unionist vote. *The Times*, 26 June 2020, <https://www.thetimes.co.uk/article/labour-must-be-careful-in-chasing-the-unionist-vote-523t6gigy> last accessed 28 May 2021.

; David Torrance, *Whatever happened to Tory Scotland?* Edinburgh: Edinburgh University Press, 2012, p7.

The focus of this article is on Wales and Scotland: the historical issues surrounding Northern Ireland are obviously different. I will question whether the UK Government's 'muscular unionism' has evolved into a form of statecraft. Whether the devolved settlements can co-exist with it is an open question. There is a tendency, amongst supporters of 'progressive' unionism, to assume that it is inevitable that the U.K. will wither away or be shocked out of its crisis by the independence of one or more of its parts unless radical constitutional reform takes place. Over 40 years ago Eric Hobsbawm cautioned against a strategy based on 'a simple form of historical determinism' to restore Labour's 'forward march'<sup>4</sup>. In similar vein, I want to caution against the recent 'constitutional determinism' which is obvious at the current time, in debates on devolution and, which as Philip Norton recently argued, 'leaves the politics out'<sup>5</sup>.

#### *Devolution after Brexit – the Internal Market Act and the Shared Prosperity Fund*

Brexit had significant but different consequences for the devolved governments in both Scotland and Wales. The people of Scotland had voted overwhelmingly to remain: the Scottish Government swiftly identified the Brexit referendum outcome as being 'a significant and material change' in the constitutional settlement assumed to have been settled by the 2014 independence referendum. Wales had voted to leave, but the political

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<sup>4</sup> Eric Hobsbawm, *The Forward March of Labour Halted*, London: Verso, 1981.

<sup>5</sup> Philip Norton, The Conservative Nation Redivivus?, *The Political Quarterly*, 2021

<https://doi.org/10.1111/1467-923X.13007> last accessed 27 May 2021

parties that dominated the National Assembly, holding over two-thirds of the seats at the time of the 2016 referendum, Labour and Plaid Cymru, had both campaigned to remain.

Whatever their differences over the eventual destinations for their countries, the objectives of the Scottish and Welsh Governments post Brexit were to be involved in the UK's departure negotiations, to seek a replacement from the UK Government for the European funding that would be lost, and to assume responsibility for any laws that would be repatriated to the UK within devolved competence. The EU Withdrawal Act 2018 specified in Section 12 that

control of areas where EU and devolved law overlap will pass *by default* to the devolved institutions when the transition period ends. However, it also allows UK ministers to freeze the devolved governments' ability to legislate in those areas where it believes legislative common frameworks will be needed.

Notwithstanding disputes between the devolved governments and the UK government about the Withdrawal Act, it is the passage of the Internal Market Act which has provoked the most dispute, culminating in a legal challenge by the Welsh Government, for which the Scottish Government declared its support, arguing

that the Act impermissibly, impliedly repeals parts of the Government of Wales Act 2006 in a way that diminishes the Senedd's legislative competence and that the Act confers power on the UK Government, by way of wide Henry VIII powers, which could be used by UK Ministers to substantively amend the Government of Wales Act in a way that cuts down the devolution settlement.

The High Court refused the Welsh Government's call for a Judicial Review on the grounds that its challenge was premature, but the Welsh Government was granted the right of appeal on 23 June 2021<sup>6</sup>.

The powers granted by the Act would also allow the UK Government to spend money in areas of devolved competence. The UK Shared Prosperity Fund, designed to replace the previous European Union Structural Funds, will be delivered using the mechanisms of the Internal Market Act and displaying common UK-wide branding<sup>7</sup>. The funds will be allocated

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<sup>6</sup> Institute for Government, *The United Kingdom Internal Market Act 2020* 2 February 2021, <https://www.instituteforgovernment.org.uk/sites/default/files/publications/internal-market-act.pdf>; Welsh Government, Written Statement: Legal challenge to the UK Internal Market Act 2020. 19 January 2021. <https://gov.wales/written-statement-legal-challenge-uk-internal-market-act-2020>; BBC News Online, High Court blocks Welsh legal challenge to post-Brexit UK trade law, 19 April 2021, <https://www.bbc.co.uk/news/uk-wales-politics-56800830>; all last accessed 24 May 2021: Welsh Government, Written Statement, Statement: Legal challenge to the UK Internal Market Act 2020- Update. 29 June, last accessed 30 June 2021.

