# Brexit and the death of devolution

Kevin Morgan & Richard Wyn Jones

**Abstract**

Devolution was almost universally regarded as heralding a fundamental shift in the nature of the United Kingdom of Great Britain and Northern Ireland. But since the 2016 Brexit referendum, the UK government has become increasingly hostile not only towards the Labour and SNP run administrations in Scotland and Wales, but to the very existence of devolution. Recent legislative changes – particularly the UK Internal Market Act – have given central government *carte blanche* to intervene in what were previously regarded as areas of devolved competence. The inevitable result has been to render the governance arrangements for the devolved countries more adversarial and less stable than was previously the case. One immediate consequence of 'the death of devolution' has been to trigger calls by devolutionists for more far-reaching changes to the state than were achieved in the late 1990s. It is far from clear, however, that such changes are politically achievable, raising the prospect of an extended period of stasis in which the current arrangements persist, not because they have any real supporters but rather because no alternative is possible.

**Keywords:** Brexit; Devolution; Governance; Constitutional Futures; Independence.

## 1. Introduction: The death of devolution

For two decades after 1999, the devolution of power to legislatures and governments in Scotland, Wales and Northern Ireland was almost universally regarded as heralding a fundamental shift in the nature of the United Kingdom. That state was never unitary in any simple sense – as the existence of three different legal systems and four different Church-State relationships should have made abundantly clear. Nonetheless, the establishment of new democratic institutions, underwritten by referendum-based popular mandates, seemed to represent a transformative moment in the history of the UK's territorial constitution.

Granted, change was far more pronounced in the peripheries than at the centre, where both Whitehall and Westminster remained largely unaffected. Neither was it ever clear how best to characterise the new state-form that appeared to be emerging. 'Asymmetric quasi-federation' was the best effort of former Welsh First Minister Carwyn Jones – a phrase whose sheer awkwardness is testament to the uncharted nature of the constitutional territory into which the UK had advanced.[1] Yet, however it might be identified, it appeared beyond doubt not only that new territory had indeed been broached, but that there would be no reversal on that path.

[1] Osmond, J. 'A written constitution for Wales,' *openDemocracy*, 11 April 2012.

This view remained intact even in the immediate aftermath of the June 2016 referendum. Indeed, Prime Minister Theresa May pledged that the devolved governments in Cardiff and Edinburgh would be fully consulted by the UK government during the forthcoming withdrawal negotiations with the European Union. This seemingly confirmed the extent to which the UK polity had been transformed (devolution was suspended in Northern Ireland from January 2017 to January 2020 and then again after February 2022).

In the event, however, even the semblance of consultation with the Scottish and Welsh Governments was quickly abandoned, with both administrations finding themselves systematically side lined. But the fact that David Lidington MP, the man widely regarded as Theresa May's *de facto* Deputy Prime Minister, was tasked with rebuilding relationships with the Cardiff and Edinburgh signalled an awareness that devolution mattered; and even an implicit recognition that London has mishandled its relationships with them.

However, following May's replacement by Boris Johnson in July 2019, any pretence that the UK government was interested in retaining cordial links with the devolved governments was rapidly abandoned. The whole tenor of the central government's rhetoric became hostile not only to the Labour and SNP run administrations in Wales and Scotland, but to the very existence of devolution. Decisions made by the central state were presented as being better by definition, with centralisation and policy uniformity serving to 'strengthen the union'. Conversely, the policy differentiation that is the inevitable corollary of devolution was framed as an existential threat. As the Covid crisis hit in March 2020, different policy responses from the four governments in Belfast, Cardiff, Edinburgh and London – in reality, differences of degree rather than substance – became another bone of contention. With Conservative politicians in Cardiff and Edinburgh, as well as London, arguing vociferously that devolved governments should follow London's policy lead.

While the controversies around the policy responses to Covid may have faded, hostility to devolution remained a constant throughout Johnson's premiership. If anything, this hostility intensified still further during successor Liz Truss's brief, tumultuous period as Prime Minister. Her now infamous refusal to talk directly to the First Ministers of Scotland and Wales was symbolic of what appears to have been the complete breakdown of the formal mechanisms established to facilitate inter-governmental relations within the UK. The resumption of inter-governmental working that followed from her resignation has been a positive development. Yet it remains too early to form a definitive view as to whether the Sunak administration will attempt to re-set relationships with the devolved governments beyond this bare minimum.

