Parliamentary Sovereignty: United Kingdom As a Quasi-Federal State

In assessing whether the United Kingdom has evolved towards becoming a federal state, as the result of devolution, it is essential to deliberate the debate's origin. Largely, it has been argued that Blair's government undermined the constitutional framework of the UK. Yet, an opposing argument contends that the creation of devolved parliaments, in Wales, Northern Ireland and Scotland, has provided the UK with characteristics typically resembling federalism, whereby a distribution of power is existent. The nature of devolution within each region creates a lack of legislative unity, disempowering Westminster's ability to influence legislation, due to the necessity of consent from devolved powers. Thus, it is proposed that the UK holds elements of a federal state, following devolution, as it establishes new constitutional relationships amongst regions. Conversely, unionists view devolution and federalism as significantly dissimilar, federalism involving the division of governmental power, "between a central government, and various states or provinces," and devolution alternatively striving to maintain Parliamentary Sovereignty. However, in practice, Westminster undeniably withholds absolute power, its ability to override the devolved regions remaining a constant. Hitherto, devolution appears to dramatically weaken Parliamentary Sovereignty, as it abolishes its authoritative stance over Scotland and Wales' domestic affairs, unlike its unwavering supremacy over England. Therefore, assigning the UK to the title of 'Quasi-federalism', whereby Parliamentary Sovereignty's overriding authority is conserved, would potentially prove more appropriate when considering the aftermath of UK devolution.

Throughout the twentieth century, the English, Welsh and Scottish regions encompassed centralism by unifying executive and legislative power. Inarguably, the uncertainty and inconclusiveness of the UK's evolution towards becoming a federal state, is explored in AXA General Insurance v Lord Advocate , which examined the subjection of the Acts of Scottish Parliament to judicial review. Lord Hope described Scottish Parliament as, "Self-standing," and ruled that such Acts, within competence, attain, "The highest legal authority," legitimising the argument that devolution has naturally brought new authority and independence to UK regions. Thus, the cumulative enlargement of their scope for influence is credible. Furthermore, following the Government of Ireland Act 1922 , devolution was catalysed by the creation of a Northern Ireland Parliament and governmental system, which existed until its abolition in 1972. However, subsequent connotations of social unrest, coupled with a devolved government, have arguably created feelings of distrust, regarding the UK's evolution towards a wholly federal state. Wales and Scotland struggled to establish devolved governments, both relying on a referendum to secure a constitutional transformation. Callaghan initiated the passage of the Scotland Act and the Wales Act , with the succeeding requirement that at least 40% of the electorate reached a collective decision. Despite Scotland's electorate favouring devolved powers, constituting 51.6% of the vote , no further progress was apparent until 1998, when the Labour Government secured power and published White Papers in favour of a referendum. This was substantiated by Davies, the Secretary of State for Wales, who stated that, "Devolution is a process. It is not an event, and neither is it a journey with a fixed-end point." Devolved powers were ultimately recognised during May 1999, thus establishing the foundation of the proposal that the UK has evolved towards federalism. Post-1999 progress is evident in the 2012 case, 'Local Government Byelaws (Wales) Bill 2012- Reference by the Attorney General for England

Wales.' This catalysed the regional authority for Wales under the Government of Wales Act , through the referral of a Bill to the Supreme Court, which was permitted by National Assembly for Wales.

Nonetheless, England's lack of influence within mainstream politics cannot be disregarded. While England encompasses 84% of the UK's population, its nationhood lacks a voice within the modern political system, thus weakening the argument of devolution catalysing UK federalism. Such absence of a representative body, and subsequent federal power, has posed the infamous 'West Lothian Question,' which challenges the equality of rights between a non-devolved England, and the rest of the devolved UK. Paradoxically, the perception that constitution has experienced, "one of the biggest changes in its history," is somewhat attributable to the waning of Westminster's authority. Its diminished power since devolution largely implies federalism, as sufficient consent from regional bodies necessitates further action. However, it must be considered that Westminster still retains its ability to pass legislation and abolish the powers held by devolved regions if necessary. Thus, despite the increase in regional power over corresponding jurisdictions, without the absolute eradication of Parliamentary Sovereignty, the UK will likely struggle to attain a fully-federal status. This argument can be furthered by Lord Hutton's reminder that, "The Northern Ireland Assembly is a body created by a Westminster statute and it has no powers other than those given to it by statute," in 'Robinson v Secretary of State for Northern Ireland' . Therefore, the proposal that devolution has paved the way for UK federalism is objectively undermined, due to the untiring upper hand of Parliamentary Sovereignty.

Moreover, when positioning the UK as a federal state, an alternative stance is attainable. Despite the limitations of devolution's fundamentality to the UK's journey to federalism, it is also possible to consider the UK's membership of the European Union. Britain gained membership to the, then titled, European Economic Community in 1973, a union of politics and economics that comprises of 28 member states, including Spain and the Czech Republic. Its policies strive to secure processes, such as free movement, covering approximately 7.3% of the world's population. Therefore, it could be suggested that the UK's membership has allowed them to become a state within a federal Europe, the EU plausibly holding various characteristics of a nation-state. Undeniably, freedom of movement and residence form the, "Cornerstone of Union citizenship," federalism potentially being encouraged by the defined borders that such elements have established. Further, the argument can be strengthened when analysing the supreme stance of EU law. This creates a perception that the European Central Government and the UK attain local, regional authority, and furthers the proposition that Europe has fashioned a constitutional federal system of its own. However, the EU's contribution is also limited. Although the EU adopts characteristics contingent of a federal state, two momentous factors prove absent, as member states remain sovereign, and fiscal authority to 'tax and spend' is non-existent. Additionally, basic factors, including a lack of police force and army, are unavoidable when assessing whether the EU is a nation-state, hence weakening the argument greatly. Substantially, the influence of the EU is undermined most convincingly through the UK Parliament's ability to withdraw upon request. Indeed, the 23rd June 2016 held a referendum whereby 51.9% voted to leave the EU, highlighting that the rights of UK Parliament are not defined by this supposed 'nation state'. When comparing such circumstances to that of conclusively federal states, such as the USA, who prove constitutionally bound, the perception that EU membership has encouraged the UK to evolve towards federalism, becomes increasingly frail.