<sup>7</sup> *HM Treasury*, Spending Review 2020, CP330, November, p37, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/938052/SR20\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938052/SR20_Web_Accessible.pdf) last accessed 24 May 2021.



on the basis not of needs perceived by the devolved governments and their local partners but on the basis of the political priorities of the UK Government.

### *Covid-19 and public understanding of devolution*

The Coronavirus crisis has shone a stronger UK spotlight on the devolved governments than anything since the tuition fee debates of 2010, and for a far more prolonged period. While the UK entered its first lockdown on 23 March with considerable four nations unity, and a four-nations approach had been announced on 3 March, the exit from that first lockdown saw marked divergences of approach emerge, with different strategies, visions, and representations of leadership.

Statements by the First Ministers of Scotland and Wales have been given particular prominence in major UK-wide news bulletins. Covid, unusually, has inserted the Scottish, Welsh and Northern Irish devolved voices into the UK political narrative and the UK media. Whereas in the past the automatic assumption of the London-based media was that England was the default model, the Covid crisis has forced news editors to give a significantly higher prominence to the decisions taken by the devolved governments, and frequently their different approaches to lockdowns, circuit-breakers, and their different models for test and trace, for the very simple reason that public health is devolved. Some even claim this has promoted the awakening of ‘a devolved consciousness’<sup>8</sup>.

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<sup>8</sup> Andrew Connell, *Devolution and the Coronavirus pandemic in Wales: doing things differently, doing things together?* Wales Centre for Public Policy, 3 July 2020,

Opinion research showed a contrast in trust in Wales and Scotland between the performance of the Scottish and Welsh governments and the UK Government. It is possible to see this, certainly until the extensive vaccine rollout in 2021, as indicating something of a competence boost for devolution. The results of the devolved elections in Wales and Scotland in May were certainly seen as evidence of the effectiveness of the incumbent governments<sup>9</sup>.

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<https://www.wcpp.org.uk/commentary/devolution-and-the-coronavirus-pandemic-in-wales-doing-things-differently-doing-things-together/>; Will Hayward, Covid, Wales and

devolution: how 12 months of a pandemic changed what we know about how we're governed. *Wales Online*, 8 March 2021,

<https://www.walesonline.co.uk/news/politics/covid-wales-devolution-how-12-19942938> ;

Institute for Government, *Coronavirus and devolution*, 1 July 2020.

<https://www.instituteforgovernment.org.uk/explainers/coronavirus-and-devolution> all last accessed 24 May 2021.

<sup>9</sup> ITV Wales, Support grows for Welsh Government over Covid-19 as voters lose faith in UK approach. 4 June 2020. <https://www.itv.com/news/wales/2020-06-04/support-grows-for-welsh-govt-over-covid-19-as-voters-lose-faith-in-uk-approach>; Mark McLaughlin and Kieran Andrews, How 'four nation' plan of action fell apart as the virus spread, *The Times*, 21 July 2020, <https://www.thetimes.co.uk/article/how-four-nation-plan-of-action-fell-apart-as-the-virus-spread-mgqm85qcz>; Andy Bounds and Sarah Neville Outbreaks highlight disparities in UK test and trace regimes. *Financial Times*, 30 July 2020

One of the long-standing issues for the devolved governments has been the inadequacy of inter-governmental arrangements for discussions with the UK governments. Researchers have identified that Brexit and Covid have accentuated existing problems of inter-governmental relationships within the UK, and the 'dual-hatted' nature of the UK Government in speaking on both a UK and England-only basis. COBR had essentially ceased to function by June and the UK government was operating through Cabinet committees which did not of course include the devolved administrations. Welsh and Scottish First Ministers did not speak to the Prime Minister between 28 May and 18 September <sup>10</sup>.

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<https://www.ft.com/content/f0be6eaa-c512-4006-b4dd-e5e0ed2c0ce1>; Will Tanner and

James Blagden, *State of the Union*, Onward, 24 March 2021,

<https://www.ukonward.com/wp-content/uploads/2021/03/stateoftheunion-5.pdf> ; Sir John

Curtice, What the 2021 elections mean for the parties, *BBC News Online*, 9 May 2021,

<https://www.bbc.co.uk/news/uk-politics-57040175> all last accessed 24 May 2021.

