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### **The forward march of devolution halted? Resources of hope and resilience.**

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#### Abstract

The devolution reforms of the 1997 Blair government were predicated on what we might term, borrowing from public service reform, 'earned autonomy'. As the devolved administrations grew in experience and authority, their powers would be expanded and diversified. This model can particularly be demonstrated in the cases of Wales and Scotland, with the latter additionally offered new powers ('the Vow') to fend off the threat of secession. Brexit and the Internal Market Bill, and the emergence of a more activist Unionism from a Conservative government with an 80 seat majority, threaten to constrain devolution in a way not envisaged in the original legislation - but paradoxically, COVID-19 has elevated and promoted the role of the devolved governments who have experienced a 'competence boost' in comparison to the UK government, and unparalleled UK-wide media visibility, while exposing existing problems in intra-government relations.

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***Work in Progress***

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## **The forward march of devolution halted? Resources of hope and resilience.**

### *Introduction*

A growing number of researchers have begun to consider the implications of Brexit for the devolved governments in the UK, and the devolution 'settlement' overall. The purpose of this paper is to ask whether the original expansive approach to devolution, which promised institutions capable of growing into additional responsibilities, a kind of 'earned autonomy' as explored in local government (Lowndes and Wilson, 2003) and health reform (Mannion et al, 2007), has now come to an end. The devolution proposals which emerged in Scotland and Wales in the 1997 White Papers had their own distinct intellectual antecedents, but fitted a wider UK Labour agenda of Modernising Government (Cabinet Office, 1999), based on a 'mission to modernise':

We are modernising our democratic framework, with new arrangements for Scotland, Wales, Northern Ireland, the English regions, Parliament and local authorities (Blair, 1999).

The paper will begin by briefly examining the original conceptions of the devolved institutions in Wales and Scotland, and the framing of their potential role and powers, and move on to sketch how those powers have expanded over twenty years in legislation enacted by both Labour and Conservative governments. It will then address the impact of Brexit on the relationships between the UK Government and the devolved administrations, the role of the Internal Markets Act in particular, and the wider context of an 'activist' or more 'muscular' unionism. The paper will then examine the way in which the Covid-19 pandemic has further complicated relationships between the UK and devolved administrations, and the evidence for a 'competence boost' for the devolved administrations in comparison to public perceptions of the UK government performance, reinforced by the elevated coverage in the UK media of policy divergence between the governments in London, Cardiff, and Edinburgh. The UK's 'vaccine nationalism' will then be

assessed in the context of both 'activist' and 'muscular' unionism and the implications for devolution.

The paper will draw on publicly available materials including UK and devolved government statements and press conferences, debates and hearings in the UK, Welsh and Scottish Parliaments, media coverage, scientific policy papers related to the pandemic, and social media, including UK government advertising, to provide an interpretive narrative of the last twelve months in particular.

### *Expansive Devolution*

The developments leading to proposals for the Scottish Parliament and the National Assembly for Wales arise from different historical and political contexts and have been well-documented over the years (Andrews, 1999; Jones and Balsom, 2000; Cairney, 2012; Taylor and Thomson, 1999; Wright and Conroy, 1997). 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:

The Assembly will be the forum for the nation, able to debate all matters of concern in Wales, not only those which it directly controls. It will be able to invite Government ministers, public bodies and other experts to contribute to such debates. For example, the Assembly could investigate and make recommendations on proposed changes to social security legislation or the structure of the court system that had particular implications for Wales (Welsh Office, 1997).

In the case of Scotland, there was more of a concern to suggest that the Scottish proposals formed 'a new, stable settlement' (Dewar, 1997) rather than threatening the prospect of independence further down the line, but nevertheless the Scotland Bill did contain a clause allowing for the transfer of further powers (House of Commons, 1998).

This expansive potential, of course, at one level simply reflects what Mitchell (1998) referred to as:

The dynamic nature of constitutional development means that whatever legislation is passed, further developments are certain.

In a far-sighted passage, Mitchell argued:

Devolution is about reforming the state as a whole and it will be the state as a whole which will be judged. If the perceived failure of Britain lies behind the demand for Scottish constitutional change, then it might be expected that perceived continued failure will result in increased demands.