Evidently, the extent to which the UK has evolved towards becoming a federal state is controversial; it potentially being more appropriate to adopt the title of ‘quasi-federalism’, whereby Parliamentary Sovereignty remains prominent in its ability to abolish what has been granted. Regarding devolution, it is understandable that Parliamentary Sovereignty will, until its eradication, limit the UK’s ability to adopt full federalism. The UK Government remains able to, on consent of Parliament, overrule any decisions established by its devolved counterparts . Understandably, the three devolved regions function contrastingly, with England, the most populace region, lacking any traces of devolved legislature . Therefore, the asymmetrical process of devolution has possibly failed to catalyze an evolution towards UK federalism, the distribution of power between regions, with the establishment of features such as the National Assembly for Wales , merely promoting an impression. Similarly, despite the few characteristics of the EU that indicate federalism, the remaining sovereignty of its member states, and its lack of public authorities, imply that quasi-federalism is equally more applicable.

Furthermore, it is essential to focus upon current proceedings, namely the impact of ‘Brexit’ upon the UK’s position as a federal state. Due to the interlacing of ‘policy competences,’ the desire of the UK’s devolved regions to participate in the moulding of Brexit is inevitable. Following ‘R(Miller) v Secretary of State for the Exiting of the EU’ , it was ruled that Article 50, which permits the UK’s official departure from the EU, could not be invoked without an Act of Parliament, and insinuated a further requirement of consent from the devolved regions. However, the idea of federalism may further be weakened by the Supreme Court’s dismissal of such a proposal, holding that conventions such as ‘Sewel’ , which disenable Westminster’s ability to legislate on subjects concerning devolved matters without their consent, were unenforceable by courts. Therefore, Brexit so far, has dramatically undermined the potential federalism of the UK, depriving devolved regions of their legal influence at such a crucial time, leaving them, “Frustrated,” and emaciated.

Despite the seemingly weak argument that devolution has led the UK towards a federal state, a future of federalism is not unforeseeable. Ultimate evolution towards federalism could, in fact, enhance the existing parliamentary ritual of the UK, being attainable through mere political determination. However, it is suggested that the federalist UK could only be fully established through expanding such a ritual. Importantly, even in the USA, UK experience was the basis behind their primary federal government in 1780s. When considering the route to full federalism within the UK, it is plausible that Westminster passing a new Act of Union would be a strong starting point. Undeniably, this would require the express consent of the Scottish Parliament and Welsh and Northern Irish assemblies, thus supporting the idea that federalism would deprive Westminster of its absolute sovereignty. Such reduction of Parliamentary Sovereignty unquestionably generates discomfort, yet it is debatable that such a departure has already been triggered. The acceptance of Scotland’s right to independence implies Westminster’s recognition that, to a certain extent, Scotland holds sovereign characteristics. Besides, Westminster’s sovereignty over broader issues, such as foreign affairs, would remain a constant, and the idea of prolonging Parliamentary Sovereignty, as the foundation of constitution, has been described as both “dysfunctional,” and, “archaic.” Inarguably, further controversy would surround the outcome of a non-devolved England, however, the improbability of English dominance over Scottish and Welsh institutions somewhat immaterializes the imminence of an English legislative system. Federalism appears distasteful to avid unionists, posing a danger that their increasing passion will lead to insular and closed-minded perceptions. This was seen previously throughout the numerous stages of European unity, Gaitskell, former Labour party leader, declaring that, “It means the end of a thousand-year history.”

Overall, it is conclusively more fitting to propose that, as a result of devolution, the United Kingdom has evolved towards becoming a quasi-federal state. Undeniably, the process of devolution has been a significant catalyst to such quasi-federalism, forming constitutional relationships within regions, assigning Wales, Scotland and Northern Ireland with more governmental influence and power, and ultimately weakening the supremacy of Westminster. Likewise, it could be suggested that the UK's membership of the European Union has also encouraged such a transition, establishing defined borders, and enforcing an overriding law. Inarguably, however, fundamental elements of federalism remain absent in both scenarios, the upper-hand of Parliamentary Sovereignty, the West Lothian Question and the non-constitutionally binding nature of the EU denying the UK of its full-federalist title. However, it is understandable that the UK may be progressing towards an outcome of 'common ground', reaching a combination of nationalist and unionist desires. Such an outcome would entail the federal UK that would secure the ambitions of the Home Nations or at least permit evolution towards a 'looser union . A federal Britain would undeniably pave the way for future constitutional development, and the passing of a new Act of Union would allow UK Parliaments to attain sovereignty over-allocated jurisdictions. Therefore, despite absolute federalism proving absent within the UK at present, its future is certainly not unlikely.