<sup>10</sup> Nicola McEwen, Michael Kenny, Jack Sheldon, and Coree Brown Swan, Intergovernmental Relations in the UK: Time for a Radical Overhaul?. *The Political Quarterly*, 2020, 91: 632-640.

doi:[10.1111/1467-923X.12862](https://doi.org/10.1111/1467-923X.12862); Michael Kenny, and Jack Sheldon 2020. When Planets

Collide: The British Conservative Party and the Discordant Goals of Delivering Brexit and

Preserving the Domestic Union, 2016–2019. *Political Studies*. 2020,

doi:[10.1177/0032321720930986](https://doi.org/10.1177/0032321720930986); Institute for Government, *Coronavirus and devolution*, 1

July 2020. [https://www.instituteforgovernment.org.uk/explainers/coronavirus-and-](https://www.instituteforgovernment.org.uk/explainers/coronavirus-and-devolution)

[devolution](https://www.instituteforgovernment.org.uk/explainers/coronavirus-and-devolution); Steven Morris, and Libby Brooks, Welsh and Scottish leaders: Johnson hasn't

These issues are covered, to some degree, in the UK Government's Dunlop review<sup>11</sup>. This acknowledges that the inter-governmental machinery of the United Kingdom requires attention. As well as new UK and shared funds, a high profile role of Secretary of State for Intergovernmental and Constitutional Affairs, and shared resourcing of the offices of the Secretaries of State for Northern Ireland, Scotland and Wales, the review proposes a new Intergovernmental Council to replace the Joint Ministerial Committee with a standing independent secretariat. In his response, Cabinet Office Minister Michael Gove said that the Prime Minister would be convening a new Union Strategy Group, he himself would be chairing a Union Policy Implementation sub-committee, there would be a Cabinet Office Union Advisory Group, and discussions were continuing with the devolved governments on intergovernmental relationships<sup>12</sup>.

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talked to us for months. *Guardian*, 18 September 2020.

<https://www.theguardian.com/politics/2020/sep/18/welsh-and-scottish-leaders-johnson-hasnt-talked-to-us-for-months> all last accessed 24 May 2021.

<sup>11</sup> Cabinet Office, Review of UK Government Union Capability, 24 March 2021,

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/972987/Lord\\_Dunlop\\_s\\_review\\_into\\_UK\\_Government\\_Union\\_Capability.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972987/Lord_Dunlop_s_review_into_UK_Government_Union_Capability.pdf) last accessed 24 May 2021.

<sup>12</sup> Letter from the Chancellor of the Duchy of Lancaster to Lord Dunlop on the government response,

### *Four forms of unionism*

Four forms of unionism have been in evidence since the emergence of governments of different colours in Edinburgh, London and Cardiff since 2007:

- Passive
- Activist
- Muscular
- Progressive

*Passive* unionism relates to the tendency to allow the devolved administrations significant leadership space within their own territories without a clear strategy from the UK

Government to talk up or explain the role of the UK Government in those territories. The territorial offices were simply the Wales Office and the Scotland Office. A number of prominent Conservatives have referred to this as the 'devolve and forget' strategy, which they say is no longer enough, since this means removing the UK Government from the everyday lives of people in Wales and Scotland. Although this sense of 'devolve and forget' has probably been exaggerated for effect, there is some truth in the suggestion that for some time UK governments did not have a clear strategy to reflect their continuing role.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/973001/L\\_Dunlop\\_Letter.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/973001/L_Dunlop_Letter.pdf) accessed 24 May 2021.

Passive unionism also resulted in hamfisted approaches to UK-wide or Britain-wide policy initiatives, such as Universal Credit<sup>13</sup>.