In Wales, the Secretary of State for Wales at the time of the 1997 referendum and the 1998 Government of Wales Act, Ron Davies, had famously declared (Davies, 1999) 'devolution is a process, not an event, a phrase that has been repeated and adapted over the years but which effectively summarises the sense of an expansive devolution. First Minister Rhodri Morgan spoke of 'organic devolution' which would allow the Assembly to grow in status and authority (Shipton, 2011:43)

### *Powers expanded*

The devolved powers of the Scottish Parliament and National Assembly for Wales (as it was) were significantly expanded in the first twenty years of devolution. In the case of Scotland, the early years saw the Scottish Executive 'testing its boundaries' (Torrance, 2020a: 16) in areas where powers were reserved, for example in respect of immigration and overseas aid. Powers over Scottish Railways were devolved to Scottish Ministers in 2005. The Scottish Executive's title was changed to Scottish Government in 2007 (and the change was encoded into law in 2012). Following the Calman Commission (2009) further powers were subsequently devolved to Scotland in the Scotland Act 2012. These included further income tax powers with a commensurate reduction in the Scottish block grant; devolution of some

other taxes with the granting of the power to create new devolved taxes in future, and new powers in certain areas including electoral administration.

Following the Vow agreed by parties opposed to Scottish Independence, and the subsequent Smith Commission, further powers were devolved in the 2016 Scotland Act, which also declared the Scottish Government and Scottish Parliament a permanent part of the UK Constitution, able to be abolished only after a further referendum. The Bill provided for 'devolution of income tax bands and rates on non-savings and non-dividend income, a share of VAT receipts in Scotland to be assigned to the Scottish Government's budget, devolution of Air Passenger Duty and Aggregates Levy; powers over certain aspects of welfare and housing-related benefits; powers over speed limits and road signs, and rail franchising; control of the functions of the British Transport Police, Ofcom and the Crown Estate relating to Scotland; and control of the Scottish Parliament's electoral system, subject to a two-thirds majority vote' (Torrance, 2020a: 32) and after amendment, control of abortion law. This 'expanding remit' (Ross, 2021) is widely recognised.

The devolution model in Wales was found to be unsatisfactory almost before the National Assembly for Wales first sat, and continued to be seen as unstable and unsustainable (Rawlings, 2003; Wyn Jones and Scully, 2012)). The Assembly had devolved to it the powers of the Secretary of State for Wales and its focus was largely secondary legislation. Some additional power – e.g. over tuition fees for higher education - were subsequently devolved to it in UK legislation.

The first term was dogged by the nature of the corporate body status of the National Assembly, with an effective informal separation of executive and legislature being engineered by First Minister Rhodri Morgan's creation of what he called the 'Welsh Assembly Government' in 2001 and the Presiding Officer Dafydd Elis Thomas's review of Assembly procedure in 2002. The publication of the Richard Commission report during the second Assembly resulted in the 2006 Government of Wales Act which codified the separation of the legislature and executive, empowered the Assembly to pass primary legislation in 20 devolved areas on a case by case basis with advance permission from Westminster. This system of Legislative Consent Orders (or LCOs) was widely derided throughout the third Assembly. In 2005 the then House Committee of the National

Assembly took the decision to name the new Assembly building opened in 2006 the Senedd, a decision not uncontroversial when the name was publicly revealed prior to its opening, but which over time became established and paved the way for the renaming of the institution itself (House Committee, 2005; Black, 2006; Andrews, 2006; BBC, 2020).

The 2006 Act contained a clause which allowed the Assembly to move to full law-making powers, subject to a referendum, and as a result of the coalition agreement between Labour and Plaid Cymru the referendum took place in March 2011, resulting in an overwhelming majority for the Assembly to assume full law-making powers without the need to get UK Parliamentary endorsement. The fourth Assembly from May 2011 saw the first laws being passed.

The conferred powers model did have some advantages for the expansive view of devolution in that its flexibility allowed the Welsh Government to venture forward in areas where the Scottish Government was prevented from doing so. In 2016, for example, the Welsh Government announced (Andrews, 2016) that it would if necessary legislate to remove sections of the UK Government's Trades Union Act which related to Trades Unions in Welsh public services (House of Lords, 2016). It subsequently did so a year later (Welsh Government, 2017). The Supreme Court had previously found in favour of the Welsh Government in respect of other legislation challenged by the UK Government (for example, Supreme Court 2012, 2014). The incoming SNP administration in 2011 was less happy with the role of the Supreme Court in relation to Scots Law and set up an Independent Review Group to look at this (Scottish Government, 2011).

The Wales Act 2014, which resulted from the 2012 Part 1 Report of the UK Conservative-Liberal Democrat coalition's Commission on Devolution (known as the Silk Commission after its chair) and the Labour Plaid Cymru One Wales Government's Holtham Commission, strengthened the devolved powers by

- Devolving stamp duty, business rates and landfill tax, and the powers to create other taxes, to the Assembly
- Proposing a referendum on the devolution of income tax

- Putting into legislation the term ‘Welsh Government’ (adopted by the incoming Labour administration in 2011).