It is also the case that it doesn't really matter. The damage, so to speak, has already been done.

Legislative changes undermining devolved competences have now reached the statute book. Not only that, but the way in which those changes have been introduced has served to undermine the established model of devolution in at least two fundamental ways. First, they have been introduced against the explicit objections of the devolved legislatures themselves, thus rendering the Sewel Convention – namely what has passed as a defence mechanism for devolved competencies in the context of the UK's so-called unwritten constitution –

effectively a dead-letter.[2] Second, whereas the trend of the two decades has not only been to expand but to clarify devolved competences, the legislative changes introduced in recent years have served to give central government *carte blanche* to intervene in what were previously regarded as areas of devolved competence. The inevitable result has been to render the governance arrangements for the devolved countries less predictable and therefore less stable than was previously the case.

As opponents of devolution have been emboldened by these developments to believe that the reforms of the late 1990s are not, after all, permanent, proponents have concluded that the previous model of devolution is no longer fit for purpose. In this sense, Brexit has already heralded the death of devolution, at least in the form to which inhabitants of Scotland and Wales have become accustomed. The model of the past two decades is no longer accepted by the UK government and therefore, in response, neither is it regarded as sufficient by supporters of devolution, even by those who remain deeply committed to the continuation of the Union.

In the remainder of this essay, we analyse the two elements of this dialectic in more detail. First, we examine the new centralising dynamic that has accompanied Brexit. We then turn our attention to the countervailing demands for constitutional entrenchment. Our concluding section assesses the likely outcome of these countervailing pressures and posits an extended period of constitutional purgatory in which the current arrangements persist simply because there is no politically viable alternative.

## 2. Brexit and the new centralism

Post-Brexit politics in the UK have been nothing less than toxic so far as the devolution settlements are concerned. The repatriation of powers from the EU to the UK raised the issue of where they would be located - in Westminster or at the devolved level – and triggered a new era of contested governance in the UK.

The most combustible examples of contested governance to date revolve around the UK Internal Market Act and post-Brexit regional policy. We briefly consider each of these controversies to illustrate the new centralism and its implications for inter-governmental relations in the post-Brexit era.

### *The UK Internal Market Act 2020*

The United Kingdom Internal Market Act (UKIMA) represents the lowest point of inter-governmental relations in the history of democratic devolution in the UK. Not surprisingly, the Welsh and Scottish Parliaments refused to give their legislative consent to the Internal Market Bill, but this did not prevent the UK government from expediting the bill, breaking the Sewel Convention in the process. The UKIMA came into effect on 18 December 2020 and its key provisions are: new rules on how legislatures and governments in the UK can legislate

[2] The Supreme Court judgement in the Miller case further confirmed that, despite its inclusion in statute, Sewel is a political convention (only) whose operation is beyond the scope of the judiciary to influence.

to regulate goods and services in future; the regulation of professional qualifications in the UK; the implementation of the Protocol on Ireland-Northern Ireland; giving UK Ministers new spending powers in devolved areas; and reserve powers for UKG related to subsidy control. Of all these provisions, the most controversial are the mutual recognition principle and the financial assistance powers.

The *mutual recognition principle* for goods means that goods made, or imported into, one part of the United Kingdom that comply with relevant legislative requirements in that part, can be sold in the other parts of the United Kingdom, without having to comply with any relevant legislative requirements in those other parts. This principle in effect means that the Devolved Governments cannot regulate the supply of goods in the Celtic nations if they are deemed to comply with regulations in England, thereby neutering their policies in ostensibly devolved areas.

Section 50 of the Act gives the UK Government wide powers to provide financial assistance to any person for, or in connection with, a wide range of specified purposes. These purposes include promoting economic development, providing infrastructure, supporting cultural activities and events, and supporting educational and training activities and exchanges. The financial assistance powers extend to funding activities in policy areas devolved to Scotland, Wales and Northern Ireland. It was under these financial powers that UKG launched the Community Renewal Fund, the Levelling Up Fund and the Shared Prosperity Fund.