*Activist* unionism involves a more organised and visible presence for the UK Government in both Wales and Scotland. While there were examples of that under the UK Labour Government to 2010, when it had like-minded devolved Labour governments in Wales and (until 2007) in Scotland, this has been augmented in recent years. Social media feeds on Twitter and Facebook have been rebranded as UK Government Scotland and UK Government in Wales. A range of stories have been promoted through videos of the UK Government, and, for example, the British Army, delivering to and for the people of Scotland and Wales during the pandemic. The vaccine roll-out has now become the emblem of a successful Union. It is natural for the UK Government, whatever its politics, to wish to

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<sup>13</sup> For example, former Welsh Secretary Alun Cairns: Welsh Secretary marks 20 years of Devolution in Wales Office of the Secretary of State for Wales, 18 September 2017, <https://www.gov.uk/government/news/welsh-secretary-marks-20-years-of-devolution-in-wales> ; Lord Dunlop: Andrew Dunlop on the Future of the Union, *Policy Exchange*, 10 February 2020, <https://policyexchange.org.uk/andrew-dunlop-on-the-future-of-the-union/> ; and Conservative Scottish Leader Douglas Ross: Douglas Ross's speech to Conservative Party Conference, *Conservative Party*, 3 October 2020. <https://www.scottishconservatives.com/2020/10/douglas-rosss-speech-to-conservative-party-conference-2020/> all last accessed 24 May 2021. On Universal Credit, see Leighton Andrews, *Ministering to Education*, Llandysul: Parthian, 2014.

promote what it is doing on a UK-wide or Britain-wide basis, and it is hard for Unionists of any stripe to object to that.

*Muscular* unionism is something different. It has become the object of concerned attention by researchers. Some call it 'hyper-unionism'. One prominent Welsh Conservative, former Senedd Member David Melding, has warned 'the torture of Brexit could give way to the strange death of the UK if a muscular unionism emanates from London and seeks to emasculate devolution'. Muscular unionism is strategic. It has a particular agenda to undermine the devolved administrations in their own backyards. In Wales, for example, central government funded initiatives such as the City Deal have been used to build stronger relationships directly between the UK Government and Welsh local authorities. Similarly, the Scottish Secretary has said that he wants the UK government to deal directly with Scottish local authorities in the way that the European Union might have done before, and the Ministry for Housing, Communities and Local Government is looking to engage with local authorities beyond England. Infrastructure projects funded by the UK government are to be given a higher profile. The Prime Minister plans to 'love-bomb' Scotland, perhaps in recognition of the failure, noted by the Scottish Conservative leader Douglas Ross, of the 'winner takes all' approach to Brexit to provide the necessary emotional basis for a united country. In the 2019 General Election, the Conservatives even promised to deliver the M4 Relief Road in Wales, without the power to do so. UK resources in England are offered to assist the devolved governments in addressing the longer NHS waiting lists following the pandemic. There has recently been an announcement of plans for the creation, without

consultation with the devolved governments, of new trade and investment hubs<sup>14</sup>. This is the movement from ‘devolve and forget’ to ‘devolve and forestall’ – and potentially, to DINO – devolution in name only.

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<sup>14</sup> David Torrance, ‘Centenary Blues: 10 years of Scottish Conservatism’ in his *Whatever happened to Tory Scotland?* Edinburgh: Edinburgh University Press, 2012, p7; Ailsa Henderson, Labour must be careful in chasing the unionist vote. *The Times*, 26 June 2020, [https://www.thetimes.co.uk/article/labour-must-be-careful-in-chasing-the-unionist-vote-523t6gigv?utm\\_medium=Social&utm\\_source=Twitter#Echobox=1593158983](https://www.thetimes.co.uk/article/labour-must-be-careful-in-chasing-the-unionist-vote-523t6gigv?utm_medium=Social&utm_source=Twitter#Echobox=1593158983); David Melding MS, twitter feed, 29 December 2020 <https://twitter.com/DavidMelding/status/1343887186836549632>; Jonathan Knott, ‘MHCLG shifts away from ‘England-only’ focus, *Local Government Chronicle*, 7 June 2021, <https://www.lgcplus.com/politics/governance-and-structure/mhclg-shifts-away-from-england-only-focus-07-06-2021/> last accessed 25 June 2021 Douglas Ross, Why is our Union special? Speech to Policy Exchange, 2 November 2020, <https://policyexchange.org.uk/pxevents/why-is-our-union-special/> last accessed 27 May 2021; UK Government, Liz Truss announces creation of four major new trade and investment hubs across the UK, Department for International Trade, 23 March. <https://www.gov.uk/government/news/liz-truss-announces-creation-of-four-major-new-trade-and-investment-hubs-across-the-uk> all these last accessed 24 May 2021.



