

UK constitution: time to bend before it breaks?



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The UK would be wise to pay close attention to the Welsh government's call for devolved justice, says **Roger Smith**

You cannot open a newspaper at the moment without realising that the constitution of the UK is—to put it mildly—contested. The relationship of international law and the national powers of the government; the ethical responsibilities of a prime minister; the Nolan principles of public life; the accountability of the executive to the legislature: any one of these raises enormous constitutional issues. History suggests, however, that much of this background noise—if not all—may quieten in time and with a change of political administration. One of the greatest existential threats to the constitution of the United Kingdom may, however, come not from any of the above. It might well be signalled by a paper quietly produced, without much national fanfare, by the Welsh government entitled *Delivering Justice for Wales* (bit.ly/3HUC1wI).

Keeping it relatable

The paper's 'Summary and Work Programme' is a mere 17 pages long. It follows a much longer document published two years ago by a commission headed by former Lord Chief Justice of England and Wales, Lord Thomas, *Justice in Wales for the People of Wales*. The first thing to note about the latest document is that its very style indicates that it could not have been published by our Ministry of Justice. There is no bumptious bragging. It is worth reading just to see why devolution is attractive to the citizens of Wales and Scotland. It focuses on the local and relatable. It is a good illustration of the beneficial impact of the politics of identity well presented by Mark Drakeford, Wales' uncharismatic but increasingly cherished

first minister. His understated style is reviving Churchill's alleged crack at his successor—'An empty taxi arrived at 10 Downing Street and Clement Attlee got out of it'—followed by reminders that Drakeford, like Attlee, may get the last laugh. There are passages in the document which read, in their immediate political context, as expressions of what was once regarded as typical English understatement. For example, the Welsh government wants to 'continue to participate in England and Wales, GB-wide, UK-wide, European and international arrangements'. Well, if you have been following recent political developments, there is a lot of baggage in that.

This participative approach is one of a list of 'core components of a devolved justice system'. Expressed as 'devolved' it may be, but there are a number on which there might be debate as to the compatibility with Dominic Raab's Ministry of Justice. Number 1 is to 'uphold the Rule of Law'. This could be the usual anodyne assertion of the value of motherhood and apple pie. But, the earlier Welsh document ties the definition to the principles set out by Lord Bingham. That incorporates a commitment to human rights, international obligations, good faith by ministers and access to justice—all of which seem somewhat shaken in the current political bombardment.

The document includes commitments which are political rather than constitutional—such as changes to family law and policing. But the core of it is about the delivery and nature of justice. It wants a new tribunal service for Wales—no immediate threat to the UK constitution there, you might think. But there is a context which is distinctly Welsh: 'The

objective of improving the traditional justice system cannot be achieved without providing social justice'. You don't find that acknowledgement in the speeches of Dominic Raab or Boris Johnson. Nor does the current UK government show much interest in a commitment to incorporate yet more troublesome UN conventions—on the Elimination of Discrimination against Women or the Rights of Disabled People. And the UK government certainly does not show much interest in strengthening equality and human rights.

Good governance, good politics

There are at least three perspectives through which we can look at the Welsh government's work. First, good governance. Read this report and you realise how bad at administration the Ministry of Justice is. The Welsh have the advantage of a smaller territory, but they have not gone from pillar to post following various individual reports by senior members of the judiciary—Leggatt on tribunals, Briggs on courts, etc. They had one commission headed by a judge that brought everyone together and produced a coherent set of central policy recommendations. They have developed a comprehensive plan and monitored performance. And they explicitly support taking 'a rational and evidence-led approach to policy making, delivered in partnership with experts, practitioners and those affected by any planned changes.' Want evidence? Collect data. Not something that the Ministry of Justice is rushing to do.

Second, good politics. Formal justice is surely linked to social justice. And the document shows a willingness to take evidence-based positions which populist ministers might find difficult to stomach: the Welsh government is working, for example, 'to reduce the size of the prison population by significantly reducing the use of short sentences, which have been shown to be counterproductive'.

Third, the constitution. Wales has, no doubt, heard Nicola Sturgeon's push for a further independence referendum. Boris Johnson may well reckon that this is an issue his successors can confront, and he just needs to survive another day. But, this document shows that Wales is set on developing elements of its own legal system. That is integral to the formation of a separate state. If you believe in the advantages of the United Kingdom, then our constitution will need to bend, if it is not to break.

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