The UKIMA proved to be so combustible that it triggered an unprecedented joint letter of protest from the three Devolved Governments 'to register our shared concerns about the UK Government's decision to bypass democratically agreed devolution arrangements'.[3] The Senedd and the Welsh Government played a prominent role in contesting the UKIMA regarding it is as the most muscular expression of a new centralism on the part of the UK government. Having failed to amend the Bill, the Welsh Government took sought a Judicial Review of the Act. That the Judicial Review was refused, on the procedural grounds that it was premature rather than any substantive grounds, does not detract from the fact that the UKIMA brought inter-governmental relations between the UK and devolved governments to a new low.

The parlous state of governance in the UK was well captured by Mark Drakeford, the Labour First Minister of Wales. Calling for the relations between the four nations to be re-set on a more consensual basis, he said:

> For this to happen, the way the Union works must change. And the need for change is urgent, the Union has never been this fragile. If matters continue in their current vein the case for the break-up of the UK will only increase. Too often we see the UK government act in an aggressively unilateral way, claiming to act on behalf of the whole UK, but without regard for the status of the nations and the democratic mandates of their government. We see muscular unionism, instead of working

[3] Welsh Government. *Ministers call for an end to bypassing of Devolved Governments,* Cardiff, Welsh Government, 24 March, 2021

> towards a genuinely constructive and collaborative relationship between the governments of the UK.[4]

We return to the implications of this statement in section 3, where we examine future scenarios for devolution in the UK.

### *Post-Brexit Regional Policy: The Shared Prosperity Fund*

As the greatest beneficiary of EU Structural Funds, the Welsh Government had a strong vested interest in the fate of any post-Brexit replacement funds. Along with the other Devolved Administrations, the WG assumed that the repatriation of powers from the EU to the UK would respect the devolution settlements and devolve the relevant policies - for economic development and the like - to the Senedd. Its attitude was 'not a penny less, not a power lost', a mantra that was rudely shattered when the details of the Shared Prosperity Fund (SPF) were finally announced. The SPF was part of a suite of policies that UKG had launched under the auspices of its so-called 'Levelling Up' programme, which was 'marked by a move away from evidence-based policy and toward a more nakedly political and centralising approach to local and regional policy and governance'.[5]

Prosecuted under the auspices of the UKIMA, the SPF is set to be the most politically combustible Levelling Up scheme given the hostility it has already attracted from the Devolved Governments. One of the most striking and revealing features of the SPF controversy is the lack of engagement between UK and devolved governments: although the scheme was first announced in 2017, the WG was not invited to seriously engage with the SPF process until two weeks before the scheme was launched on 13 April 2022.

Regional development stakeholders can be forgiven for comparing the SPF unfavourably with its predecessor, the EU Structural Funds. Whatever its shortcomings, the EU programme was founded on four principles that were universally acclaimed to be soundly based in good practice. These principles were:

- **Concentration** – concentration of resources on poorest regions and concentration of effort on targeted policy objectives etc;
- **Programming** – multi-annual national programmes aligned to EU priorities;
- **Partnership** – multi-scalar and multi-stakeholder collaboration; and,
- **Additionality** – EU funds were designed to be additional to (rather than a surrogate for) national regional policy.[6]

Accustomed to working with these EU policy principles, regional stakeholders have found the SFP scheme to be challenging in more ways than one. The reasons why become apparent

[4] Drakeford, M. 'First Minister sets out ideas to strengthen "fragile" Union,' Cardiff, Welsh Government, *Press Release*, 29 June 2021

[5] Tomaney, J. and Pike, A. 'Levelling Up?' *Political Quarterly*, 91(1) (2020), pp.43-48.

[6] European Commission. *Cohesion in Europe Towards 2050*, Luxembourg: Publications Office of the European Union, 2022.

when we compare post-Brexit practice against the core principles of the EU approach to structural funding.