*Progressive* unionism arguably saw its emotional and cultural highlight in Danny Boyle’s opening ceremony for the 2012 Olympics. In some respects, it has all been downhill from there, as unionism has been challenged by the growing strength of both Scottish nationalism after 2014 and English exceptionalism from 2016. Today, there is not a common progressive unionist agenda although some attempts to develop such a theme can be seen in initiatives such as the *Constitutional Reform Group*, *We, the People*, and the Welsh Government’s proposals for reform of the union. Most of these endorse the need for a comprehensive review of the UK constitution, which looks at relations between the nations and regions of the UK, the role of the central state, the future of the House of Lords, and wider devolution all round. The Welsh Government seeks a constitutional convention, with popular participation, to work through the proposals for a new Union, which would include a reformed Upper House of Parliament with a membership which takes proper account of the multi-national character of the Union. No single group can claim the right to the notion of progressive unionism – indeed Lord Dunlop has himself spoken of his project as ‘progressive’ unionism. While Michael Gove has ruled out constitutional reform as a response to the SNP’s 2021 election victory, a recent book co-authored by Conservative Minister Penny Mordaunt seeks reform of the House of Lords and the Scottish Conservative Leader has endorsed Lords Reform to include representation of the nations and regions<sup>15</sup>.

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<sup>15</sup> Constitutional Reform Group, Act of Union Bill, 2018.

[https://www.constitutionreformgroup.co.uk/wp-content/uploads/2019/05/O1X4rDCGKS20AQ9HrpMW\\_Act-of-Union-Bill-2018.pdf](https://www.constitutionreformgroup.co.uk/wp-content/uploads/2019/05/O1X4rDCGKS20AQ9HrpMW_Act-of-Union-Bill-2018.pdf) ; We the People – the case for radical federalism, <https://www.radicalfederalism.com/our-publications> , 14 January 2021; Welsh Government, *Reforming our Union*,

*Is Muscular unionism a form of statecraft?*

We need to see muscular unionism in the context of the post-Brexit adjustment of the UK state. Whether this can be considered statecraft, in the sense of having a strategy for electoral success and a governmental programme with clear goals and an end-game, is obviously questionable. Johnson's 2019 strategy was the mission to 'Get Brexit Done' and

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<https://gov.wales/sites/default/files/publications/2019-10/reforming-our-union-shared-governance-in-the-uk.pdf> 10 October 2019, revised 29 June 2021:

<https://gov.wales/reforming-our-union-shared-governance-in-the-uk-2nd-edition> last accessed 30 June 2021; Andrew Dunlop on the Future of the Union, Policy Exchange, 10 February 2021, <https://policyexchange.org.uk/andrew-dunlop-on-the-future-of-the-union/> ;

Robert Peston, Boris Johnson's to love-bomb Scotland to keep it in the UK, ITV News, 8 May 2021, <https://www.itv.com/news/2021-05-08/boris-johnson-to-love-bomb-scotland-to-keep-it-in-uk> ; Mure Dickie and Sebastian Payne, Michael Gove rejects case for UK

constitutional reform, *Financial Times*, 10 May 2021,

<https://www.ft.com/content/e3aeaaf5-e477-4900-ae35-30d778d839d4> ; Douglas Ross,

Why is our Union special? Speech to Policy Exchange, 2 November 2020.

<https://policyexchange.org.uk/pxevents/why-is-our-union-special/> all last accessed 24 May

2021. Penny Mordaunt and Chris Lewis, *Greater: Britain after the Storm*, Hull: Biteback Publishing, 2020.

the machinery of government was utilised to provoke an election fought on that basis.

There was little space in that approach for consideration of the differences of viewpoint in nations beyond England. It is possible, of course, to see what has followed, not as statecraft, but simply as a response to the consequences of getting Brexit done.