Following the 2015 General Election and the prior publication of Silk ‘II’, critical scrutiny of a draft Wales Bill, and the publication of the Welsh Government’s alternative Government and Laws in Wales Bill (2016), the Wales Act 2017 was passed. This recognised the permanence of the National Assembly, as it was then; changed the basis of the Welsh devolution model from conferred to reserved, gave the Welsh Government some new powers, removed the previous requirement for a referendum to precede the use of powers on income tax, and other administrative matters. In 2019, the National Assembly set a Welsh Rate of Income Tax for the first time (Torrance, 2020b has a useful summary of these developments).

In 2020, the National Assembly voted to rename itself Senedd Cymru or Welsh Parliament.

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

Brexit had significant 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 (Sturgeon, 2016) The Scottish First Minister set out her demand that Scotland should remain in the EU and in the Single Market.

Wales had voted to leave, but the political 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. Although the then First Minister of Wales, Carwyn Jones, called publicly for the immediate implementation of Article 50 and negotiations on exit to start (National Assembly, 2016). The Welsh Government’s immediate concerns were to protect levels of funding to Wales that had been received from European sources, and to be involved in the departure negotiations (Hunt et al, 2016).

Whatever their differences over the eventual destinations for their countries, the focus of the Scottish and Welsh Governments post Brexit was to be involved in the UK’s departure

negotiations, to seek a replacement from the UK Government of European funding that would be lost, and to assume responsibility for any laws that would be repatriated to the UK within devolved competence. An early emergency meeting of the British-Irish Council, demanded by the Welsh First Minister, took place in July and identified the following areas where clarification was urgently needed:

The Council noted that there are a number of priority areas where implications arise, in particular: the economy and trade, the Common Travel Area, relations with the EU and the status of all citizens affected by the change (BIC, 2016).

As discussions between the UK and EU moved forward, a sub-committee of the Joint Ministerial Committee was established as a channel for communications on the negotiations (JMC (EN)). The meetings agreed to establish frameworks which respected 'the devolution settlements and the democratic accountability of the devolved legislatures' and would 'lead to a significant increase in decision-making powers for the devolved administrations' (JMC (EN), 2017). The UK Government had identified 154 areas where there was intersection between EU law and devolved powers. These were separated into categories where no further action was needed, non-legislative areas, where co-ordination was needed, and legislative areas, where regulatory consistency was crucial and new frameworks needed to be established through legislation at UK level, including in relation to agriculture, fisheries, environmental issues, food standards and professional qualifications (Cabinet Office, 2019).

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. In any area where this power were used, the UK government would be able to set UK-wide regulations until new common frameworks were agreed. Ministers have to consult with their devolved counterparts, and report to the UK parliament every three months on where and why they have made such regulations, and on the progress made towards agreement on new UK-wide frameworks (Institute for Government, 2020).



It is clear that throughout this process there was significant intergovernmental working, particularly at official level. This is not to say that there were not political disagreements between the devolved governments and the UK Government, focused initially on the first draft of the EU Withdrawal Bill to which both the Welsh and Scottish Governments objected, calling it a 'power grab' and declaring their intention to refuse consent. The two governments objected in particular to the first drafts of clause 11 and Schedule 3 which would have prevented the devolved legislatures modifying 'retained EU law' and would, they argued, allow UK Government ministers to unilaterally use Henry VIII clauses to modify devolved law and change law in areas of devolved policy. Ministers in devolved administrations have noted how different UK Ministers have been more or less attentive to the concerns of the devolved administrations.

The Bill itself had arisen after the UK Government was defeated in the Supreme Court in the Miller Case, to which the Welsh and Scottish Governments were interested parties supporting the case that an Act of Parliament was needed before the UK Government could give notice of withdrawal. Both Governments also introduced Continuity Bills which sought to pre-empt changes to the Scotland Act 1998 and the Government of Wales Act 2006. These passed their legislative stages in the respective legislatures in March 2018, but did not proceed to Royal Assent since the UK Government referred them to the Supreme Court. Amendments to the Bill which meant that UK Ministers would have to specify which areas they wanted to protect, and a limitation on use of this power to two years after exit day, resulted in the National Assembly granting consent, though the Scottish Parliament still withheld consent. The UK Government reference of the Welsh Continuity Bill to the Supreme Court was dropped. The Supreme Court ruled that the Scottish Bill 'as a whole' would not be outside the competence of the Scottish Parliament but certain sections would be. (Supreme Court 2018).