- **Concentration** – according to WG calculations, the SPF quantum is £722m short of what Wales would have received absent Brexit;
- **Programming** – a 7-year EU programme (extending to 10 years when the additional 3 years to complete the spending is factored in) has been replaced by a three-year (or more accurately a 2.5 year) SPF with no guarantee of funding beyond 2024-25;
- **Partnership** – Cardiff-London partnership has been conspicuous by its absence;
- **Additionality** – WG has refused to contribute to (let alone match) UK regional policy funds because it was denied any role in designing the SPF policy.

Leaving aside the controversy over the quantum of funds – and the UK level disputes the WG's calculations – it seems incontrovertible that the SPF has been found wanting with respect to the principles of programming, partnership and additionality.

As regards programming, it is axiomatic that sound and effective regional development projects cannot be designed and delivered in the context of annualised budgets. Indeed, it is widely accepted that annualised budgets make for projects that are poorly designed and delivered because local parties feel compelled to spend the money quickly for fear of losing it at the end of a financial year.

Partnership has been woefully lacking because WG has been deliberately bypassed in the SPF process as UKG has preferred to deal directly with local authorities. While local officers may have been flattered by being elevated into Whitehall interlocutors, many local authorities have really struggled to engage with the SPF process as short deadlines have exacerbated more general problems arising from the lack of capacity.

The lack of partnership between UKG and WG has had debilitating effects on additionality: the WG has refused to co-invest in the SPF scheme because, as we noted above, it was denied any role in designing it. Far from being party political objections, these three shortcomings of the SPF have been acknowledged by cross-party parliamentary committees.[7]

Although the WG has acknowledged that UKG has made some concessions on the design of the SPF, it says it remains fundamentally at odds with it for the following reasons:

- the UK Government's failure to honour repeated pledges to replace, in full, EU funds for Wales, meaning an overall shortfall of more than £1.1bn (accounting for the loss of structural and rural funding, and inflation) by March 2025;
- the UK Government's use of the UK Internal Market Act to forcibly take decisions in devolved areas and exclude the Welsh Government from a transparent process of joint decision making for the SPF, while bypassing the scrutiny of the Senedd;

[7] Welsh Parliament. *Post-EU funding arrangements*, Cardiff, October 2022.

- the prospectus's methodology for financial allocations to Wales, which distributes money away from those areas where poverty is most concentrated.

As a result, the UKG has been informed 'that the Welsh Government will not deploy our own resources to implement UK Government programmes in Wales which we consider to be flawed and undermining of the devolution settlement'.[8]

One way of understanding the contested governance of the SPF is as a clash of two different models of devolution. The WG reference point is the *national model* of devolution as it has evolved since the establishment of the then National Assembly for Wales in 1999: a model of devolution which provides the devolved level with genuine policy autonomy, including the ability to allocate funding according to its own priorities. The UKG reference point, by contrast, appears to be the *subnational model* of devolution that it has pioneered in England with the creation of city-regions overseen by metro mayors.[9] In the latter case, policy autonomy is – certainly by comparison – limited, with the relationship between central and devolved government perhaps better understood as being akin to a principal-agent relationship. While UKG claims that dealing directly with local authorities in order to manage the SPF constitutes 'an extension of the devolution process', it might equally well be regarded as an attempt to replace the established national model of devolution with its preferred subnational model.

However we characterise the nature of the dispute between central and devolved governments, the contested governance of post-Brexit regional policy means that the woefully inadequate level of partnership working between WG and UKG is having profoundly debilitating effects on regional renewal projects in some of the poorest areas of Western Europe. While this constitutes a serious failure of economic development policy, it also threatens the political integrity of the UK as a multinational state.

## 3.Entrenchment and the challenge of/to parliamentary sovereignty

The legislation establishing devolved legislatives and executives all contained a form of words emphasising that Westminster retained the right to legislate on all matters that were in the process of being devolved. This boilerplate declaration of the continuing relevance of Westminster parliamentary sovereignty served to confirm the truth of the maxim – attributed to Enoch Powell – that power devolved was power retained. Yet simultaneously, the widespread understanding was that whatever the formal, legal position, the political realities were now such that no UK government would dare to seek to undermine the powers and prerogatives of institutions that owed their existence to affirmative votes in popular referendums. On this reading, affirmations of the continuing relevance of the doctrine of parliamentary sovereignty were therefore to be regarded as little more than a legal fiction.