Hayton argues that 'the cornerstone of Johnson's statecraft is Brexit itself', with a victory - achieved through popular sovereignty - ostensibly to reassert the sovereignty of the Westminster Parliament but more accurately to regain the authority of the Executive government or 'Crown in Parliament'. That statecraft has been unlike anything ever seen post-war. It involved testing the boundaries of what had previously been regarded as acceptable or indeed unifying behaviour of governments as laid down in the Cabinet Manual, proroguing Parliament illegally, and at the same time bringing the monarch into politics; imposing party discipline by removing the Whip from a significant number of respected former Cabinet Ministers and experienced Parliamentarians; threatening a no-deal Brexit; defying Parliamentary decisions; threatening to break international law, and more recently unilaterally breaching the Northern Ireland Protocol. In the context of Scotland, a refusal to countenance another Scottish referendum lies at the core of the approach, endorsed before the May 2021 elections by UK Labour and Scottish Labour in Opposition (though not by Welsh Labour). Meanwhile, culture war distractions enthuse the support base and distract opponents into tactical rather than strategic engagement. The calculation here is that a Scottish independence referendum does not need to be conceded, and the UK can stumble on, as it has before, while an activist unionism of state modernisation is developed in policy and infrastructure terms, supplemented by the muscular unionist approach of the repatriation to Westminster of specific powers and

funding previously available to the devolved governments, demonstrated in the Internal Market Act and the Shared Prosperity Fund.

Allied to this, and post-Covid now emerging in policy, is a particular approach to the British State post-Brexit, underpinned by a reassertion of what Policy Exchange has called ‘the UK’s traditional constitution’<sup>17</sup>, based on Westminster sovereignty and a strong executive. This reassertion of parliamentary sovereignty is in direct opposition to the concept of ‘divided’ sovereignty put forward by former Prime Minister Gordon Brown, who argued that the expansive devolution which had evolved in the UK over the years since 1998 meant that power was now shared. For Brown, the adjudication of disputes was now in the hands not of the Westminster Parliament but the Supreme Court: ‘we will bury for good the idea that Westminster enjoys undivided sovereignty’. One former senior Whitehall official has argued however that the political objective of dividing sovereignty is unattainable, not only because England is too big to be part of a federation, but because ‘federalism would require the

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<sup>17</sup> See *The First Hundred Days*, *Policy Exchange*, 15 December 2019,

<https://policyexchange.org.uk/wp-content/uploads/2019/12/The-First-Hundred-Days.pdf>;

Rachel Wolf, Whitehall is woefully unprepared for Dominic Cummings’ true plan to reform the state, *Daily Telegraph*, 1 January 2020,

<https://www.telegraph.co.uk/politics/2020/01/01/whitehall-woefully-unprepared-dominic-cummings-true-plan-reform/> ;

*Modernising the United Kingdom*, *Policy Exchange*, 3 August

2019. <https://policyexchange.org.uk/publication/modernising-the-united-kingdom/> all last

accessed 24 May 2021.

abolition of the ancient doctrine of parliamentary sovereignty', itself an 'Anglo-British' conception<sup>18</sup>.

It may be too early to assert that muscular unionism is a form of statecraft. It could explode in Johnson's face. Tensions in Northern Ireland may be irreconcilable long-term. The national question in Scotland will eventually have to be put to the test, and the UK Government's approach of playing for time, in the hope that a more activist unionism can deliver, could falter as the need to pay the Covid bills becomes a stronger priority for budget-setting. There is emerging evidence that culture war distractions may play to Johnson's Leave support, but have little purchase beyond that. Is 'muddling through' a strategy for successful statecraft? Time will tell<sup>19</sup>.

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<sup>18</sup> Richard Hayton, Conservative Party statecraft and the Johnson Government, *The Political Quarterly*, Early View, 14 May 2021, <https://doi.org/10.1111/1467-923X.13006> last accessed 24 May 2021; Gordon Brown, *My Scotland: Our Britain: a Future worth sharing*, London: Simon and Schuster, 2014; Ciaran Martin, *Resist, Reform or Re-Run? Short- and long-term reflections on Scotland and independence referendums*, Blavatnik School of Government, April 2021, [https://www.bsg.ox.ac.uk/sites/default/files/2021-04/Scotland Referendum final.pdf](https://www.bsg.ox.ac.uk/sites/default/files/2021-04/Scotland%20Referendum%20final.pdf) last accessed 27 May 2021.