However, 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 has declared its support. The Centre for Constitutional Change at Edinburgh University and the Wales Governance Centre at Cardiff University jointly declared:

The substance of the Bill and the manner of its introduction have reduced relations between the Scottish and Welsh Governments on the one hand, and the UK Government on the other, to the worst level we have known (Cardiff University/Edinburgh University 2020).

The Act has been separately described by the Scottish Government's Cabinet Secretary for the Constitution, Europe and External Affairs, Mike Russell, as 'a deliberate act of constitutional sabotage' (Scottish Government, 2020) and opening the way to 'very substantial future amendment' of the Welsh settlement (Welsh Government, 2020).

The Bill had been controversial during its passage with the House of Lords agreeing amendments to protect the devolution settlement, the refusal of consent by the Welsh and Scottish Parliaments and opposition by the Northern Ireland Assembly. The Welsh Government's case has some similarities with its previous concerns about the EU Withdrawal Act, notably

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 (Welsh Government, 2021).

The Act governs trading relationships between businesses within England, Northern Ireland, Scotland and Wales. It enshrines into law two 'Market Access Principles' – mutual recognition and non-discrimination. These mean that if an imported or manufactured good complies with laws in the part of the UK where it is made or imported, then it will automatically be eligible for sale in other parts of the UK; and rules must not discriminate against goods or services from other parts of the UK. This could effectively undermine policies such as the Welsh Government's ban on single use plastics (Welsh Government, 2020).

The powers granted by the Act would also allow the UK Government to spend money in areas of devolved competence, including

promoting economic development; providing infrastructure, including public utilities, transport facilities, health, education and sport facilities, courts or prisons and housing; supporting cultural or sporting activities “that directly or indirectly benefit the United Kingdom or particular areas of the United Kingdom”; supporting education and training activity exchanges within the UK and internationally (Institute for Government, 2021).

The UK Shared Prosperity Fund, designed to replace the previous European Union Structural Funds, which will be delivered using the mechanisms of the Internal Market Act and displaying common UK-wide branding (HM Treasury, 2020:37), illustrates the concerns of the devolved governments. The 2019 Conservative Party manifesto pledged that this would ‘at a minimum match the size of [EU] funds in each nation’ (Conservative Party, 2019: 44), although at the time of writing, devolved governments were unaware of the likely allocations. A promised 2018 consultation on the design of the fund has not taken place. The funds will be allocated 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, amounting to what Welsh First Minister Mark Drakeford has called ‘a direct attack on devolution’ (Institute for Government, 2020). The UK Government is now seeking to recruit 12 senior civil servants accountable to the Secretary of State for Wales to deliver the fund.

It is worth concluding this section with an overview of the impact of the Brexit debate on the devolved voices within the UK public sphere. Schlesinger (2019) explained how the Brexit issue had ‘overwhelmed the Scottish communicative space and marginalised the Scottish political voice in the UK’. He explains that Scotland as a distinct polity has long had ‘a dualistic public sphere and a media landscape in which the British and Scottish are co-present’. The concept of a ‘dualistic public sphere’ cannot easily be transferred across to Wales, where there is already a dual public sphere constituted in the Welsh and in the English languages: ‘fragmented’ is more accurate (Andrews, 2014, 2017) – but, like Scotland, until Covid, the Welsh political voice in the UK had been muted. Nor is the political history of Wales or the political economy of the Welsh media the same as that of Scotland.

But above all, the real challenge that Brexit has posed to the Union is an emotional challenge. As the Scottish Conservative Leader Douglas Ross has said

‘Brexit has been damaging to support for the UK because it undermined, in the eyes of many, those shared values.

‘We failed to bring our country back together again after the vote.

‘Leave and Remain parts still feel divided more than four years on from the decision.

‘For many the 31st of January represented a triumph but for others all they felt regret.

‘We did not build a consensus around delivering Brexit.

‘Instead there has been a ‘winner takes it all’ approach (Ross, 2020b).

### *Covid-19 - ‘the emergence of’ a devolved consciousness’?*

While the UK entered lockdown on 23 March with considerable four nations unity, and a four-nations approach had been announced on 3 March (UK Government, 2020), the exit from lockdown saw marked divergences of approach emerge. It is possible to argue that, from the end of March 2020 to roughly the middle of May 2020, there was an undoubted unity and solidarity in the UK’s response to the virus which had evaporated by September (Smith, 2020; Sargent, 2020). By the middle of May, that unity had begun to fracture (Rawnsley, 2020; Helm et al, 2020), with different approaches emerging in the four nations of the UK, as different strategies, visions, and representations of leadership were offered by leaders of the devolved nations and city Mayors, By August, ‘national unity’ was in question.