[8] Welsh Government. *Confirmation of Welsh Government's position on the UK Government's Shared Prosperity Fund prospectus*, Cardiff, Welsh Government, 7 June 2022.

[9] Henderson, A. and Wyn Jones, R, *Englishness: The political force transforming Britain*, Oxford: Oxford University Press, 2021; Waite, D. and Morgan, K. City deals in the polycentric state: the spaces and politics of metrophilia in the UK, *European Urban and Regional Studies*, 26(4), 2019, pp. 382-399.

In essence, this situation was to persist until the last few days of campaigning prior to the Scottish independence referendum on the 18 September 2014 when the leaders of those political parties opposed to independence signed the Gordon Brown-inspired 'Vow' intended to strengthen the case for remaining in a reformed union. Its first substantive sentence pledged that 'The Scottish Parliament is permanent and extensive new powers for the Parliament will be delivered by the process and to the timetable agreed and announced on the 19th September'.[10]

But if reference to 'permanent' could plausibly be read as suggesting that the intention was to place the status of Scotland's parliament beyond the reach of the vagaries of Westminster opinion – implying a direct assault on the principle of parliamentary sovereignty – the route by which the post-referendum Smith Commission proposed that permanence be guaranteed was far more circumspect. It involved two parts: 'UK legislation will state that the Scottish Parliament and Scottish Government are permanent institutions', and 'The Sewel Convention will be put on a statutory footing'.[11]

The logic was clear enough: the Westminster parliament would make declaratory statements recognising the devolved legislatures and executives as part of the constitutional furniture of the state. Having been suitably bolstered by inclusion in legislation, the Sewel convention – which since 1999 had ensured that Westminster would not normally legislate on devolved matters without the consent of the devolved legislatures – would then ensure that their powers could not be reduced against their will.

Both the Scotland Act 2016 and the Wales Act 2017 subsequently contained statements declaring that the devolved institutions were 'a permanent part of the UK's constitutional arrangements' and recognising the existence of the convention. But, of course, no matter how elegant the internal logic, a guarantee of permanence this was not – as was to be demonstrated all too rapidly in the very different political climate following the 2016 referendum.

Our previous section discussed the ways in which, since then, central government has moved to curtail devolved powers. Placing the Sewel convention on a statutory footing in the Scottish and Welsh devolution legislation proved no kind of defence against this development, with the UK Supreme Court decision in R (Miller) vs Secretary of State for Exiting the European Union [2017] UKSC 5 confirming that this did not convert the convention into a judicially-enforceable rule.[12]

In response, proponents of devolution have returned with renewed urgency to the question of how permanence or entrenchment (the two terms continue to be used interchangeably, although the latter now appears more frequently) might be achieved. It is worth briefly reviewing both their diagnosis of the issues at stake as well as the potential solutions

[10] *Daily Record*, 16 September 2014.
[11] Smith Commission (2014) *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, 2016, p.13.
[12] Cowie, G. and Torrance, D. *Devolution: The Sewel Convention*, London, House of Commons Library, 13 May 2020.

proffered. Doing so serves to underline the extent to which the behaviour of the UK government is regarded as having destabilized the model of devolution to which we have become accustomed. But also, relatedly, the extent to which devolutionists are now caught between the Scylla of a UK government that no longer respects the basis of the current devolved settlements and the Charybdis of the hard limits on entrenchment created by the doctrine of parliamentary sovereignty. For reasons of brevity, we focus on key texts, namely the 2022 report of the Brown Commission and the latest iteration of the Welsh Government's *Reforming our Union* position paper.