<sup>19</sup> Arj Singh, 'Anti-woke agenda' helping Tories hang on to Leave voters, expert says, *Huffington Post*, 22 June 2021, [https://www.huffingtonpost.co.uk/entry/tories-culture-war-brexit-voters\\_uk\\_60d1c30ae4b0b75a294f1c6e](https://www.huffingtonpost.co.uk/entry/tories-culture-war-brexit-voters_uk_60d1c30ae4b0b75a294f1c6e) last accessed 25 June 2021; Bobby Duffy and Ben Page, Culture wars uncovered: most of UK public don't know if 'woke' is a compliment or an insult, *The Conversation*, 26 May 2021, <https://theconversation.com/culture-wars->

### *Constitutional determinism*

There is a tendency, amongst supporters of more fundamental devolution, what some call ‘radical federalism’, as well as supporters of independence, to assume that without change it is inevitable that the crumbling state that is called the U.K. will wither away or be shocked out of its crisis by the independence of one or more of its parts. Progressive unionism now takes for granted that, without fundamental change, the Union will fall apart. Yet Independence supporters have argued for the inevitablism of Scottish independence for nearly fifty years. Of course, there have been significant changes in that period, with the realization of the Scottish Parliament and the achievement of the referendum on independence in 2014, and the political dynamics of the independence debate now are different.

In his 1978 Marx Memorial Lecture, *The Forward March of Labour Halted*, Eric Hobsbawm cautioned against believing in ‘a simple form of historical determinism’ to restore Labour’s forward march. In similar vein, I want to caution against the recent ‘constitutional determinism’ that is obvious at the current time. Instead, we need, as Hobsbawm argued, ‘to recognize the novel situation in which we find ourselves, to analyse it realistically and concretely’ in order to formulate what we want to do. The polar dynamics of the politics of Scotland and England are a core feature of that. Labour’s weakness in Scotland and England

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uncovered-most-of-uk-public-dont-know-if-woke-is-a-compliment-or-an-insult-161529 last accessed 25 June 2021; Charles Lindblom, *The Science of Muddling through*, *Public Administration Review*, 19(2): 79-88, 1959.

is one factor; the SNP's strength in Scotland, Scotland's vote to Remain, and substantial and enduring support for independence, are other factors; so is the rise of the particular form of Englishness underpinning Johnsonism and Brexit. We should never forget that the Scottish/English culture wars emerged as a key feature of the 2015 General Election, with Conservative willingness to deploy a resentful Englishness, represented by the image of Labour in the SNP's pocket<sup>21</sup>.

We also need to consider again the pliant, adaptable nature of English Conservatism. Thirty-six years ago, Neal Ascherson coined the notion of the United Kingdom as a country house:

Here, time is linear to a perfectly oppressive degree. We are gazing from the terrace of a country house down carefully-landscaped perspectives of barbered lawns and positioned trees. The eye is masterfully led down a vista of elements (this battle, that cabinet) chosen to combine with one another into a single artistic experience. You could say: "Prune back that Reform bush and make the Tolpuddlia bed twice as big". But you would feel a bit of a vandal.

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<sup>21</sup> Tom Nairn, *The Break-up of Britain*. London: New Left Books, 1977; Leighton Andrews, 'The breakdown of Tom Nairn', in John Osmond, (ed) *Gordon Brown – bard of Britishness*, Cardiff: Institute for Welsh Affairs, 2006; Eric Hobsbawm, *The Forward March of Labour Halted*. London: Verso, 1981; Ailsa Henderson and Richard Wyn Jones, *Englishness: the political force transforming Britain*, Oxford University Press, 2021.

That country house metaphor has recently been reasserted by the editor of Conservative Home, Paul Goodman:

If some other countries are like Bauhausian mansions, designed as a single whole, the United Kingdom is like an ancient country home, constructed over time, frequently if casually renovated, run up in many different styles – and sprawling over territory it has gradually assimilated.

Standing back and gazing at this venerable structure can bring with it the itch to rationalise and reorder: to tidy up what is undoubtedly untidy by sending for the bulldozers of rational constitution-making, razing our home to the ground, and recasting it in concrete, glass and steel.

Similarly, the architect of the Conservative Party's active union approach, Andrew Dunlop, argues that 'administrative tidiness or symmetry is not a prime driver of change'.