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. Covid-19 is of course ‘a genuinely shared experience’ making it ‘open to immediate public assessment and judgement’ (Gaskell et al, 2020). Statements by the First Ministers of

Scotland and Wales have been given particular prominence in major UK-wide news bulletins. The different emphases of city mayors such as London's Sadiq Khan and Manchester's Andy Burnham have also attracted regular attention (Khan and Burnham, 2020; Khan et al, 2020). The acting political editor of the *Western Mail*, Will Hayward, refers to the experience of the pandemic as promoting 'the awakening of a devolved consciousness' (Hayward, 2021a). He has revealed that the data analytics available to journalists within the *Western Mail*, part of the Reach media group, show that mention of the First Minister Mark Drakeford adds value to the story Interviews with the First Minister on Facebook and the website may attract 500,000 views and the First Minister himself recognises how his own UK media profile has significantly changed (Hayward, 2021b).

UK media coverage of the devolved institutions had been patchy, even on the airwaves of the BBC, which commissioned a review of devolved news coverage in 2008 (King, 2008; Lewis et al, 20078. Coverage in print media outlets has been even less extensive, except as significant moments of policy divergence, such as the decisions by devolved administrations in Wales and Scotland not to charge their own students £9000 fees in 2010, unlike the UK coalition government, which resulted in expressions of English resentment in some newspapers charges of 'apartheid', and I have documented elsewhere how the Welsh decision suddenly awoke the BBC's UK newsroom to the realities of devolved power (Andrews, 2012, 2014).

It has taken some time for UK Ministers to learn the reality that in some portfolios, they are simply Ministers for England (Andrews, 2012, 2014). Covid, unusually, has inserted the Scottish, Welsh and Northern Irish devolved voices into the UK political narrative and the UK media (Connell, 2020). Whereas in the past the automatic assumption of the London-based media was that England was the default model (Andrews, 2014), the Covid crisis, on the BBC at any rate, has forced news editors to give a significantly higher prominence to the decisions taken by the devolved governments, for the very simple reason that public health is devolved (Institute for Government, 2020). Not only has this given a focus to policy divergence, it has also offered the public contrasting models of leadership to that of the Prime Minister, with the first Ministers of Wales and Scotland, in particular, demonstrating detailed knowledge of the virus, the impact of their policies, and the rationale for their

decisions. It appears that some, including the Prime Minister, may now regret that (Cole, 2021).

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 (McEwen et al, 2020; Kenny and Sheldon, 2020) – or as 're-centralizing the UK' (Morphet, 2021). Welsh and Scottish First Ministers confirmed in September they had not spoken to the Prime Minister since 28 May (Morris and Brooks, 2020). COBR (A) 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 (Institute for Government, 202). The Scottish Conservative leader agreed that 'The Covid-19 crisis has put the structures for interaction between the UK Government, Devolved Administrations and indeed the English Mayoralities to the ultimate test'. He continued:

And I think that even the most committed defender of the current system would admit that they have been found wanting.

On one hand the UK Government's suspicions around the security of information has been legitimate.

But on the other, Devolved Administrations, responsible for managing the virus in their nations, have been forced to look for detail on announcements from publicly available press releases.

Trust has broken down and when it does we see time and time again popular opinion siding with their devolved representatives.

The SNP benefits from inter-governmental disputes, the UK Government does not (Ross, 2020b).

Opinion polls and qualitative research suggest a decline in trust in the UK government's approach from early May, with a succession of mixed messages compromising the UK government's 'narrative capacity' (Andrews, 2021, in press). These tensions cut across the UK government's constitutional ambitions and their reception in the devolved nations. The exit from lockdown saw marked divergences of approach. At the end of April, the Prime Minister declared that the UK was 'past the peak' of the virus (Johnson, 2020). The easing of lockdown was signalled and finally announced in a broadcast on 10 May. The devolved governments had not been consulted on the UK Government's change of messaging until after the decision had been taken and said their governments would not be changing the message. (Sparrow et al, 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. This situation has not improved with Covid-19. Wales's First Minister said that there had not been a regular rhythm to meetings between the four governments (Robinson, 2020). While COBR (A) did finally meet in September, Mayors in England felt excluded (ITV Wales, 2020b; O'Reilly, 2020).

