

These Isles



An essay by Glyndwr Cennydd Jones

First published in four parts on the website
of the Institute of Welsh Affairs
in April 2019

These Isles

by Glyndwr Cennydd Jones

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

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

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

As discussed in Linda Colley's book *Acts of Union and Disunion* (Profile Books 2014), most states are synthetic constructs and subject to change, experiencing conflict at some stage of their evolution. That said, unitary states face ongoing challenges in acknowledging the partial autonomy and diversity of their constituent nations, especially in cultivating and sustaining a sense of allegiance and belonging to the larger political body, as was effectively enacted by the UK during the era of the British Empire. Historians often associate the Empire with England, but while English institutions influenced the way in which much of the Empire was run, especially through common law, people moving into this expansive construct as administrators, missionaries, professionals, settlers and soldiers mirrored the multi-national nature of the UK, disseminating Welsh, Scottish, Irish and English customs globally, along with shared British ideals.

In time, the UK unitary state developed mature political institutions, considerable defensive resources, effective instruments for preserving internal order, a complex narrative of ideological underpinning,

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

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

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

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

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

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

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

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

The National Parliament of each member nation would sit as the legislative and representative body of its people, having every power and right not by treaty or constitution delegated to the joint institutions. The national legislatures should be mirrored by robust legal structures, supporting the continued rule of law as administered by an independent judiciary. Scotland possessed its own judiciary before 1999 whilst the development of a genuine devolved legislature in Wales has led to a compelling case for introducing a distinct Welsh legal jurisdiction. The ultimate authority on all questions regarding the legitimacy of any law or treaty would sit with a Supreme Court of the Isles.

In 1999, England was omitted from the devolution reforms as it was not allocated an institutional political entity of its own through the foundation of a parliament in common with Wales, Scotland and Northern Ireland. England now comprises over 53 million people, more than five times the total number living in the other UK nations combined. This demographic disparity is widening and it is one of the many reasons why support for increased autonomy across the nations is coalescing. However, England's continued unity is not without question as the territory contains significant regional variations. In terms of wealth, status, power and population, England is orientated heavily towards the South. Producing almost 22% of the UK's total output, London acts as a strong centripetal force, undermining the position of Northern England and the sense of a pervasive, sustainable English identity more broadly. It could be said that England suffers from the absence of a discrete parliament through which its internal disparities and inequities may be analysed and addressed.

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

As explored by David Melding AM in his book *The Reformed Union: The UK as a Federation* (Institute of Welsh Affairs 2013), protection of the isle-wide economic union, which works to address opportunities, risks and threats collectively over time, is as important as supporting the political and social aspects underpinning the relationships between nations. For example, a robust system of fiscal decentralisation might not immediately include allocation to the national governments of responsibility for setting taxes on capital, retail sales and excise duties, whereas those on corporations, income, payroll and property are suited. Sharing the income tax base is an obvious approach. However, the large-scale economic implications of national governments having the comprehensive powers to vary differently the higher and lower rates through a 'tax on base' model must be considered carefully. This is because income tax is a major source of receipts which varies in yield during the economic cycle, demanding some provision of borrowing powers to the nations for dealing with fluctuations in revenue. Intergovernmental relationships within a federation or confederation could be seriously strained by any debt crises caused through injudicious borrowing, especially if accompanied by creditors expecting, whether rightly or wrongly, bailouts from central bodies. Therefore, until the new fiscal arrangements are embedded, access to global markets by national governments should be discouraged for a period, with an isle-wide body established to act as a facilitator of lending for capital programmes of a substantial nature.

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

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

The challenge to both Conservative and Labour parties is to become more formally representative of the nations within their organisational structures. The make-up of the Liberal Democrats is already federalised and the strength of the nationalist movements in Wales, Scotland and Northern Ireland at a level uncommonly seen in other multinational states globally, with the notable exception of Spain i.e. Catalunya. Interestingly, the Scottish Nationalist Party's (SNP) stance during the independence referendum of 2014 was closer to that of devo-max than a classic sovereignty model of the past—better suited to the modern era of globalisation, worldwide corporations and growing integration between states. As described by Tom Devine in his book *Independence or Union* (Penguin Press 2016), the SNP intended that 'an independent Scotland would retain the monarchy, membership of NATO and sterling, through a currency union with the rest of the former UK. This would inevitably have had major implications for the economic powers of a new Scottish state. There was also much talk of a future social union between Scotland and England in the event of independence, which would have eased some of the trauma of separation.'

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

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

A new constitutional framework promoting multicultural Welsh, Scottish, Northern Irish and English identities within an overarching British civic partnership could well flourish with the monarch as a continued Head of State, and the parliamentary model of government, inspired by Westminster, underpinning the developing political institutions in Wales, Scotland, Northern Ireland and England. The tacit acceptance by Westminster of Scottish, and by some implication Welsh, independence as a legitimate option suggests that sovereignty is ultimately determined by the populations of the nations separately and not by the people of the UK collectively. To argue that it is the British people who are first amongst equals is to wilfully ignore the long established, respected status of the home nations in European history. Further, could Westminster unilaterally dissolve the devolved parliaments in the various capitals even if it so wished? Nevertheless, Britishness as a concept is much older than the UK and it is unrealistic to argue that the Welsh or Scottish people, in notional independent territories, would start considering the English as fellow Europeans instead of fellow British.

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

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

Beyond the unitary state, models of federation and confederation may appear structurally similar, at first glance, with individuals participating democratically in electing representatives to established legislative parliaments at two levels of government in both. However, each model has subtly different

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

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

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

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

The following sources have inspired These Isles:

- David Torrance: *'A process, not an event': Devolution in Wales, 1998-2018* (House of Commons, 2018)
- Lord David Owen, Gwynoro Jones, Lord Elystan Morgan and Glyndwr Cennydd Jones: *Brexit, Devolution and the Changing Union* (2018) and *Towards Federalism and Beyond* (2017)
- Tom M Devine: *Independence or Union* (Penguin Press, 2016)
- *A Draft Constitution for a Confederal United Kingdom* (Scottish Constitutional Commission, 2015)
- Linda Colley: *Acts of Union and Disunion* (Profile Books, 2014)
- David Melding AM: *The Reformed Union: The UK as a Federation* (Institute of Welsh Affairs, 2013)
- Barry Cunliffe: *Facing the Ocean: The Atlantic and its Peoples* (Oxford University Press, 2001)
- James Mitchell: 'From National Identity to Nationalism' in the book *The Challenge to Westminster: Sovereignty, Devolution and Independence* (Tuckwell Press, 2000).

Glyndwr Cennydd Jones is an advocate for greater cross-party consensus in Wales and for a UK-wide constitutional convention to run alongside the current EU withdrawal process. June 2019.