As might be expected, perhaps, the Brown Commission report contains a somewhat plaintive defence of the scheme of entrenchment enacted following the Smith Commission report: 'If the [Sewel] convention is followed, it gives the devolved institutions the same kind of protection that constitutional codification gives states or provinces in federal countries'. But the convention has not been respected, causing 'great concern among those who support the United Kingdom', and giving 'succour to nationalists…as they claim it shows that devolution can be abolished on the whim of a hostile UK government.' The latter view is dismissed as being, '[o]f course…unrealistic'.[13] Nonetheless, another attempt to ensure meaningful entrenchment is required, consisting of two steps.

First, a 'new, statutory, formulation of the Sewel convention' is to be introduced, 'which should be legally binding.' The latter would be achieved by stipulating that the convention 'should not be restricted to applying "normally" but should be binding in all circumstances' – thus (on this reading) forcing the judiciary to intervene to halt any infringement, in a way they had so obviously failed to do in the Miller case. Secondly, 'the legislation giving effect to the Sewel convention should be one of the protected constitutional laws which would require the consent not just of the House of Commons but of a reformed second chamber also'. The report goes so far as to claim that, in combination, 'This form of entrenchment of the devolution settlements provides protection for them analogous to a written constitution.

This claim is surely hyperbolic. Even assuming that democratic reform of the second chamber can be achieved – and as the report concedes, it's been the 'official goal of successive governments for a century' – details of the proposed alternative are so scanty that comparing the protections it might provide with those of a written constitution seems less than serious. More pertinently, it is far from clear that the proposed scheme of entrenchment would be robust enough to resist a repeat of the Johnson or Truss administrations' approach to devolution. So long as parliamentary sovereignty remains the central constitutional dogma of the state, there are limits to the extent to which any protections – whether 'statutory' or not – may be relied upon.

The Welsh Government's condemnation of the behaviour of the UK government is, if anything, even blunter than that found in the Brown Commission report. According to Minister Mark Drakeford's Foreword, its 'aggressively unilateral' approach to the devolved nations means that it has 'become harder and harder to make the case for the Union, and the

[13] Brown Commission. *A New Britain: Renewing Our Democracy and Rebuilding Our Economy*, Report of the Commission on the UK's Future, London, Labour Party, 2022, p.103.

threat to it has never been greater during my lifetime'. Particular objection is taken to the ways in which the UK government has not only 'undermined trust in…[its] commitment to the Sewel convention', but gives every impression that the convention is to 'now to be regarded as entirely optional'.[14]

Given this context, one might be forgiven for regarding the proposed remedies as somewhat underwhelming. As immediate steps, the Welsh Government believes that, first, 'there must be a clearer specification of the circumstances when refusals of devolved legislatures' consent can be legitimately overridden, and secondly there should be a more explicit stage of [Westminster] Parliamentary consideration of the implications of proceeding' with legislation without the consent of devolved legislature.[15] Should this fail to be enough to force a return to more consensual ways of working, it goes on to say that 'it will become inevitable' that the only way to 're-establish the integrity of the devolution settlement' will be drop the 'normally' qualification from the wording for the Sewel convention.

The latter step is regarded by the Welsh Government as introducing a 'radical safeguard' for the devolved level. Yet as already noted, so long as (Westminster) parliamentary sovereignty remains the core principle at the heart of the UK's uncodified constitution, any protections for the devolved level will remain reliant on the centre exercising a degree of self-restraint that, in recent years, has been conspicuous only by its absence. This point is implicitly conceded in *Reforming our Union* when it states that the case for a 'written or codified constitution…grows increasingly strong as devolution matures, and as compliance with traditional constitutional conventions and understandings breaks down'.[16]

More recently, the interim report of the Independent Commission on the Constitutional Future of Wales concluded that 'the current settlement has been eroded by decisions of recent UK Governments' and proposed 'entrenched devolution' as one of three potential futures for Wales (alongside federalism and independence).[17] Yet in their discussion of this option, the Commissioners go on to ask the following key question: 'Is it plausible that robust entrenchment of the powers of the Senedd and the Welsh Government could be achieved without a UK wide written constitution which introduced limitations to Parliamentary sovereignty?' [18]