Diary research confirms that the public began to pick up on the policy differences in the four nations in May (Britain Thinks, 2020; Cushion et al, 2020a, Ofcom, 2020).), and recognised that the differing approaches of the devolved administrations entailed implicit criticisms of the UK Government's thinking (Cushion et al, 2020b; Ofcom, 2020b; Forrester and Wearmouth, 2020).

The media highlighted the differences in a variety of fields, often referring to the devolved administrations flexing their muscles (Rogers, 2020), including testing and tracing people with Covid-19, where Wales and Scotland had public service-led systems (Bounds and Neville, 2020; Allen-Mills, 2020) while England had a highly centralised system using private sector companies alongside the Public Health England system which was performing better (Pollock, 2020; Ham, 2020); on quarantine from overseas visits (Hughes and Dickie, 2020); and on working from home advice (Pickard and Thomas, 2020);

Opinion research shows a contrast in trust between the performance of the Scottish and Welsh governments and the UK Government (Brooks, 2020; ITV Wales, 2020; Shipton,

2020a). In Scotland, polling indicates significantly enhanced support for independence (Curtice, 2020): while the same is not true in Wales, there has been a rise in support for pro-independence voices (Shipton, 2020b; YesCymru, 2020). It is possible to see in this, certainly until the extensive vaccine rollout in 2021, as indicating something of a competence boost for devolution (McLaughlin and Andrews, 2020; Hayward, 2021b).

### *A tale of four unionisms*

We need to distinguish between four forms of unionism in evidence since the emergence of governments of different colours in Edinburgh, London and Cardiff since 2007. I will label these

- Passive unionism
- Activist unionism
- Muscular unionism
- Progressive unionism

*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. Recently, a number of prominent Conservatives have referred to this as the ‘devolve and forget’ strategy, which they say is no longer enough (Dunlop, 2021; Cairns, 2017):

By devolving and forgetting, you remove the UK Government from the everyday lives of people across Scotland (Ross, 2020a).

*Activist* unionism involves a more organised and visible presence for the UK Government in both Wales and Scotland. Social media feeds on Twitter and Facebook have been rebranded as UK Government Scotland and UK Government in Wales. There is a UK Government ‘Delivering for Scotland’ website. A range of stories are promoted through videos of the UK Government, and, for example, the British Army, delivering to and for the people of Scotland and Wales. It is natural for the UK Government, whatever its politics, to wish to 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. At its best, it promises to modernise UK-wide infrastructure and devolve further powers (Policy Exchange, 2019a). The Dunlop Review (Cabinet Office, 2021), finally published on 24 March 2021, too late for this paper, lies at its heart.

*Muscular* unionism is something different. It has become the object of concerned attention by researchers (Henderson, 2020, Torrance, 2009). One Welsh Conservative 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’ (Melding, 2020). Some call it hyper-unionism (Kenny and Sheldon, 2020). Muscular unionism, as I will argue below, is a deliberate strategy and a form of statecraft, which threatens to conjure a state of what I have previously called DINO – ‘devolution in name only’ (Andrews, 2019). It involves a refusal to grant a further Scottish independence referendum (and in this, some UK Labour and Scottish Labour politicians, though not Welsh Labour politicians, are in agreement); a repatriation to Westminster of specific powers and funding previously available to the devolved governments, as demonstrated in the Internal Market Act and the Shared Prosperity Fund; and it is underpinned by a particular view of the UK state and the need for a reassertion of ‘the UK’s traditional constitution’ (Policy Exchange, 2019b). 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 institutions including local authorities. A ‘Western powerhouse’ model, bringing together Cardiff, Newport and Bristol, was launched to undermine Welsh Government economic plans. We have recently seen an announcement of plans for the creation, without consultation with the devolved governments, of new trade and investment hubs (UK Government, 2021). Welsh appointments to bodies under the control of the UK government have been politicised, as Policy Exchange suggests should happen across the UK (Urwin and Wheeler, 2019). In the 2019 General Election, the Conservatives even promised to deliver the M4 Relief Road, without the power to do so. The Queens Speech promised a cross-border Marches deal, and many other actions (Prime Minister’s Office, 2019) Table 1 summarises elements of this ‘muscular unionism’. We can expect also attacks, post May-2021, on the representativeness of the devolved administrations in Wales and Scotland if

turnout levels remain lower than those for UK Parliamentary elections. Some are already taking pot-shots (Hart, 2021).