I call this the Downton Abbey approach to Devolution. This is scaffolding as strategy, in other words. The English localism to which the Conservative Party is committed - 'the patchwork of elected mayors, combined authorities, police commissioners, single authorities, and local enterprise partnerships' – may not look like a coherent constitutional future, but it is at the heart of their proposals for a reawakening of the union, with relationships built between the paternalist centre to support a new local clientelism.

Vaccine unionism may have breathed life into it, and the Prime Minister put that at the heart of his letters to the First Ministers of Scotland and Wales following the May 2021



elections, stating that this was ‘Team UK’ in action, and inviting them to a summit to discuss the shared challenges post-pandemic<sup>22</sup>.

There are real dangers in constitutional determinism – assuming in a teleological fashion that the UK state is destined to unravel unless radical reform takes place, identifying only weakness and instability rather than strength and flexibility. This underestimates the long-term statecraft of the Conservative Party, and the dynamics of politics, rather than thinking critically about it and the political strategies deployed, and the seriousness of this project of

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<sup>22</sup> Neal Ascherson, *Ancient Britons and the Republican Dream*, 1985. Reprinted at <https://www.opendemocracy.net/en/opendemocracyuk/ancient-britons-and-republican-dream/> last accessed 27 May 2021; Paul Goodman, The red, white and blue archipelago: how localism can sustain the Union. *ConservativeHome*, 26 February, 2021 <https://www.conservativehome.com/thetorydiary/2021/02/the-red-white-and-blue-archipelago-how-localism-can-sustain-the-union.html> last accessed 27 May 2021; Lord Dunlop: Andrew Dunlop on the Future of the Union, *Policy Exchange*, 10 February 2020, <https://policyexchange.org.uk/andrew-dunlop-on-the-future-of-the-union/> last accessed 27 May 2021; Prime Minister’s Office, Letters from the Prime Minister to the First Minister of Scotland and First Minister of Wales, 8 May 2021, <https://www.gov.uk/government/publications/letters-from-the-prime-minister-to-the-first-minister-of-scotland-and-the-first-minister-of-wales-8-may-2021> last accessed 24 May 2021.

‘English Gaullism’, provided now with a platform of vaccine unionism<sup>23</sup>. Scaffolding as strategy, shoring things up, *muddling through*, has been the Conservative approach to constitutional statecraft for 150 years.

### *The Forward March of Devolution Halted*

Progressive unionism requires amongst other things a Labour Party capable of winning more seats in England and Scotland as well as Wales – and of reaching out across England, Scotland and Wales to other progressive forces, including other parties, who share a progressive unionist agenda. Labour promises a constitutional convention. It is unclear what that means in practice, and why it is likely to produce an outcome capable of reinforcing a popular progressive unionism with a strong and persuasive emotional connection to a future modernised union. Nor is it clear that the constituent parts of what is called UK Labour – in Scotland, in Wales, in England, in local government, in Westminster – share a common vision. UK Labour is constitutionally wedded to Westminster’s Parliamentary sovereignty. Developing a shared vision, and establishing it as core to a post-Brexit, post-Covid agenda, essential to a modernised protective UK state, is an urgent task.

It will not be enough for progressive unionists to make their case on the basis that it is the only way to see off independence. We need to jettison illusions. It is clear that the UK

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<sup>23</sup> Philip Collins, The rise of the new Toryism, *New Statesman*, 26 May 2021,

<https://www.newstatesman.com/politics/2021/05/rise-new-toryism> last accessed 27 May 2021.

Government has an emerging unionist approach and strategy which may appear as ‘muddling through’ but rests now on a number of activist, indeed muscular, elements, building on the Conservative Party’s long-term strengths in absorbing new ideas and developments; its established base in England, and its Brexit-era popularisation of a particular view of Westminster sovereignty.

Instead, it is essential to understand that new Conservative strategy, to counter it, to clarify how it diminishes the power and freedoms of the peoples of Wales, Scotland *and* England, to build support for a new union on a cross-party and non-party basis, in England as well as in Wales and Scotland, and to build a new movement for a new union. Perhaps the key feature of resistance to muscular unionism open to long-term supporters of devolution lies in the fact that the only political institutions that the people of Wales and Scotland have ever voted to create are the National Assembly for Wales, (now Welsh Parliament or Senedd), and the Scottish Parliament. England as a nation, of course, has never had that opportunity. But that is another subject for another day.

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