## 4. Conclusion: Beyond devolution?

Devolution as it developed in Scotland and Wales after 1999 relied on what might be termed a productive ambiguity. While the key legislation underpinning the devolved institutions continued to proclaim (Westminster) parliamentary sovereignty, and with it the possibility that powers could be removed up to and including the point of outright abolition, there was

[14] Welsh Government. *Reforming Our Union*: *Shared Governance in the UK*, Cardiff, Welsh Government, June 2021, pp. 17-18
[15] Ibid, pp.18-19
[16] Ibid, p.9
[17] Independent Commission. *The Independent Commission on the Constitutional Future of Wales: Interim Report*, Cardiff, 2022.
[18] Ibid, p.75.

a widespread assumption even at the heart of the state that this possibility was theoretical rather than actual. Good political sense let alone the democratic mandates which had established devolution would ensure that the powers and prerogatives of the devolved institutions would be both respected and, ultimately, protected. Thus, Diceyian *amour propre* could be preserved alongside the Celtic devolutionists' conceit that they had achieved fundamental, irreversible state reform.

The behaviour of successive UK governments since the Brexit referendum has fatally undermined this version of devolution. It is demonstrably the case that the Sewel convention has provided no defence in a context in which parliamentary sovereignty has been reasserted as *the* core constitutional doctrine of the state by a government impatient with any assertion of autonomous authority in Cardiff or Edinburgh. As we have seen, the unsurprising response by devolutionists has been to demand the entrenchment of devolution in ways that move beyond the ambiguities of the original dispensations.

But even if the original model of devolution is, in this sense, dead – acceptable neither at the centre nor the peripheries of the state – what might follow from this remains entirely unclear. Although untrammelled parliamentary sovereignty is clearly back in vogue, any UK government seeking to abolish Scottish and Welsh devolved institutions would need to be willing to shoulder enormous, even catastrophic, risks. These are institutions that enjoy significant popular legitimacy and, indeed, have become key markers of national identity. A direct assault on their existence would surely generate a backlash, including extensive civil disobedience, such that it's hard to imagine how any UK government could restore stability to the governance of the devolved territories in the aftermath.

Even a 'death by a thousand cuts' approach – a more subtle erosion of powers - is risky. In this case not only because is there a real danger of precipitating an unintended crisis of the kind that would follow from a direct assault, but in addition, the Conservative party (the only conceivable agents of such a policy) would likely find itself completely marginalised by the Scottish and Welsh electorates, thus further exacerbating centrifugal forces in the state. In short, devo-sceptics have undermined the credibility of the previous model of devolution without any viable alternative to set in its place.

But by the same token, neither is it obvious that devolutionists have a politically viable alternative of their own. The Brown Commission version of entrenchment would involve fundamental institutional reform of Westminster, including the introduction of potentially far-reaching constraints on the power of the House of Commons. Even if they were achievable, it is far from clear that these reforms would provide much by way of protection against a Westminster government that had decided (wisely or not) to bring the devolved institutions to heel. Meanwhile, producing a written or codified constitution would represent nothing less than a constitutional revolution, at least as far as English tradition is concerned. The resulting upheaval would literally have no precedent in the modern history of the state. Given that England is home to around 85% of the state's population, even basic considerations of *realpolitik* must render such a development highly unlikely.

Given this impasse, some readers may be tempted to regard independence as a possible, even inevitable, way forward. But as Leighton Andrews pointed out in his recent essay in

*Political Quarterly* (2021), we should be wary of such 'constitutional determinism'.[19] Even before the apparent implosion of the SNP, there were many reasons to doubt the existence of a viable route to Scottish let alone Welsh independence.

Thus, even as Brexit has heralded the death of the previous model of devolution, it seems likely that it will be succeed by an extended period of constitutional purgatory – a period in which this model of devolution persists not because it has any real supporters, not because it has any continuing vitality, but simply because no alternative is possible. Whatever its supposed benefits, in terms of its impact on the UK territorial constitution, it is thus hard to consider the impact of Brexit as being anything other than entirely negative.

[19] Andrews, L. 'The forward march of devolution halted and the limits of progressive unionism,' *Political Quarterly* 92 (3) (2021), pp. 512-52.