*Table One about here*

*Progressive* unionism arguably saw its emotional 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 rise of both Scottish nationalism after 2014 and English exceptionalism from 2016. Today, there is not a common progressive unionist agenda – indeed Lord Dunlop has himself spoken (2020) of his project as progressive unionism - although some attempts to develop such a theme can be seen in initiatives such as the Constitutional Reform Group (2012), *We, the People* (2021), and the Welsh Government (2020). 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. A radical re-shaping of the UK constitution could allow greater autonomy for the UK nations. 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, and explicit responsibility for ensuring that the constitutional position of the devolved institutions is properly taken into account in UK parliamentary legislation. This would involve conceiving of the union as a voluntary association of four nations, with sovereignty dispersed (Drakeford, 2019). The Welsh First Minister himself has spoken approvingly (Drakeford, 2021a) of the July 2019 speech by Theresa May as Prime Minister, where she said that the Union rested 'on the support of its people' and would endure as long as people wanted it to, as long as it enjoyed the popular support of the people of Scotland and Wales, England and Northern Ireland' (May, 2019). The proposals of the Welsh Government and *We The People* are seen by some as representing something of an ambivalent unionism (Farquarharson, 2020) which would lead to the break-up of the UK (Melding, 2021): but it is interesting to see that the Scottish Conservative Leader endorses Lords Reform to include 'formal representation for our nations and regions' (Ross, 2020b).

### **Muscular Unionism as strategic statecraft.**

The two choices – activist unionism or muscular unionism – reflect a tension within the Conservative Party where for some Muscular Unionism is a form of statecraft. We need to see Muscular Unionism in context. It derives from a particular approach to the British State post-Brexit, and is underpinned by detailed strategic thinking by a number of individuals loosely gathered around the Policy Exchange thinktank who had an influence on the 2019 Conservative Manifesto, including the Prime Minister's former chief advisor Dominic Cummings.

Bulpitt (1986) sought to identify the nature of Conservative Party statecraft during Mrs Thatcher's time as leader, asking 'in what ways has the Conservative Party sought to gain office, govern satisfactorily and retain office within the British structure of politics'?. He identified a number of elements: party management; a winning electoral strategy; hegemony over political argument; governing competence; and a further winning electoral strategy. He argued that Mrs Thatcher reconstructed Conservative statecraft in opposition, understanding and working with 'the limitations placed on elite activity by the many changing structural constraints arising from within and without the polity'.

The Johnson agenda has demonstrated both a particular statecraft and an agenda for state modernisation. The 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 (Andrews, 2019): 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, now endorsed by UK Labour and Scottish Labour in Opposition, while exploiting the divisions in the SNP

over its unlawful actions in government, egged on by a significant range of elite Scottish Conservatives often grouped around the *Spectator* magazine or the *Daily Telegraph*.

The calculation here is that an independence referendum does not need to be conceded, and the UK can stumble on, as it has before, while an activist unionism is developed in policy and infrastructure terms. There may also be a calculation that building up the EU as the enemy overseas against which to unite, undermines certain elements of Scottish opinion which are both pro-independence and pro-Brexit. To many of us it may seem like a gamble, but Johnson has gambled before, and seen that gamble, in the form of the vaccination strategy, pay off.

The Conservative state modernisation agenda is extensive. If the range of Policy Exchange papers on the Constitution, the Judiciary and Whitehall is accurate, its possibilities range from limiting the powers of the Supreme Court – possibly even re-branding it as simply an Upper Court of Appeal, to remove the sense that it is a constitutional court – to an infrastructure modernisation programme for the UK, a re-casting of central institutions to oversee the Union, with the engagement of devolved authorities such as Mayors within England to address the UK/English delivery confusion, to a series of Whitehall reforms (some of which are pretty uncontroversial) and the creation of a UK form of the American defence-linked research agency DARPA, one of Dominic Cummings' long-held ambitions. The intellectual justification has to a degree been spelled out by Michael Gove (2020; and see Payne and Parker, 2020).

### **The Forward March of Devolution Halted**

There is a tendency, amongst supporters of more fundamental devolution, what some call 'radical federalism', as well as supporters of independence, to assume that it is inevitable that the crumbling state that is called the U.K. (or Yookay, as Raymond Williams (1985) called it) will wither away or be shocked out of its crisis by independence of one or more of its parts. Radical devolutionists or radical federalists assert that without Lampedusa-style change (Drakeford, 2019), the Union will fall apart. Independence supporters have argued

for the inevitablism of Scottish independence since Nairn (1971; and see Andrews, 2006, 2019, 2020; Thomas, 2020). In his 1978 Marx Memorial Lecture, *The Forward March of Labour Halted*, Eric Hobsbawm cautioned against ‘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 (1978, 1979, 1981), ‘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. In other words, we need to understand the present conjuncture (Hall, 1979) in all its complexity.

Neal Ascherson coined the notion of the United Kingdom as a country house 36 years ago:

English manipulation of history is quite different. 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 (Ascherson, 1985).

I hadn’t anticipated seeing that metaphor in contemporary Conservative usage, but here it is:

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 (Goodman, 2021).

Scaffolding as strategy, in other words. Downton Abbey Devolution. 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' (Goodman, 2021) – may not look like a coherent constitutional future to us, 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. In Wales and Scotland, expect to see more funds which target council leaders, rather than passing through the Welsh or Scottish Governments, in a new version of divide and rule. The rationale – 'Viewed politically, what we are painting in this article is an archipelago – a mass of different localisms in different places' (Goodman, 2021). Indeed, even the Institute for Economic Affairs is now calling for more devolution (Littlewood, 2021).

There are real dangers in a constitutional determinism – assuming in a teleological fashion that the UK state is destined to unravel unless radical reform takes place, assuming weakness and instability rather than strength and stability. I may want to believe that myself, but nothing is inevitable. And assuming it underestimates the emerging statecraft of the Conservative government, and the dynamics of politics, rather than thinking critically about the 'Boris bloc' (Clarke, 2020), the political strategies deployed to create that contingent alliance, and the seriousness of their project (Andrews, 2020), deferred by Covid, and disguised by Johnson's clownishness (Docx, 20121), but provided now with a platform of vaccine unionism. Scaffolding as strategy, shoring things up, has been the Conservative approach to constitutional statecraft for 150 years. For many of us the current amalgam of capitalist accelerationism, ancient Tory statecraft, muscular unionism, and post-Brexit faux-Churchillian puffery may appear dynamically unstable, but it requires conjunctural analysis, not radical voluntarism.

### **Conclusion: Resources of Hope and Resilience**

The resources of hope (Williams, 1989) and resilience open to long-term supporters of devolution lie in the fact that the only political institutions that the people of Wales and Scotland have ever voted for are the National Assembly for Wales, (now Welsh Parliament or Senedd), and the Scottish Parliament. While some have used the SNP's recent difficulties

to seek to undermine devolution as a whole (Nelson, 2021), the leader of the Scottish Conservatives has pointed to the continuing 'widespread public support' for the Scottish Parliament north of the border (Ross, 2020). Theresa May as Prime Minister declared 'For those of us who believe in the Union, devolution is the accepted and permanent constitutional expression of the unique multinational character of our Union' (May, 2019). Recent polling by pro-Unionist Conservatives (Tanner and Blagden, 2021) has echoed the notion of a competence boost enjoyed by the Welsh and Scottish governments during the pandemic, though whether that catalyses as votes for the current ruling parties is an open question, particularly in Wales (ITV Wales, 2021). Public opinion remains highly volatile, but opinion polls on the institutions themselves demonstrate now twenty years of growing support for their endurance.

It will not be enough for supporters of further devolution or radical federalism (We the People, 2021), to make their case on the basis that it is the only way to see off independence (Drakeford, 2021b; Drakeford, 2019; Welsh Government, 2019). We need to jettison illusions. It is clear that the UK 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. The danger for a unionist party like Welsh Labour is that it could become squeezed in the way that Scottish Labour has done (Tanner and Blagden, 2021).

Instead, it is essential to understand that new unionist strategy, to counter it, to clarify how it diminishes the power and freedoms of the Welsh and Scottish peoples, 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. But that is another subject for another day.

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**Table One Elements of Muscular Unionism as Statecraft**

Element	Examples
Desire to constrain original and subsequent devolution settlements	<ul style="list-style-type: none"><li>• Internal Market Act</li><li>• Shared Prosperity Fund</li></ul>
Rejection of any form of shared sovereignty	<ul style="list-style-type: none"><li>• Refusal to grant second IndyRef</li><li>• Assertion of Westminster's right to frame IndyRef rules and remit</li></ul>

<p>Reassertion of Westminster Parliamentary Sovereignty</p>	<ul style="list-style-type: none"> <li>• Internal Market Act</li> <li>• Shared Prosperity Fund</li> </ul>
<p>Unrestrained Westminster Executive</p>	<ul style="list-style-type: none"> <li>• Undermining of courts/judicial review</li> <li>• Abandonment of Nolan principles</li> <li>• Henry VIII powers</li> <li>• Undermining of Electoral Commission</li> <li>• Further outsourcing of services and contracts</li> </ul>